

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863

Th16b



**Prepared July 8, 2008 (for July 10, 2008 hearing)**

**To:** Coastal Commissioners and Interested Persons

**From:** Charles Lester, District Director  
Jonathan Bishop, Coastal Program Analyst

**Subject: STAFF REPORT ADDENDUM for Th16b SLO-MAJ-2-04 Part 3 (CZLUO Amendment).**

As described in the June 27, 2008 staff report, San Luis Obispo County proposes to amend its Local Coastal Program by updating the Coastal Zone Land Use Ordinance (CZLUO) or Implementation Plan (IP).

Since the staff report was completed, the County of San Luis Obispo and other interested parties have suggested minor changes to the recommendations. In response to these comments, staff has made modifications to the suggested modifications. The changes are shown below as follows (new text shown with double underlines; deletions are shown with ~~double strike-throughs~~):

### **I. Changes to Suggested Modifications**

#### **1) Suggested Modification 1 – Keep e(1)(iii) but modify. Modify e(1)(v).**

iii. Incidental Public services and utilities in Wetlands. Essential incidental public services and utilities pursuant to ESHA Policy 13 and CZLUO Section 23.07.172(e), ~~such as Highway One, which cannot be feasibly be relocated elsewhere and are designed to avoid any significant disruption of the ESHA.~~

...

v. ~~Mitigation~~ Restoration of damaged habitats. Restoration or management measure required to protect the resource. ~~Where feasible,~~ Projects located within or adjacent to environmentally sensitive habitat areas that have been damaged habitats shall be conditioned to require the restoration, monitoring, and long term protection of such habitat areas through a restoration plan and accompanying deed restriction or conservation easement be restored as a condition of development approval. Where previously disturbed but restorable habitat for rare and sensitive plant and animal species exist on a site that is surrounded by other environmentally sensitive habitat areas, these areas shall be delineated and potentially restored considered for restoration as recommended by a restoration plan.

#### **2) Suggested Modification 4**

(6) Open space preservation. Pursuant to the purpose of the Critical Viewshed, or SRA to protect significant visual resources, sensitive habitat or watershed open space preservation is a compatible



California Coastal Commission

July 2008 Meeting in San Luis Obispo

Staff: J.Bishop Approved by:

SLO-MAJ-2-04 Part 3 (CZLUO Amendment) addendum 7.8.2008.doc

~~measure to support the approval of new development. Approval of an application for any land division, Minor Use Permit or Development Plan (excluding any agricultural accessory building) new development in these scenic coastal areas is contingent upon the applicant executing an agreement with the county to maintain in open space use appropriate portions of the site within the Critical Viewshed, or SRA (for visual protection) that are not intended for development. Guarantee of open space preservations may be in the form of public purchase, agreements, easement controls or other appropriate instrument approved by the Planning Director, provided that such guarantee agreements are not to grant provide for public access unless acceptable to the property owner or unless required to provide public access in accordance with the LCP.~~

### 3) Suggested Modification 5

- d. Development adjacent to coastal bluffs. Stormwater outfalls that discharge to the bluff, beach, intertidal area, or marine environment are prohibited unless it has been demonstrated that it is not possible feasible to detain the stormwater on-site, or direct the stormwater to pervious land areas or the street, without causing flooding or erosion. In such instances, stormwater outfalls shall include filtration and treatment systems necessary to protect coastal water quality; be screened from public view using underground pipes and/or native vegetation screening of local stock; and receive all necessary applicable agency approvals. Consolidation of existing outfalls shall be pursued where feasible. The drainage plan shall incorporate all reasonable measures to minimize increased erosion to the coastal bluff as a result of development.



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Th16b



**Prepared June 27, 2008 (for July 10, 2008 hearing)**

**To:** Commissioners and Interested Persons

**From:** Charles Lester, Deputy Director  
Jonathan Bishop, Coastal Program Analyst

**Subject:** San Luis Obispo County Local Coastal Program Major Amendment No. 2-04 (Part 3) Title 23 Coastal Zone Land Use Ordinance Amendment. For public hearing and action at the California Coastal Commission's July 10, 2008 meeting to take place in San Luis Obispo.

### SYNOPSIS

San Luis Obispo County proposes to amend the Coastal Zone Land Use Ordinance (CZLUO), or Implementation Plan (IP) portion of its certified Local Coastal Program (LCP). The amendment updates multiple IP sections including: 1) Section 23.01.043c(3)(i) – Appeals to the Coastal Commission; 2) Section 23.04.186d3 – Landscape Plan Content; 3) 23.04.200 – Archaeology; 4) 23.04.210 – Visual Resources; 5) 23.04.220 – Energy/Solar; 6) Section 23.05.050 - Drainage; 7) Section 23.05.062 - Tree Removal; 8) Section 23.05.110 – Roads and Bridges; 9) Section 23.06.100 - Water Quality; 10) Section 23.06.104 – Municipal Wells; 11) Section 23.06.106 – Onsite Sewage; 12) Section 23.06.108 – Chemical Control; 13) 23.07.104c – Archaeology; 14) 23.07.170 - Environmentally Sensitive Habitats; 15) Section 23.07.172 - Wetlands; 16) Section 23.11.030 – Environmentally Sensitive Habitats Definition. **The standard for review for the amendment is conformity with and adequacy to carry out the provisions of the County's certified Land Use Plan (LUP).**

### SUMMARY OF STAFF RECOMMENDATION

**Staff is recommending that the update be approved if modified as recommended in this staff report.** In summary, the suggested modifications include changes to:

- Clarify that ESHA, and the application of ESHA standards, are not limited to the areas mapped as Combining Designations, consistent with the proposed addition of “unmapped ESHA” to the existing ESHA definition.
- Maintain the CZLUO Section 23.07.170a so that biological reports are prepared for all development within or adjacent to ESHA.
- Maintain the existing CZLUO requirement that only resource dependent uses are allowed in an ESHA.
- Maintain the requirement that projects located within and adjacent to ESHA first avoid adverse impacts before applying mitigation measures.
- Maintain existing visual and scenic resource protection standards.
- Strengthen archaeological resource protection standards through required coordination and



California Coastal Commission

July Meeting in San Luis Obispo

Staff: J. Bishop Approved by:

**EXHIBIT G970022X:D**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING TITLE 23 OF THE SAN LUIS OBISPO COUNTY CODE, THE COASTAL ZONE LAND USE ORDINANCE; SECTIONS 23.04.186, 23.05.050, 23.06.100, 23.06.106, 23.06.108 REGARDING WATER QUALITY AND DRAINAGE; SECTION 23.05.110 REGARDING ROADS AND BRIDGES; SECTIONS 23.04.200 AND 23.07.104 REGARDING ARCHAEOLOGICAL RESOURCES; SECTION 23.04.210 REGARDING VISUAL RESOURCES; SECTION 23.04.220 REGARDING ENERGY CONSERVATION; SECTION 23.04.440 REGARDING A COMMUNITY-BASED TDC PROGRAM FOR LOS OSOS; AND SECTIONS 23.01.043 AND 23.11.030 REGARDING APPEALS WITHIN UNMAPPED ENVIRONMENTALLY SENSITIVE HABITATS

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

SECTION 1: Chapter 23.04 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by **adding new** Section 23.04.200 to read as follows:

**23.04.200 - Protection of Archaeological Resources Not Within the Archaeologically Sensitive Areas Combining Designation:** All development applications that propose development that is not located within the Archaeologically Sensitive Areas combining designation and that meets the following location criteria shall be subject to the standards for the Archaeologically Sensitive Areas combining designation in Chapter 23.07: development that is either within 100 feet of the bank of a coastal stream (as defined in the Coastal Zone Land Use Ordinance), or development that is within 300 feet of such stream where the slope of the site is less than 10 percent.

SECTION 2: Section 23.07.104c [Archaeologically Sensitive Areas: When a mitigation plan is required] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby **amended** to read as follows:

- c. **When a mitigation plan is required.** If the preliminary site survey determines that proposed development may have significant effects on existing, known or suspected archaeological resources, a plan for mitigation shall be prepared by the archaeologist. The purpose of the plan is to protect the resource. The plan may recommend the need for further study, subsurface testing, monitoring during construction activities, project redesign, or other actions to mitigate the impacts on the resource. Highest priority shall be given to avoiding disturbance of sensitive resources. Lower priority mitigation measures may include use of fill to cap the sensitive resources. As a last resort, the review authority may permit excavation and recovery of those resources. The mitigation plan shall be submitted to and approved by the Environmental Coordinator, and considered in the evaluation of the development request by the Review Authority applicable approval body.

SECTION 3: Chapter 23.04 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by **adding new** Section 23.04.210 to read as follows:

**23.04.210 - Visual Resources:**

The following standards apply within Critical Viewsheds, Scenic Corridors and Sensitive Resource Area (SRA) combining designations that are intended to protect visual resources, as identified in this title, the Official Maps, Part III of the Land Use Element, or the area plans of the Local Coastal Plan.

- a. **Applicability of standards.** The following standards apply to public and private development that consists of the following: proposed land divisions and residential and residential accessory structures (including water tanks), agricultural and agricultural accessory structures, commercial structures, pipelines and transmission lines, public utility facilities, communications facilities, and access roads that are required by the Coastal Zone Land Use Ordinance to have a land use permit, except that the following are exempt from some or all of these standards:
  - (1) Agricultural accessory structures that are 600 square feet or less in area.
  - (2) **Project not visible.** An exemption from the standards in the following subsections c(1), (2), (4), and (5) may be granted if documentation is provided demonstrating that the proposed structures and access roads will not be visible from the ocean, the shoreline, public beaches, the Morro Bay estuary, and any of the roads specified in the applicable area plan planning area standards for Critical Viewsheds, Scenic Corridors or SRA's that are intended to protect visual resources. Such documentation shall at a minimum provide topographic and building elevations with preliminary grading and building plans. An exemption from the standard in subsection c(6) may be granted if the preceding documentation is provided, and if open space preservation within the Critical Viewshed or SRA is not otherwise needed to protect sensitive habitat or watershed, as identified in the area plans.
- b. **Permit requirement.** Minor Use Permit approval, unless Development Plan approval is otherwise required by this title or planning area standards of the area plans. The land use permit or land division application shall include the following:
  - (1) A landscaping plan and a visual analysis that is prepared by a licensed architect, a licensed landscape architect or other qualified person acceptable to the Director of Planning and Building. The landscaping plan and visual analysis shall be used to determine compliance with the following standards.
- c. **Standards for Critical Viewsheds and SRAs for protection of visual resources.** The following standards apply within areas identified as Critical Viewsheds or SRAs in the area plans for protection of visual resources.
  - (1) **Location of development.** Locate development, including accessory structures, water tanks and access roads, in the least visible portion of the site as viewed from any of the applicable roads or highways described in the applicable planning area standards in the area plans, consistent with protection of other resources. Visible or partially visible development locations shall only be considered if no non-visible development locations are identified, or if such locations would be more environmentally damaging. Visible or partially visible development locations may be approved where visual effects are reduced to an insignificant level, as determined by the review authority. Use topographic features first and vegetation second to screen development from public view.

- (2) **Building visibility.** Minimize building height and mass by using low-profile design where applicable, including partially sinking structures below grade. Minimize the visibility of buildings, including water tanks, by using colors to harmonize with the surrounding environment.
  - (3) **Ridgetop development.** Locate structures so that they are not silhouetted against the sky as viewed from the ocean, the shoreline, public beaches, the Morro Bay estuary, and applicable roads or highways described in the applicable planning area standards in the area plans, unless compliance with this standard is infeasible or results in more environmental damage than an alternative.
  - (4) **Landscaping for hillside and ridgetop development.** Provide at least 80 percent screening of structures at plant maturity using native or drought-tolerant vegetation (no invasive species) as seen from applicable roads or highways described in the applicable planning area standards in the area plans, but without obstructing major public views (e.g., screening should occur at the building site rather than along a public road). Maximize use of evergreen trees and large-growing shrubs that have shapes similar to existing native vegetation. Alternatives to such screening may be approved if visual effects are otherwise reduced to an insignificant level through use of topographic features or design of structures. Provisions shall be made to maintain and guarantee the survival of required landscape screening for a period of at least five years.
  - (5) **Residential land divisions - cluster requirement.** Residential land divisions and their building sites shall be clustered in accordance with Chapter 23.04 or otherwise concentrated in order to protect the visual resources as identified in the area plans.
  - (6) **Open space preservation.** Pursuant to the purpose of the Critical Viewshed or SRA to protect significant visual resources, open space preservation is a compatible measure to support the approval of new development. Approval of an application for any land division, Minor Use Permit or Development Plan (excluding any agricultural accessory building) is contingent upon the applicant executing an agreement with the county to maintain in open space use appropriate portions of the site within the Critical Viewshed or SRA (for visual protection) that are not intended for development. Guarantee of open space preservation may be in the form of public purchase, agreements, easements controls or other appropriate instrument, provided that such guarantee agreements are not to grant public access unless acceptable to the property owner.
- d. **Standards for scenic corridors.** The following standards apply within areas identified as Scenic Corridors in the area plans for protection of visual resources.
- (1) **Setback.** Where possible, residential buildings, residential accessory structures and agricultural accessory structures shall be set back 100 feet from the edge of the right-of-way of the road along which the Scenic Corridor is established in the area plans, or a distance as otherwise specified in the area plan planning area standards. If there is no feasible development area outside of this setback, the project shall be located on the rear half of the property and shall provide a landscaping screen of moderately fast-growing, drought-tolerant plant material to provide 80 percent view coverage at plant maturity at the building site (not along the public road). A landscaping plan in accordance with the requirements of Chapter 23.04 shall be provided at the time of building permit application submittal.

- (2) **Signs.** Locate signs that are required to have a land use permit, especially freestanding signs, so that they do not interfere with vistas from the road along which the Scenic Corridor is established in the area plans.

SECTION 4: Chapter 23.04 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by **adding new** Section 23.04.220 to read as follows:

**23.04.220 - Energy Conservation, Including Design for Solar Orientation:** The policies and guidelines for designing compact communities and energy efficient projects described in the Energy Element of the County General Plan shall be consulted for new land divisions and development.

SECTION 6: Chapter 23.05 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by **adding new** Section 23.05.110 to read as follows:

**23.05.110 - Road and Bridge Design, Construction and Maintenance:**

Roads and bridges shall be designed, constructed and maintained to protect sensitive resources (such as aquatic habitat and scenic vistas) and prime agricultural soils to the maximum extent feasible; to minimize terrain disturbance, vegetation removal and disturbance of natural drainage courses; to avoid the need for shoreline protective devices; and to provide for bikeways and trails, consistent with the Circulation Element of the County General Plan. In addition, the following measures shall be implemented:

- a. Contour slopes to blend in with adjacent natural topography
- b. Replant graded areas with native vegetation
- c. Include pollution prevention procedures in the operation and maintenance of roads and bridges to reduce pollution of surface waters
- d. Apply fertilizers and nutrients at rates that establish and maintain vegetation without causing nutrient runoff to surface waters
- e. Give preference to aerial crossings of watercourses

SECTION 7: Section 23.04.186d(3) [Landscape plan content: Planting plan] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by **adding new** Subsection (ix) to read as follows:

- (ix) A note that fertilizers and nutrients are to be applied at rates that establish and maintain vegetation without causing nutrient runoff to surface waters.

SECTION 8: Section 23.05.050b [Drainage Standards: Natural channels and runoff] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended to read as follows:

- b. **Natural channels and runoff.** Proposed projects are to include design provisions to retain off-site natural drainage patterns and, when required, limit peak runoff to pre-development levels. To the maximum extent feasible, all drainage courses shall be retained in or enhanced to appear in a natural condition, without channelization for flood control.

**SECTION 9:** Section 23.05.050 [Drainage Standards] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by **revising** subsection a [design and construction], and by **adding new** Subsections g and h to read as follows (new subsections e and f regarding best management practices have been added through Periodic Review implementation):

- a. **Design and construction.** Drainage systems and facilities subject to drainage plan review and approval that are to be located in existing or future public rights-of-way are to be designed and constructed as set forth in the County Engineering Department Standard Improvement Specifications and Drawings. Other systems and facilities subject to drainage plan review and approval are to be designed in accordance with good engineering practices. The design of drainage facilities in new land divisions and other new development subject to Minor Use Permit or Development Plan approval shall maximize groundwater recharge through on-site or communitywide stormwater infiltration measures. Examples of such measures include constructed wetlands, vegetated swales or filter strips, small percolation ponds, subsurface infiltration basins, infiltration wells, and recharge basins. Where possible, recharge basins shall be designed to be available for recreational use.
- g. **Sensitive habitat and groundwater protection.** Runoff from roads and development shall not adversely affect sensitive habitat, groundwater resources and downstream areas, and shall be treated to remove floatable trash, heavy metals and chemical pollutants as necessary prior to discharge into surface or groundwater.
- h. **Impervious surfaces.** New development shall be designed to minimize the amount of impervious surfaces.

**SECTION 10:** Section 23.06.100 [Water Quality] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by **adding new** Section 23.06.104 to read as follows:

**23.06.104 - Municipal Well-head Protection: Referrals:**

The purpose of this section is to protect groundwater resources from contamination by proposed development.

Minor Use Permit and Development Plan applications that propose uses within one mile of a municipal well (locations of municipal wells may be shown in the area plans) that have the potential to release toxic or hazardous materials (e.g. gas stations, businesses that handle hazardous wastes) shall be referred to the County Environmental Health Division for review and appropriate recommended measures that assure protection of water quality. Recommended measures may include, but are not limited to the following:

- a. Determining the extent of areas that contribute water to municipal wells, and making further recommendations as appropriate
- b. Relocating proposed uses relative to municipal wells, especially where such uses involve the manufacture, storage or handling of hazardous materials



- c. Concentrating or clustering development relative to the location of municipal wells
- d. Reducing the density or intensity of proposed uses
- e. Limiting the amounts of potential contaminants that may be stored or handled

SECTION 11.: Section 23.06.100 [Water Quality] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by **adding new** Section 23.06.106 to read as follows:

**23.06.106 - Wastewater: On-site Sewage Disposal:** Wastewater from on-site sewage disposal systems shall not adversely affect groundwater resources or sensitive habitat.

SECTION 12.: Section 23.06.100 [Water Quality] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by **adding new** Section 23.06.108 to read as follows:

**23.06.108 - Chemical Control:**

Land use permit applications that require discretionary review for projects that have potential to release toxic or hazardous materials (e.g. gas stations, businesses that handle hazardous wastes) shall include measures, and where applicable, Best Management Practices that: a) minimize the amounts of potential contaminants that may be stored or handled; b) assure proper containment and c) prevent release of contaminants into the environment. These measures and practices shall be referred to the County Division of Environmental Health for review and for recommendations that shall be implemented through the land use permit.

SECTION 13.: Section 23.01.043c [Appeals to the Coastal Commission, Appealable Development] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended to read as follows:

c. **Appealable development.** As set forth in Public Resources Code Section 30603(a) and this title, an action a decision by the County on a permit application, including any Variance, Exception, or Adjustment granted, for any of the following projects may be appealed to the California Coastal Commission:

- (1) Developments approved between the sea ocean and the first public road parallelling to the sea ocean, or within 300 feet of the inland extent of any beach (or of the mean high tide line of the ocean where there is no beach), whichever is the greater distance, as shown on the adopted post-certification appeals maps.
- (2) Approved developments not included in subsection c(1) of this section that are proposed to be located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff, as shown on the adopted post-certification appeals maps.
- (3) Developments approved in areas not identified included in subsections c(1) or c(2) above that are located in a Sensitive Coastal Resource Area, as defined in Chapter 23.11 of this title, which includes:

- (i) Special marine and land habitat areas, wetlands, lagoons, and estuaries mapped and designated as Environmentally Sensitive Habitats (ESHA) in the Local Coastal Plan. Does not include resource areas determined by the County to be Unmapped ESHA.
  - (ii) Areas possessing significant recreational value, including any "V" (Visitor Serving designation) as shown in the Land Use Element and areas in or within 100 feet of any park or recreation area.
  - (iii) Highly scenic areas which are identified as Sensitive Resource Areas by the Land Use Element.
  - (iv) Archaeological sites referenced in the California Coastline and Recreation Plan or as designated by the State Historic Preservation Officer.
  - (v) Special Communities or Small-Scale Neighborhoods which are significant visitor destination areas as defined by Chapter 23.11 of this title.
  - (vi) Areas that provide existing coastal housing or recreational opportunities for low-and moderate income persons.
  - (vii) Areas where divisions of land could substantially impair or restrict coastal access.
- (4) Any approved development not listed in Coastal Table O, Part I of the Land Use Element as a Principal Permitted (PP) Use.
  - (5) Any development that constitutes a Major Public Works Project or Major Energy Facility. "Major Public Works Project" or "Major Energy Facility" shall mean any proposed public works project or energy facility exceeding \$100,000 in estimated construction cost, pursuant to Section 13012, Title 14 of the California Administrative Code.

The procedures established by Section 23.01.041c. (Rules of Interpretation) shall be used to resolve any questions regarding the location of development within a Sensitive Coastal Resource Area.

SECTION 14.: Section 23.11.030 [Coastal Zone Land Use Ordinance Definitions] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended to read as follows:

**Environmentally Sensitive Habitat Area (Mapped ESHA).** A type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities and development. They include wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats and are mapped as Land Use Element combining designations. Is the same as an Environmentally Sensitive Habitat.

**Environmentally Sensitive Habitat Area (Unmapped ESHA).** A type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities and development. They include, but are not limited to, known wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats that may not be mapped as Land Use Element combining designations. The existence of Unmapped ESHA is determined by the County at or before the time of application acceptance and shall be based on the best available information. Unmapped ESHA includes but is not limited to:

- a. Areas containing features or natural resources when identified by the County or County-approved expert as having equivalent characteristics and natural function as mapped other environmentally sensitive habitat areas;
- b. Areas previously known to the County from environmental experts, documents or recognized studies as containing ESHA resources;
- c. Other areas commonly known as habitat for species determined to be threatened, endangered, or otherwise needing protection.

SECTION 15.: That the Board of Supervisors has considered the initial study prepared and conducted with respect to the matter described above. The Board of Supervisors has, as a result of its consideration, and the evidence presented at the hearings on said matter, determined that the proposed negative declaration as heretofore prepared and filed as a result of the said initial study, is appropriate, and has been prepared and is hereby approved in accordance with the California Environmental Quality Act and the County's regulations implementing said Act. The Board of Supervisors, in adopting this ordinance, has taken into account and reviewed and considered the information contained in the negative declaration approved for this project and all comments that were received during the public hearing process. On the basis of the Initial Study and any comments received, there is no substantial evidence that the adoption of this ordinance will have a significant effect on the environment.

SECTION 16.: 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 17.: This ordinance shall 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.

SECTION 18.: 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.

INTRODUCED at a regular meeting of the Board of Supervisors held on the \_\_\_\_\_ day of \_\_\_\_\_, 2004, and PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2004, by the following roll call vote, to wit:

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING TITLE 23 OF THE SAN LUIS OBISPO COUNTY CODE, THE COASTAL ZONE LAND USE ORDINANCE; SECTIONS 23.05.050 AND 23.06.100 REGARDING WATER QUALITY AND DRAINAGE; SECTION 23.05.062 REGARDING TREE REMOVAL; SECTION 23.07.170 REGARDING DEVELOPMENT WITHIN OR ADJACENT TO ENVIRONMENTALLY SENSITIVE HABITATS; AND SECTION 23.07.172 REGARDING MINERAL EXTRACTION IN WETLANDS

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

SECTION 1: Section 23.05.050 [Drainage Standards] of the Coastal Zone land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by adding new section 23.05.050f to read as follows:

- f. Parking lots and paved areas. Parking lots and other paved areas where automobiles are parked that are 1.0 acres or greater in size shall be equipped with sediment and grease traps, and shall be subject to a periodic maintenance program which are funded and carried out by the property owner. (Mod69)

SECTION 2: Section 23.05.062b2 [Exceptions to Tree Removal Permit Requirements] of the Coastal Zone land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended to read as follows:

2. In a hazardous condition which presents an immediate danger to health or property as determined by a county inspection provided that such removal is allowed by letter of the Planning Director and subject to the standards of Section 23.05.064 (Tree Removal Standards); or

SECTION 3: Section 23.06.100 [Water Quality] of the Coastal Zone land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by adding new section 23.06.100a to read as follows:

- a. Standards for Preventing Polluted Runoff Impacts from Non-point Sources. Land use permit applications that require discretionary review shall be designed and located to avoid significant adverse impacts to streams, tidepools, sensitive plants, riparian vegetation, agricultural lands, and other environmentally sensitive habitat areas from surface water runoff and wastewater. The following shall apply to new development: (Mod69)
3. Where potentially significant adverse impacts might occur, new development shall assess potential pollutants resulting from the development project, as well as the potential impacts of those pollutants on nearby waterways and agricultural lands. Proposed new development shall furthermore be consistent with Central Coast Basin Plan's current water quality objectives for ocean waters, inland surface waters, enclosed bays, and estuaries.

Where polluted surface water runoff might occur as the result of a proposed development project, the proposed project shall be evaluated for potential impacts to critical waterway components, such as: dissolved oxygen, pH, suspended material,

oil/grease, sediment, turbidity, temperature, toxicity, pesticides, chemicals, etc. Where applicable, measures shall be developed and implemented to mitigate potentially significant adverse impacts (e.g., establish a vegetation "filter" strip between a waterway and development).

**SECTION 4:** Section 23.07.170a [Environmentally Sensitive Habitats] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended to read as follows:

- a. **Application content.** Unless a comprehensive program or list of Planning Area or Coastal Zone Land Use Ordinance standards already exists, and mitigation measures have already been identified that will reduce potential impacts to less than significant levels, and the proposed project will incorporate all feasible mitigation measures, a land use permit application for a project on a site located within or adjacent to an Environmentally Sensitive Habitat shall also include a report by a biologist approved by the Environmental Coordinator that:
- (1) Evaluates the impact the development may have on the habitat, and whether the development will be consistent with the biological continuance of the habitat. For those environmentally sensitive habitat areas which are only seasonally occupied, or where the presence of the species can best be determined during a certain season (e.g., an anadromous fish species or annual wildflower species), the field investigation(s) must be conducted during the appropriate time to maximize detection of the subject species. The report shall identify possible impacts, their significance, mitigation measures required to reduce impacts to less than significant levels, the maximum feasible mitigation measures to protect the resource and a program for monitoring and evaluating the effectiveness of the mitigation measures.
  - (2) Is complete, current, and meets established standards for report content and assessment methodology. Report standards shall be consistent with CEQA guidelines, and incorporate the recommendations of the California Department of Fish and Game, U.S. Fish and Wildlife Service, Marine Mammals Commission, and National Marine Fisheries Service, as appropriate.
  - (3) Evaluates development proposed adjacent to environmentally sensitive habitats to identify significant negative impacts from noise, sediment and other potential disturbances that may become evident during project review.
  - (4) Identifies the biological constraints that need to be addressed in designing development that would first avoid, then minimize impacts to ESHA. These identified constraints will be used by the County to evaluate, and require implementation of project design alternatives that result in impacts to ESHA being avoided and unavoidable impacts minimized. This shall also include assessment of impacts that may result from the application of fire safety requirements.

- (5) Verifies that applicable setbacks from the habitat area required by Sections 23.07.170 to 23.07.178 are adequate to protect the habitat or recommends greater, more appropriate setbacks.
- (6) Critically evaluate "after-the-fact" permit applications where unpermitted development has illegally encroached into setback areas before off-site mitigation is considered. Evaluate all options of restoring and enhancing the pre-existing on-site habitat values. Off-site mitigation consisting of replacing the area of disturbance with like habitat at a minimum of 3:1 ratio shall should be an additional requirement where necessary to offset the temporary impacts of the violation and address the potential for restoration efforts to fail.

**SECTION 5:** Section 23.07.170d and e [Environmentally Sensitive Habitats] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended to read as follows:

- d. **Alternatives analysis required.** Construction of new, improved, or expanded roads, bridges and other crossings will only be allowed within required setbacks after an alternatives analysis has been completed. The alternatives analysis shall examine at least two other feasible locations with the goal of locating the least environmentally damaging alternative. ~~The bridge or road may be allowed in the proposed location when accompanied by all feasible mitigation measures to avoid and/or minimize adverse environmental effects, only~~ When the alternatives analysis concludes that a feasible and less environmentally damaging alternative does not exist, the bridge or road may be allowed in the proposed location when accompanied by all feasible mitigation measures to avoid and/or minimize adverse environmental effects. If however, the alternatives analysis concludes that a feasible and less-environmentally damaging alternative does exist, that alternative shall be used and any existing bridge or road within the setback shall be removed and the total area of disturbance restored to natural topography and vegetation.
- e. **Development standards for environmentally sensitive habitats.** All development and land divisions within or adjacent to an Environmentally Sensitive Habitat Area shall be designed and located in a manner which avoids any significant disruption or degradation of habitat values. New development within or adjacent to the habitat shall not significantly disrupt the resource. This standard requires that any project which has the potential to cause significant adverse impacts to an ESHA be redesigned or relocated so as to avoid the impact, or reduce the impact to a less than significant level. (Mod67)
  - (1) Development within an ESHA. In those cases where development within the ESHA cannot be avoided, the development shall be modified as necessary so that it is the least environmentally damaging feasible alternative. Development shall be consistent with the biological continuance of the habitat. Circumstances in which a development project would be allowable within an ESHA include:
    - i. Mitigation, Restoration or management measures required to protect the resource. Where feasible, damaged habitats shall be restored as a condition of development approval.
    - ii. Coastal accessways. Public access easements and interpretive facilities such as nature trails which will improve public understanding of and support for protection of the resource.

- iii. Public services and utilities. Essential public services and utilities, such as Highway One, which cannot be feasibly located elsewhere and are designed to avoid any significant disruption of the ESHA.
- iv. Resource-dependent uses. New development within the habitat shall be limited to those uses that are dependent upon the resource. Where the project results in loss (i.e., permanent conversion) of habitat area, replacement habitat shall be provided in accordance with California Department of Fish and Game and/or U.S. Fish and Wildlife Service recommendations. Generally, replacement habitat must be provided at recognized ratios to successfully reestablish the habitat at its previous size, or as is deemed appropriate in the particular biologic assessment(s) for the impacted site. Replacement habitat, whenever feasible, shall be of the same type as is lost ("same-kind") and within the same biome ("same-system").

(2) Standards for nonconforming development in ESHA's. Where the County is obligated to allow development in an ESHA on the basis that a constitutional taking would otherwise result, the following standards shall apply with respect to development:

- i. Avoidance of takings. The amount and type of development allowed shall be the least that would allow for reasonable economic use.
- ii. Mitigation required. All significant adverse impacts to the ESHA shall be fully mitigated.

(3) Steelhead stream protection: Net loss stream diversions prohibited. Diversions of surface and subsurface water will not be allowed where a significant adverse impact on the steelhead run, either individually or cumulatively, would result. (Mod67)

Diversion dams, water supply wells which tap the subflow, and similar water supply facilities which could significantly harm the steelhead run in any of these streams shall not be allowed. Exceptions may be considered only where the impact is fully mitigated and no significant disruption would result. Techniques for impact avoidance include:

- i. Limiting diversions. Limiting diversions to peak winter flows exceeding the amount needed to maintain the steelhead runs, with off-stream storage where year-round water supplies are desired.
- ii. Protecting water quality. Treating diverted water after use, and returning it to the watershed of origin in like quantities and qualities; and
- iii. Supplementing flows. Supplementing stream flows with water imported from sources that do not exacerbate impacts on steelhead or salmon runs elsewhere.

(4) Other prohibited uses. Prohibited development activities include:

- i. Placement of barriers to fish. In-stream barriers to sensitive freshwater species migration, including types of dams not covered above, weirs, and similar obstacles which would substantially interfere with normal migration patterns, except where mitigated to less than significant levels (e.g., with fish ladders or

other effective bypass systems).

- ii. Destruction of rearing habitats. Development which would cause loss of spawning or rearing habitat through flooding, siltation or similar impacts.
- iii. Disturbance or removal of native riparian vegetation on the banks of streams. Locations constituting an exception to this requirement are:
  - a. In-between stream banks when essential for flood control purposes;
  - b. On roads, trails, or public utility crossings where there is no feasible alternative and no significant disruption would result; and
  - c. For native habitat restoration and protection projects.
- iv. Interference with fish migration. Any other development activity that would raise overall stream temperatures to unfavorable levels, or that would interfere with normal fish migration and movement within the stream.
- v. Breaching. Breaching of the beach berm, where such berm creates a coastal lagoon that provides summer rearing habitat for juvenile steelhead and/or other sensitive aquatic species. Exceptions shall be authorized only where such breaching represents the least environmentally damaging feasible alternative for relieving a flood hazard, public health hazard, or water pollution problem. In the event that a breach is authorized, it shall be conducted subject to the following standards:
  - a. Artificial breaching of a sand bar or beach berm containing a coastal lagoon is considered coastal development, therefore a coastal development permit must be obtained prior to breaching activity.
  - b. As appropriate, permits for creek mouth breaching must also be obtained prior to commencement of any work from California Department of Fish and Game, the U.S. Army Corps of Engineers, the Monterey Bay National Marine Sanctuary (if applicable), the Regional Water Quality Control Board, and all other concerned agencies prior to the breaching. In many cases, the required coastal development permit must be obtained from the California Coastal Commission instead of, or in addition to, the County, because the lagoon/creek mouth will be located entirely or partially within the State's retained jurisdiction.
  - c. Because of the unique nature of individual creekmouth environments, breaching standards must be designed specifically for each location where breaching activity will occur.
  - d. Development of a creek mouth breaching plan for each site shall include consideration of the following:
    - 1. Use of feasible available alternatives, to eliminate the practice of artificial breaching if possible.



2. Thorough study of affected rare, threatened, or endangered species and habitat, in particular steelhead trout, and tidewater goby.
3. Review of mitigation options as compensation for environmental damage caused by breaching.
4. Public access impacts.
5. Public health impacts.
6. Public safety impacts.
7. Review of historic and projected flooding of public and private properties, agricultural lands, and habitat.
8. Monitoring of lagoon and stream water quality.
9. Creation of a monitoring plan for each individual breaching incident, and a long-term monitoring plan to study lagoon health and the impacts of breaching on the lagoon. (Mod67)

- (5) Grading adjacent to Environmentally Sensitive Habitats shall conform to the provisions of Section 23.05.034c (Grading Standards).

**SECTION 6:** Section 23.07.172e1 [Site Development Standards] of the Coastal Zone land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended to read as follows:

- (1) **Diking, dredging, or filling of wetlands:** Diking, dredging, or filling activities in wetland areas under county jurisdiction shall be allowed only to the extent that they are consistent with Environmentally Sensitive Habitats Policy 11 of the San Luis Obispo County Coastal Plan Policies ~~Local Coastal Plan~~, and shall not be conducted without the property owner first securing approval of all permits required by this title. Mineral extraction is not an allowed use in a wetland.

**SECTION 7:** That the Board of Supervisors has considered the initial study prepared and conducted with respect to the matter described above. The Board of Supervisors hereby, as a result of its consideration, and the evidence presented at the hearings on said matter, 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 judgement 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 8: 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 9: This ordinance shall 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.

SECTION 10: 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.

INTRODUCED at a regular meeting of the Board of Supervisors held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT: None

ABSTAINING: None

\_\_\_\_\_  
Chairman of the Board of Supervisors,  
County of San Luis Obispo,  
State of California

ATTEST:

\_\_\_\_\_  
County Clerk and Ex-Officio Clerk  
of the Board of Supervisors  
County of San Luis Obispo, State of California

[SEAL]

consultation with appropriate Native American representatives.

- Improve standards that prevent polluted runoff from non-point sources.

With these modifications, the proposed amendment to the San Luis Obispo certified Implementation Plan is in conformity with, and adequate to carry out, the certified Land Use Plan.

## Staff Report Contents

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## I. Staff Recommendation – Motions & Resolutions

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

### A. Denial of Implementation Plan Amendment as Submitted

***Motion (1 of 2).** I move that the Commission reject the Implementation Plan amendment SLO-MAJ-1-06 (Part 3) as submitted by the County of San Luis Obispo.*

**Staff Recommendation of Rejection.** Staff recommends a **YES** vote. Passage of this motion will result in rejection of the Implementation Plan amendment and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**Resolution to Deny Certification of the Implementation Plan as Submitted.** The Commission hereby **denies** certification of the Implementation Plan amendment SLO-MAJ-1-06 (Part 3) as submitted by the County of San Luis Obispo and adopts the findings set forth below on the grounds that the Implementation Plan amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan amendment



would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that would result from certification of the Implementation Plan amendment as submitted.

## B. Approval of Implementation Plan Amendment if Modified

***Motion (2 of 2).** I move that the Commission certify the Implementation Plan amendment SLO-MAJ-1-06 (Part 3) for the County of San Luis Obispo if it is modified as suggested in this staff report.*

**Staff Recommendation to Certify with Suggested Modifications.** Staff recommends a **YES** vote. Passage of the motion will result in the certification of the Implementation Plan amendment with suggested modifications and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**Resolution to Certify with Suggested Modifications.** The Commission hereby certifies the Implementation Plan Amendment SLO-MAJ-1-06 (Part 3) for the County of San Luis Obispo if modified as suggested and adopts the findings set forth below on the grounds that the Implementation Plan amendment with suggested modifications will conform with, and is adequate to carry out, the provisions of 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 suggests the following modifications to the proposed IP amendment, which are necessary to make the requisite LUP consistency findings. If San Luis Obispo County accepts and agrees to each of the suggested modifications within six months of Commission action (i.e., by January 10, 2009), by formal action of the Board of Supervisors, the IP amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished. Where applicable, text in ~~cross-out~~ format denotes text to be deleted and text in underline format denotes text to be added.

### 1. Amend proposed ESHA ordinance sections 23.07.170a, d, and e as follows:



23.07.170 – Environmentally Sensitive Habitats: The provisions of this section apply to development proposed within or adjacent to (within 100 feet of the boundary of) an Environmentally Sensitive Habitat as defined by Chapter 23.11 of this title, ~~and as mapped by the Land Use Element combining designation maps.~~

**a. Application content.** ~~Unless a comprehensive program or list of Planning Area or Coastal Zone Land Use Ordinance standards already exists, and mitigation measures have already been identified that will reduce potential impacts to less than significant levels, and the proposed project will incorporate all feasible mitigation measures, a~~ A land use permit application for a project on a site located within or adjacent to an Environmentally Sensitive Habitat shall also include a report by a biologist approved by the Environmental Coordinator that:

- (1) Evaluates the impact the development may have on the habitat, and whether the development will be consistent with the biological continuance of the habitat. For those environmentally sensitive habitat areas which are only seasonally occupied, or where the presence of the species can best be determined during a certain season (e.g., an anadromous fish species or annual wildflower species), the field investigation(s) must be conducted during the appropriate time to maximize detection of the subject species. The report shall identify possible impacts, their significance, measures to avoid possible impacts, mitigation measures required to reduce impacts to less than significant levels when impacts cannot be avoided, measures for the restoration of damaged habitats and long term protection of the habitats, and a program for monitoring and evaluating the effectiveness of ~~the mitigation~~ such measures.
- (2) Is complete, current and meets established standards for report content and assessment methodology. Report standards shall be consistent with CEQA guidelines, and incorporate the recommendations of the California Coastal Commission, California Department of Fish and Game, U.S. Fish and Wildlife Service, Marine Mammals Commission, and National Marine Fisheries Service, as appropriate.

...

**d. Alternatives analysis required.** Construction of new, improved, or expanded roads, bridges and other crossings will only be allowed within required setbacks after an alternatives analysis has been completed. The alternatives analysis shall examine at least two other feasible locations with the goal of locating the least environmentally damaging alternative. When the alternatives analysis concludes that a feasible and less environmentally damaging alternative does not exist, the bridge or road may be allowed in the proposed location when accompanied by all feasible mitigation measures to avoid and/or minimize adverse environmentally effects. If however, the alternatives analysis concludes that a feasible and less-environmentally damaging alternative does exist, that alternative shall be used and any existing bridge or road within the setback shall be removed and the total area of disturbance restored to natural topography and vegetation.



- e. **Development standards for environmentally sensitive habitats.** All development and land divisions within or adjacent to an Environmentally Sensitive Habitat Area shall be designed and located in manner which avoids any significant disruption or degradation of habitat values. This standard requires that any project which has the potential to cause significant adverse impacts to an ESHA be redesigned or relocated so as to avoid the impact, or reduce the impact to a less than significant level where complete avoidance is not possible. (Mod 67)

(1) Development within an ESHA. In those cases where development within the ESHA cannot be avoided, the development shall be modified as necessary so that it is the minimum necessary to provide a reasonable least environmentally damaging feasible alternative. Development shall be consistent with the biological continuance of the habitat. Circumstances in which a development project would be allowed within an ESHA include:

- i. Resource dependent uses. New development within the habitat shall be limited to those uses that are dependent upon the resource.
- ~~i. Mitigation. Restoration or management measure required to protect the resource. Where feasible, damaged habitats shall be restored as a condition of development approval.~~
- ii. Coastal accessways. Public access easements and interpretive facilities such as nature trails which will improve public understanding of and support for protection of the resource.
- ~~iii. Public services and utilities. Essential public services and utilities, such as Highway One, which cannot be feasibly be relocated elsewhere and are designed to avoid any significant disruption of the ESHA.~~
- iv. ~~Resource dependent uses~~ Habitat Creation and Enhancement. Where the project results in an unavoidable loss (i.e., temporary or permanent conversion) of habitat area, replacement habitat and/or habitat enhancements shall be provided and maintained by the project applicant. Plans for the creation of new habitat, or the enhancement of existing habitat, shall consider the recommendations of the California Coastal Commission, the in accordance with California Department of Fish and Game and/or U.S. Fish and Wildlife Service recommendations. Generally, replacement habitat must be provided at recognized ratios to successfully reestablish the habitat at its previous size, or as is deemed appropriate in the particular biologic assessment(s) for the impacted site. Replacement and/or enhanced habitat, whenever feasible, shall be of the same type as is lost (“same-kind”) and within the same biome (“same-system”), and shall be permanently protected by a deed restriction or conservation easement.
- ~~i v. Mitigation~~ Restoration of damaged habitats. Restoration or management measure required to protect the resource. Where feasible, Projects located within or adjacent to environmentally sensitive habitat areas that have been damaged habitats shall be conditioned to require the restoration, monitoring, and long term



protection of such habitat areas through a restoration plan and accompanying deed restriction or conservation easement be restored as a condition of development approval. Where previously disturbed but restorable habitat for rare and sensitive plant and animal species exist on a site that is surrounded by other environmentally sensitive habitat areas, these areas shall be delineated and potentially restored as recommended by a restoration plan.

- (2) ~~Standards for nonconforming~~ Development in ESHA's to avoid a takings. Where the County is obligated to allow ~~If development in an ESHA must be allowed to avoid on the basis that an unconstitutional taking would otherwise result, then all of the following standards shall apply with respect to such development:~~
- i. Avoidance of takings. The amount and type of development allowed shall be the least necessary to avoid a takings.~~that would allow for a reasonable economic use~~
  - ii. Impacts avoided/minimized. All development in and impacts to ESHA shall be avoided to the maximum extent feasible. Any unavoidable impacts shall be limited the maximum extent feasible.
  - iii. Mitigation required. All ~~significant~~ adverse impacts to the ESHA shall be fully mitigated.

- (3) Steelhead stream protection: Net loss stream diversions prohibited. Diversions of surface and subsurface water will not be allowed where a significant adverse impact on the steelhead run, either individually or cumulatively, would result.

Diversions dams, water supply wells which tap the subflow, and similar water supply facilities which could significantly harm the steelhead run in any of these streams shall not be allowed. Exceptions may be considered only where the impact cannot be avoided, is fully mitigated and no significant disruption would result. Techniques for impact avoidance include:

- i. Limiting diversions. Limiting diversions to peak winter flows exceeding the amount needed to maintain the steelhead runs, with off-stream storage where year-round water supplies are desired.
- ii. Protecting water quality. Treating diverted water after use, and returning it to the watershed of origin in like quantities and qualities; and
- iii. Supplementing flows. Supplementing stream flows with water imported from sources that do not exacerbate impacts on steelhead or salmon runs elsewhere.

- (4) Other prohibited uses. Prohibited development activities include:

- i. Placement of barriers to fish. In-stream barriers to sensitive freshwater species migration, including types of dams not covered above, weirs, and similar obstacles which would substantially interfere with normal migration patterns, except where barriers cannot be avoided and impacts are mitigated to less than significant levels (e.g., with fish ladders or other effective bypass systems).



- ii. Destruction of rearing habitats. Development which would cause loss of spawning or rearing habitat through flooding, siltation or similar impacts.
- iii. Disturbance or removal of native riparian vegetation on the banks of streams. Locations constituting an exception to this requirement are:
  - a. In-between stream banks when essential for flood control purposes and no less environmentally damaging alternative is available to protect existing structures;
  - b. On roads, trails, or public utility crossings where vegetation removal cannot be avoided, and where there is no feasible alternative and no significant disruption would result; and
  - c. For native habitat restoration and protection projects.
- iv. Interference with fish migration. Any other development activity that would raise overall stream temperatures to unfavorable levels, or that would interfere with normal fish migration and movement within the stream.
- v. Breaching. Breaching of the beach berm, where such berm creates a coastal lagoon that provides summer rearing habitat for juvenile steelhead and/or other sensitive aquatic species. Exceptions shall be authorized only where such breaching represents the least environmentally damaging feasible alternative for relieving a flood hazard, public health hazard, or water pollution problem. In the event that a breach is authorized, it shall be conducted subject to the following standards:
  - a. Artificial breaching of a sand bar or beach berm containing a coastal lagoon is considered coastal development, therefore a coastal development permit must be obtained prior to breaching activity.
  - b. As appropriate, permits for creek mouth breaching must also be obtained prior to commencement of any work from California Department of Fish and Game, the U.S. Army Corps of Engineers, the Monterey Bay National marine Sanctuary (if applicable), Regional Water Quality Control Board, and all other concerned agencies prior to the breaching. In many cases, the required coastal development permit must be obtained from the California Coastal Commission instead of, or in addition to, the County, because the lagoon/creek mouth will be located entirely or partially within the State's retained jurisdiction.
  - c. Because of the unique nature of individual creekmouth environments, breaching standards must be designed specifically for each location where breaching activity will occur.
  - d. Development of a creek mouth breaching plan for each site shall include consideration of the following:





1. Use of feasible available alternatives, to eliminate the practice of artificial breaching if possible.
2. Thorough study of affected rare, threatened, or endangered species and habitat, in particular steelhead trout, and tidewater goby.
3. Review of mitigation options as compensation for environmental damage caused by breaching.
4. Public access impacts.
5. Public health impacts.
6. Public safety impacts.
7. Review of historical and projected flooding of public and private properties, agricultural lands, and habitat.
8. Monitoring of lagoon and stream water quality.
9. Creation of a monitoring plan for each individual breaching incident, and a long-term monitoring plan to study lagoon health and the impacts of breaching on the lagoon.

(5) Grading adjacent to Environmentally Sensitive Habitats shall conform to the provisions of Section 23.05.034c (Grading Standards).

**2. Amend CZLUO Section 23.07.172(e)(1) as follows:**

(1) Diking, dredging, or filling of wetlands: Diking, dredging, or filling activities in wetland areas under county jurisdiction shall be allowed only to the extent that they are consistent with Environmentally Sensitive Habitats Policy ~~4-13~~ of the San Luis Obispo County Coastal Plan Policies, and shall not be conducted without the property owner first securing approval of all permits required by this title. Mineral extraction is not an allowed use in a wetland.

**3. Miscellaneous ESHA modifications for internal consistency.**

**23.01.022(b). Local Coastal Plan provisions:** The following portions of the San Luis Obispo County Local Coastal Plan (the policy document portion of the land use plan prepared as part of the San Luis Obispo County Local Coastal Program) adopted by Board of Supervisors Resolution 88-115 and all amendments thereto:

....

(2) **Environmentally Sensitive Habitat maps:** The combining designation maps adopted as part of the Local Coastal Plan showing areas known at that time to be ~~that are~~ sensitive habitats for plant and animal life, on file in the San Luis Obispo County Planning Department.

....



### 23.05.026 - Grading Permit Exemptions

~~(h)(3)~~ Within 100 feet of an Environmentally Sensitive Habitat ~~as shown in the Land Use Element~~;

### 23.05.034 - Grading Standards:

~~(c)~~ **Grading adjacent to Environmentally Sensitive Habitats.** Grading shall not occur within 100 feet of any Environmentally Sensitive Habitat ~~as shown in the Land Use Element~~ except:

#### 4. Section 23.04.210 – Visual Resources:

The following standards apply within Critical Viewsheds, Scenic Corridors and Sensitive Resource Area (SRA) Combining Designations that are intended to protect visual resources, as identified in this title, the Official Maps, Part III of the Land Use Element, or the area plans of the Local Coastal Plan.

- a. Applicability of standards. The following standards apply to ~~public and private~~ new development ~~that consists of the following: proposed land divisions and residential and residential accessory structures (including water tanks), agricultural and agricultural accessory structures, commercial structures, pipelines and transmission lines, public utility facilities, communications facilities, and access roads that are required by the Coastal Zone Land Use Ordinance to have a land use permit, except that the following are exempt from some or all of these standards (a)-(d):~~
  - (1) Agricultural accessory structures that are 600 square feet or less in area, or other minor agriculturally-related development (e.g. fencing, wells).
  - ~~(1)~~ (2) Project not visible. An exemption from the standards in the following subsections c(1), (2), (4), and (5) may be granted if documentation is provided demonstrating that the ~~proposed structures and access roads~~ development will not be visible from the ocean, the shoreline, public beaches, the Morro Bay estuary, ~~and~~ any of the roads specified in the applicable area plan planning area standards for Critical Viewsheds, Scenic Corridors, or SRA's that are intended to protect visual resources. Such documentation shall be prepared by a qualified professional acceptable to the Planning Director and at a minimum shall provide scaled topographic and building elevations with preliminary grading, drainage, and building plans. An exemption from the standard in subsection c(6) may be granted if the preceding documentation is provided, and if it is determined by the Planning Director that open space preservation within the Critical Viewshed, or SRA is not otherwise needed to protect the scenic and visual resource, sensitive habitat or watershed, as identified in the area plans.
- b. Permit requirement. Minor Use Permit approval, unless Development Plan approval is otherwise required by this title or planning area standards of the area plans. The land use permit or land division application shall include the following:



- (1) A landscaping plan, grading and drainage plan, lighting plan, fencing plan, and visual analysis, including the use of story-poles as required, that is prepared by a licensed architect, a licensed landscape architect or other qualified ~~person~~ professional acceptable to the Director of Planning and Building. The ~~landscaping plans~~ and visual analysis shall be used to determine compliance with the following standards.
- c. Standards for Critical Viewsheds, and SRAs for protection of visual resources. The following standards apply within areas identified as Critical Viewsheds, or SRAs in the area plans for protection of visual resources.
- (1) Location of development. Locate development, including but not limited to primary and secondary structures, accessory structures, fences, utilities, water tanks, and access roads, in the least visible portion of the site ~~as viewed from any of the applicable roads or highways described in the applicable planning area standards in the area plans,~~ consistent with protection of other resources. Emphasis shall be given to locations not visible from major public view corridors. Visible or partially visible development locations shall only be considered if no feasible non-visible development locations are identified, or if such locations would be more environmentally damaging. ~~Visible or partially visible development locations may be approved where visual effects are reduced to an insignificant level, as determined by the review authority.~~ New development shall be designed (e.g., height, bulk, style, materials, color) to be subordinate to, and blend with, the character of the area. Use naturally occurring topographic features and slope created "pockets" first and native vegetation and berming second, to screen development from public view and minimize visual intrusion.
  - (2) ~~Building~~ Structure visibility. Minimize ~~building~~ structural height and mass by using low-profile design where ~~applicable~~ feasible, including ~~partially~~ sinking structures below grade. Minimize the visibility of ~~buildings, including water tanks, structures~~ by using ~~colors~~ design techniques to harmonize with the surrounding environment.
  - (3) Ridgetop development. Locate structures so that they are not silhouetted against the skyline or ridgeline as viewed from the ocean, the shoreline, public beaches, the Morro Bay estuary, applicable roads or highways described in the applicable planning area standards in the area plans, unless compliance with this standard is infeasible or results in more environmental damage than an alternative.
  - (4) Landscaping for hillside and ridgetop development. Provide ~~at least 80 percent~~ screening of ~~structures~~ development at plant maturity using native, non-invasive, ~~or~~ drought tolerant vegetation of local stock (no invasive species) ~~as seen from applicable roads or highways described in the applicable planning area standards in the area plans,~~ ~~but~~ without obstructing major public views (e.g., screening should occur at the building



site rather than along a public road). ~~Maximize The use of evergreen trees and large-growing shrubs that have shapes~~ vegetation appropriate to the site shall be similar to existing native vegetation. Alternatives to such screening may be approved if visual effects impacts are ~~otherwise reduced to an insignificant level~~ avoided through use of natural topographic features ~~or~~ and the design of structures. Provisions shall be made to maintain visual screening for the life of the development. ~~the survival of required landscape screening for a period of at least five years.~~

- (5) ~~Residential~~ Land divisions and lot-line adjustments – cluster requirement. New land divisions and lot-line adjustments where the only building site would be on a highly visible slope or ridgetop shall be prohibited. ~~Residential~~ Land divisions and their building sites that are found consistent with this provision shall be clustered in accordance with Chapter 23.04 or otherwise concentrated in order to protect the visual resources ~~as identified in the area plans.~~
- (6) Open space preservation. Pursuant to the purpose of the Critical Viewshed, or SRA to protect significant visual resources, sensitive habitat or watershed open space preservation is a compatible measure ~~to support the approval of new development.~~ Approval of an application for ~~any land division, Minor Use Permit or Development Plan (excluding any agricultural accessory building)~~ new development in these scenic coastal areas is contingent upon the applicant executing an agreement with the county to maintain in open space use appropriate portions of the site within the Critical Viewshed, or SRA (for visual protection) ~~that are not intended for development.~~ Guarantee of open space preservations may be in the form of public purchase, agreements, easement controls or other appropriate instrument approved by the Planning Director, ~~provided that such guarantee agreements are not to grant public access unless acceptable to the property owner.~~
- d. Standards for scenic corridors. The following standards apply within areas identified as Scenic Corridors in the area plans for protection of visual resources.
- (1) Setback. Where possible, new development residential buildings, residential accessory structures and agricultural accessory structures shall be set back a minimum of 100 feet from the edge of the right-of-way of the road along which the Scenic corridor is established in the area plans, or a distance as otherwise specified in the area plan planning area standards. If there is no feasible development area outside of this setback, the project shall be located on the rear half of the property as long as the location is not more environmentally damaging. ~~and~~ New development allowed in visible areas shall provide a landscaping screen consistent with the requirements of c(4) above. ~~of moderately fast growing, drought tolerant plant material to provide 80 percent view coverage at plant maturity at the building site (not along the public road).~~ A landscaping



plan in accordance with these requirements and the requirements of Chapter 23.04 shall be provided at the time of building permit application submittal.

(2) Signs. ~~Locate~~ Signs that are required to have a land use permit, especially freestanding signs, shall so that they do be located so as to not interfere with unique and attractive features of the landscape, including but not limited to unusual landforms, sensitive habitats, and scenic vistas from the road along which the Scenic Corridor is established.

e. General Visual Standards for Coastal Development. Notwithstanding subsections (a)-(d) above, all development requiring a coastal development permit must be consistent with the requirements of Coastal Plan Visual and Scenic Resource Policies 1-11 as applicable.

### 5. Section 23.05.050 – Drainage Standards:

Delete outdated preamble - "[this amendment does not corresponde.....]"

b. Natural channels and runoff. Proposed projects are to include design provisions to retain off-site natural drainage patterns and, when required, limit peak runoff to pre-development levels. To the maximum extent feasible, all drainage courses shall be retained in or enhanced to appear in a natural condition, without channelization for flood control. On downhill sites, encourage drainage easements on lower properties so that drainage can be released on the street or other appropriate land area below.

d. Development adjacent to coastal bluffs. Stormwater outfalls that discharge to the bluff, beach, intertidal area, or marine environment are prohibited unless it has been demonstrated that it is not possible to detain the stormwater on-site, or direct the stormwater to pervious land areas or the street, without causing flooding or erosion. In such instances, stormwater outfalls shall include filtration and treatment systems necessary to protect coastal water quality; be screened from public view using underground pipes and/or native vegetation screening of local stock; and receive all necessary agency approvals. Consolidation of existing outfalls shall be pursued where feasible. The drainage plan shall incorporate all reasonable measures to minimize increased erosion to the coastal bluff as a result of development.

e. Water Runoff.

(1) BMP's – Residential Development. All new residential development ..... Such measures shall include, but not be limited to ... ; and or managing runoff on the site (e.g., percolation basins); and other Low Impact Design (LID) techniques.

(2) BMP's – Non-Residential Development ... The Best Management Practices shall include measures to minimize post-development loadings of total suspended solids. Where feasible other Low Impact Design (LID) techniques shall be implemented.

f. Parking lots and paved areas. Parking lots and other paved areas where automobiles are parked that are 1.0 acre or greater in size shall be equipped with sediment and grease traps facilities and/or measures to address post construction runoff and ongoing nonpoint source pollution (e.g.,



sediment and grease traps, oil/water separators, biofilters), and shall be subject to a periodic maintenance program which are funded and carried out by the property owner. (~~Mod 69~~)

- h. Impervious surfaces. New development shall be designed to minimize the amount of impervious surfaces in order to maximize the amount of on-site runoff infiltration.

#### 6. Amend proposed ordinance section 23.06.100a as follows:

- a. Standards for preventing Polluted Runoff Impacts from Non-point Sources. ~~Land use permit applications that require discretionary review~~ New development shall be designed and located to avoid significant adverse impacts to wetlands, streams, tidepools, sensitive plants, riparian vegetation, agricultural lands, and other environmentally sensitive habitat areas from surface water runoff and wastewater. The following shall apply to new development: (~~Mod 69~~)

31. Where potentially significant adverse impacts might occur, new development shall assess potential pollutants resulting from the development project, as well as the potential impacts of those pollutants on nearby waterways and agricultural lands. Proposed new development shall furthermore be consistent with Central Coast Basin Plan's current water quality objectives for ocean waters, inland surface waters, enclosed bays, and estuaries.

Where polluted surface water runoff might occur as the result of a proposed development project, the proposed project shall be evaluated for potential impacts to critical waterway components, such as: dissolved oxygen, pH, suspended material, oil/grease, sediment, turbidity, temperature, toxicity, pesticides, chemicals, etc. Where applicable, measures shall be developed and implemented to avoid and mitigate potentially significant adverse impacts (e.g. establish a vegetation "filter" strip between a waterway and development).

#### 7. Section 23.07.104 – Archaeologically Sensitive Areas:

**b. Preliminary site survey required.** Before issuance of a land use or construction permit for development within an archaeologically sensitive area, a preliminary site survey shall be required. The survey shall be conducted by an qualified archaeologist knowledgeable in local Native American Chumash-Indian culture and approved by the Environmental Coordinator. The County will provide pertinent project information to the Native American tribe(s).

**c. When a mitigation plan is required.** If the preliminary site survey determines that proposed development may have significant effects on existing, known or suspected archaeological resources, a plan for mitigation shall be prepared by ~~the~~ a qualified archaeologist. The County will provide pertinent project information to the Native American tribe(s) as appropriate. The purpose of the plan is to protect the resource. The plan may recommend the need for further study, subsurface testing, monitoring during construction activities, project redesign, or other actions to mitigate the impacts on the resource. Highest priority shall be given to avoiding disturbance of sensitive resources. Lower priority mitigation measures may include use of fill to



cap the sensitive resources. As a last resort, the review authority may permit excavation and recovery of those resources. The mitigation plan shall be submitted to and approved by the Environmental Coordinator, and considered in the evaluation of the development request by the Review Authority.

**d. Archeological resources discovery.** In the event archaeological resources are unearthed or discovered during any construction activities, the standards of Section 23.05.140 of this title shall apply. Construction activities shall not commence until a mitigation plan, prepared by a qualified professional archaeologist reviewed and approved by the Environmental Coordinator, is completed and implemented. The County will provide pertinent project information to and consult with the affected Native American tribe(s) as appropriate. The mitigation plan shall include measures to avoid the resources to the maximum degree feasible and shall provide mitigation for unavoidable impacts. A report verifying that the approved mitigation plan has been completed shall be submitted to the Environmental Coordinator prior to occupancy or final inspection, whichever occurs first.

#### **8. Section 23.01.043c– Appeals to the CCC:**

**Appealable development.** As set forth in Public Resources Code Section 30603(a), and this title, an action by the county on a permit application, including any Variance, Exception or Adjustment granted, for any of the following projects may be appealed to the Coastal Commission:

(1) Development approved between the sea and the first public road paralleling to the sea, or within 300 feet of the inland extent of any beach (or of the mean high tide line of the ~~ocean~~ sea where there is no beach), ~~whichever is the greatest distance, as shown on the adopted post-certification appeals maps.~~

(2) Approved developments not included in subsection c(1) of this section that are proposed to be located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff, ~~as shown on the adopted post-certification appeals maps.~~

....

The procedures established by Section 23.01.041c (Rules of Interpretation) shall be used to resolve any questions regarding the location of ~~development within a Sensitive Coastal Resource Area~~ any land use category or combining designation boundary, or the location of a proposed public facility, road alignment or other symbol or line on the official maps, including for the purpose of determining the appealability of a development within a Sensitive Resource Area.

#### **9. Section 23.04.220 – Energy Conservation, Including Design for Solar Orientation:**



~~The policies and guidelines for designing compact communities and energy efficient projects described in the Energy Element of the County General Plan shall be consulted for new land divisions and development. New development shall consider compact community design and incorporation of energy efficiency measures.~~

#### 10. Section 23.05.110 – Road and Bridge Design, Construction and Maintenance:

Roads and bridges shall be designed, constructed and maintained to protect sensitive resources (such as aquatic habitat and scenic vistas) and prime agricultural soils to the maximum extent feasible; to minimize terrain disturbance, vegetation removal and disturbance of natural drainage courses; to avoid the need for shoreline and streambank protective devices; and to provide for bikeways and trails, consistent with the Circulation Element of the Local Coastal Plan~~County General Plan~~. In addition, the following measures shall be implemented:

- a. Contour slopes to blend in with adjacent natural topography
- b. Replant graded areas with native non-invasive vegetation of local stock
- c. Include pollution prevention procedures in the operation and maintenance of roads and bridges to reduce pollution of surface waters
- d. Give preference to aerial crossings of watercourses

### III. Findings and Declarations

#### 1. Environmentally Sensitive Habitat Areas

##### A. Policy

San Luis Obispo County proposes to amend several sections of the Implementation Plan (Coastal Zone Land Use Ordinance (CZLUO)) that address the protection of Environmentally Sensitive Habitat (ESHA). The standard of review for the proposed changes is conformity with and adequacy to carry out the Coastal Plan Policy document of the LCP (Land Use Plan). The LUP includes a general statement of the definition of ESHA, the Coastal Act requirements to protect ESHA, and includes the Coastal Act definition of environmentally sensitive area in Appendix A:

*Environmentally sensitive habitat areas are settings in which plant or animal life (or their habitats) are rare or especially valuable due to their special role in an ecosystem. Designation of environmentally sensitive habitats include but are not limited to: 1) wetlands and marshes; 2) coastal streams and adjacent riparian areas; 3) habitats containing or supporting rare and endangered or threatened species; 4) marine habitats containing breeding and/or nesting sites and coastal areas used by migratory and permanent birds for resting and feeding. The Coastal Act provides protection for these areas and permits only resource-dependent uses within the habitat area. Development adjacent must be sited to avoid impacts. (Coastal Plan Policies, p. 6-5)*





**Appendix A: Environmentally Sensitive Area** - means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. (Section 30107.5)

The LUP also includes 42 separate policies to protect ESHA, including wetlands (Policies 7-19), streams (policies 20-28), terrestrial habitats (policies 29-37) and marine habitats (policies 38-42). Coastal Plan Policy 1 embodies the essential requirements of Coastal Act section 30240:

**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.

Other policies include the requirement that new development not significantly disrupt ESHA (Policy 2); habitat restoration requirements (Policy 4); and land divisions restrictions (Policy 4).

**B. Conformity of the IP Amendment**

**1. ESHA Definition**

The County proposes to amend the CZLUO 23.11.030 definition of ESHA by clearly including “unmapped ESHA” within the definition of ESHA (see Exhibit 1, p. 7) This proposed amendment of the IP is an important change to address the LUP and by extension Coastal Act requirements to protect ESHA. It also addresses Commission recommendations in the adopted Periodic Review of the County’s LCP. In order to protect ESHA consistent with the general LUP ESHA definition, the definition of ESHA must allow for the identification of ESHA based on current on-the-ground biological review. It should not be tied to a specific map of resources identified at a point in time. Although ESHA mapping is also important, and provides both more certainty in the development review process and higher protection of known ESHA, an ESHA definition that relies solely on such mapping does not allow for the identification of ESHA based on updated field work, new knowledge, and other changing circumstances. As with many other jurisdictions, new sensitive species and habitats have been identified in San Luis Obispo County since certification of the LCP, including the Morro shoulderband snail in Los Osos and the California red-legged frog.

The County’s proposed ESHA definition amendment allows for the identification of ESHA consistent with the broad definition of ESHA in the LUP and the Coastal Act. In addition, the proposed definition identifies examples of ESHA, including but not limited to wetlands, riparian areas, and terrestrial habitats. It also includes categorical examples of ESHA including:

- *Areas containing features or natural resources when identified by the county or County-approved expert as having equivalent characteristics and natural function as mapped other environmentally sensitive habitat areas;*



- *Areas previously known to the County from environmental experts, documents or recognized studies as containing ESHA resources*
- *Other areas commonly known as habitat for species determined to be threatened, endangered, or otherwise needing protection.*

These general categories are presumptively ESHA under the new definition and would allow sufficient flexibility for identifying ESHA on the ground based on expert biological review. This is consistent with recent Commission adoption of ESHA definitions in the Malibu LCP and the UCSC LRDP that generally presume the existence of ESHA in the following categories unless there is compelling evidence to the contrary:

- Any habitat area that is rare or especially valuable from a local, regional, or statewide basis.
- Habitat Areas that contribute to the viability of plant or animal species designated or candidates for listing as rare, threatened, or endangered under State or Federal law.
- Habitat Areas that contribute to the viability of species designated as Fully Protected or Species of Special Concern under State law or regulations.
- Habitat Areas that contribute to the viability of plant species for which there is compelling evidence of rarity, for example, those designated 1b (Rare or endangered in California and elsewhere) or 2 (rare, threatened or endangered in California but more common elsewhere) by the California Native Plant Society.
- Areas that are designated as an Area of Special Biological Significance or a Marine Protected Area

In short, the proposed ESHA definition is broad, but also provides some guidance as to the categories of biological resources that may be considered ESHA. The Commission finds that the proposed addition of “unmapped ESHA” to the LCP ESHA definition would strengthen the protection of ESHA in San Luis Obispo County.<sup>1</sup> However, minor modifications to the CZLUO are needed to assure internal consistency with the County’s proposal to protect all ESHAs, whether mapped or unmapped (see Modifications 1, 2, and 3). With such minor changes, the Commission finds that the proposed amendment to the LCP ESHA definition is in conformity with and adequate to carry out the LUP.

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<sup>1</sup> The LCP currently designates mapped ESHAs as Sensitive Coastal Resource Areas (SCRAs) for purposes of applying heightened procedural protections, including the extension of the Commission’s appeal jurisdiction over development proposed within an ESHA. However, the County proposes to amend CZLUO section 23.01.043c(3)(i) to clearly state that development in “unmapped ESHA” would not trigger the Commission’s appeal jurisdiction (see Exhibit 1). Although the LUP does not provide any basis for distinguishing mapped and unmapped ESHA for such purposes, the decision to not include unmapped ESHA in the appeal jurisdiction is not inconsistent with the LUP.



## 2. Protection of ESHA

The County also proposes amendments to CZLUO section 23.07.170 regarding development within or adjacent to ESHA (see Exhibit 1). These amendments are more problematic and several modifications are necessary to assure conformity of the IP with the LUP.

First, the County proposes to amend the coastal development permit application requirements for projects located within or adjacent to ESHA by allowing the requirement for a biological report to be waived if:

*. . . a comprehensive program or list of Planning Area or Coastal Zone Land Use Ordinance standards already exists, and mitigation measures have already been identified that will reduce potential impacts to less than significant levels, and the proposed project will incorporate all feasible mitigation measures.*

This allowance must be struck from the proposed ordinance because it would allow the waiver of biological report based on environmental review standards in conflict with LUP Coastal Plan Policy 1 (and by extension Coastal Act section 30240). The LUP requires that only resource dependent uses be allowed within ESHA; that is, new development must completely avoid ESHA if it is not dependent on the ESHA. However, the proposed ordinance would waive a biological report requirement if impacts were reduced to less than significant levels and all feasible mitigation measures were incorporated. This approach is similar to what is often required under CEQA, and is a weaker standard than the LUP requirement to avoid new development in ESHA. It is implicit in this approach that new development may be allowed within an ESHA, regardless of whether it is resource dependent. This intent is also underscored by another County-proposed change to eliminate the resource-dependent requirement from the IP (discussed below). In order to be consistent with the LUP, the existing requirement for a biological report in any case involving ESHA should be retained, in order to adequately evaluate the consistency of the development with the LUP. Therefore, Modification 1 is necessary to assure conformity of the IP with the LUP. Minor modifications to the Application content requirements are also needed to affirm the LUP requirement that new development generally is not allowed in ESHA, and to assure adequate coordination with the Coastal Commission with respect to ESHA issues (see Modification 1).

Although the proposed approach must be modified, the Commission notes that to the extent a biological report or other evaluative document already exists that would allow for adequate assessment of on-the-ground resources in a specific case, this may meet the intent of the existing biological report requirement to protect ESHA. In addition, in other cases, such as the on-going Habitat Conservation planning to protect the Morro shoulderband snail, may be appropriately addressed through an LCP amendment that addresses the specific concerns of existing legal entitlements with an ESHA where new development must be contemplated. As discussed below, the County's intent is also be partially addressed through the addition of a clear statement in the IP acknowledging the potential need to allow non-resource dependent in an ESHA in order to avoid a takings of private property.



The second major proposed change to the IP ESHA provisions concerns proposed amendment of the development standards for ESHA. Most significant, the County proposes to eliminate the current IP requirement that new development within ESHA be limited to resource-dependent uses. This change does not conform with Coastal Plan ESHA Policy 1 (or Coastal Act section 30240) and must be deleted. The County also proposes to allow public services and utility developments in ESHA, which is not allowed by the LUP with the exception of incidental public services in wetlands, as specifically allowed by Coastal Act section 30233. Therefore, this addition must be struck as not in conformity with the LUP. Finally, the County proposes to add a provision to the LCP that would clarify the standards for development in ESHA that must be allowed to avoid a takings of private property. This addition is in conformity with the LUP and the Coastal Act (section 30010), but a modification is needed to clarify the standard and underscore the limitation that any development that must be approved in an ESHA, should be sited and designed to maximize the protection of ESHA (and thus minimize impacts) while still providing for a reasonable economic use of the property based on investment-backed expectations (see Modification 1).

### 3. Mineral Extraction in Wetlands

The amendment clarifies in Section 23.07.172e1 that diking, dredging, or filling activities in wetlands are only allowed if consistent with ESHA Policy 11 of the *Coastal Plan Policies* document of the LUP. More significantly, the amendment prohibits mineral extraction as an allowable use in a wetland. In this case, the proposed amendment is generally consistent with and adequate to carry out the LUP. However, the County's submittal incorrectly references Policy 11 of the LUP, rather than Policy 13. A single modification is suggested for this portion of the proposed amendment to instead accurately reference LUP Policy 13 (see Suggested Modification 2).

## 2. Scenic Resources

### A. Policy

The LUP contains 11 Scenic Resource Policies. Some of them are also specifically incorporated into the CZLUO as "standards":

***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. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

***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.]*



***Policy 3: Stringline Method for Siting New Development***

*In a developed area where new construction is generally infilling and is otherwise consistent with Local Coastal Plan policies, no part of a proposed new structure, including decks, shall be built farther onto a beachfront than a line drawn between the most seaward portions of the adjoining structures; except where the shoreline has substantial variations in landform between adjacent lots in which case the average setback of the adjoining lots shall be used. At all times, this setback must be adequate to ensure geologic stability in accordance with the policies of the Hazards chapter. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.118 OF THE CZLUO.]*

***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.]*

***Policy 5: Landform Alterations***

*Grading, earthmoving, major vegetation removal and other landform alterations within public view corridors are to be minimized. Where feasible, contours of the finished surface are to blend with adjacent natural terrain to achieve a consistent grade and natural appearance. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.034 OF THE CZLUO.]*

***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.]*

***Policy 7: Preservation of Trees and Native Vegetation***

*The location and design of new development shall minimize the need for tree removal. When trees must be removed to accommodate new development or because they are determined to be a safety hazard, the site is to be replanted with similar species or other species which are reflective of the community character. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.05.064 OF THE CZLUO.]*

***Policy 8: Utility Lines within View Corridors***



*Where feasible, utility lines within public view corridors should be placed underground whenever their aboveground placement would inhibit or detract from ocean views. In all other cases, where feasible, they shall be placed in such a manner as to minimize their visibility from the road. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.08.284 OF THE CZLUO.]*

***Policy 9: Signs***

*Prohibit off-premise commercial signs except for seasonal, temporary agricultural signs. Design on-premise commercial signs as an integral part of the structure they identify and which do not extend above the roofline. Information and direction signs shall be designed to be simple, easy-to-read and harmonize with surrounding elements. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.306, 23.04.310, AND 23.04.312 OF THE COASTAL ZONE LAND USE ORDINANCE.]*

***Policy 10: Development on Beaches and Sand Dunes***

*Prohibit new development on open sandy beaches, except facilities required for public health and safety (e.g., beach erosion control structures). Limit development on dunes to only those uses which are identified as resource dependent in the LCP. Require permitted development to minimize visibility and alterations to the natural landform and minimize removal of dune stabilizing vegetation. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

***Policy 11: Development on Coastal Bluffs***

*New development on bluff faces shall be limited to public access stairways and shoreline protection structures. Permitted development shall be sited and designed to be compatible with the natural features of the landform as much as feasible. New development on bluff tops shall be designed and sited to minimize visual intrusion on adjacent sandy beaches. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

**B. Conformity of the IP Amendment**

The County proposes to add a new visual resource protection standard to the IP to protect resources in certain identified critical viewsheds, scenic corridors, other scenic sensitive resource areas (SRAs). The standards would apply to these areas as they may be identified in an Area Plan, such as the proposed additions to the Estero Area Plan (Irish Hills backdrop, Cayucos Hillsides and Bluffs). Presumably any additional identified sensitive viewsheds would be subject to these standards in the future.

The new standards are a significant acknowledgment by the County of the importance of protecting the scenic resources of certain areas that have been identified as visually significant. At the same time, they provide some flexibility with respect to agriculturally-related development, so that agricultural resources may also be protected, consistent with the LUP and, by extension, the Coastal Act. For example, the proposed standards would not apply to agricultural accessory structures less than 600 square feet.

Although the new standards add important detail to the IP requirements to address scenic resources, the main issue raised by the standards is assuring that existing scenic and visual resource standards are not



unintentionally overridden by the new standards. As cited above, the LUP has 11 distinct visual resource protection policies, 7 of which are also to be applied as IP standards (Policies 1, 2, 4, 5, 6, 10, and 11). That is, they are both LUP policies and IP standards. It is important that the newly proposed visual standards be consistent with these LUP policies, and also that they not be interpreted as replacing the specific requirements of these existing policies as IP standards. For example, LUP Policy 2 requires that “site selection for new development is to emphasize locations not visible from major public view corridors.” The new IP section specifies that the new visual standards would apply to specific views that may be identified in an Area Plan. In order to assure conformity with the LUP, it is important to clarify that the Policy 2 requirement for siting development will continue to apply, in addition to the new standards that may protect specifically identified views. Modification 4, therefore, would add a subsection (e) simply acknowledging the applicability of LUP Visual Resource Policies 1-11 to proposed development, including Policies 1, 2, 4, 5, 6, 10, and 11 as standards of IP.

Other potential conflicts with the current LUP and IP visual standards are addressed through suggested adjustments to the proposed ordinance. Most notable, the new ordinance would specify that certain development be screened up to 80%. LUP Policy 4, though, requires that “[n]ew development which cannot be sited outside of public view corridors is to be screened utilizing native vegetation . . . .” In the past this screening requirement has been applied on a case-by-case basis as necessary to protect the specific visual resources potentially impacted in a given case. Depending on the case, specifying an 80% screening requirement potentially conflicts with the LUP and the existing policy as it is incorporated into the IP, and it may not be adequate to carry out the LUP. Therefore, it is necessary to eliminate the specific screening requirement. Another clarification is needed that lot-line adjustment developments are required to be consistent with the visual resource policies and standards of the LCP, as is currently the case. As with standard land divisions, lot-line adjustments potentially raise conflicts with the requirements for creating and locating new building sites (such as avoiding ridgelines). Finally, to assure that the exemptions to the new ordinance are not overly broad, modifications are suggested to limit exemptions in certain cases to agriculturally-related development. This will assure that non-agricultural development in rural areas does not unduly impact these sensitive viewsheds. Other minor modifications are suggested to assure internal consistency with the existing IP visual standards (see Modification 4).

### 3. Water Quality and Drainage

#### A. Policy

***Policy 7: Siting of New Development.*** *Grading for the purpose of creating a site for a structure or other development shall be limited to slopes of less than 20 percent except:*

*Existing lots of record in the Residential Single-Family category and where a residence cannot be feasibly sited on a slope less than 20 percent;*

*When grading of an access road or driveway is necessary to provide access to an area of less than 20 percent slope where development is intended to occur, and where there is no less*



*environmentally damaging alternative;*

*The county may approve grading and siting of development on slopes between 20 percent and 30 percent through Minor Use Permit, or Development Plan approval, if otherwise required by the Coastal Zone Land Use Ordinance. Also in review of proposed land divisions, each new parcel shall locate the building envelope and access road on slopes of less than 20 percent. In allowing grading on slopes between 20 percent and 30 percent the county shall consider the specific characteristics of the site and surrounding area that include but are not limited to: the proximity of nearby streams or wetlands, the erosion potential and slope stability of the site, the amount of grading necessary, neighborhood drainage characteristics and measures proposed by the applicant to reduce potential erosion and sedimentation. The county may also consider approving grading on slopes between 20 percent and 30 percent where it has been demonstrated that there is no other feasible method of establishing an allowable use on the site without grading. Grading and erosion control plans shall be prepared by a registered civil engineer and accompany any request to allow grading on slopes between 20 percent and 30 percent. It shall also be demonstrated that the proposed grading is sensitive to the natural landform of the site and surrounding area.*

*In all cases, siting of development and grading shall not occur within 100 feet of any environmentally sensitive habitat. In urban areas as defined by the Urban Services Line, grading may encroach within the 100 foot setback when locating or siting a principally permitted development, if application of the 100 foot setback renders the parcel physically unusable for the principally permitted use. Secondly, the 100 foot setback shall only be reduced to a point at which the principally permitted use, as modified as much as practical from a design standpoint, can be accomplished to no point less than the setback allowed by the planning area standard or 50 feet whichever is the greater distance. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO COASTAL ZONE LAND USE ORDINANCE SECTIONS: 23.05.034 (GRADING) AND 23.04.021 (LAND DIVISIONS).]*

***LUP Policy 8: Timing of Construction and Grading.*** *Land clearing and grading shall be avoided during the rainy season if there is a potential for serious erosion and sedimentation problems. All slope and erosion control measures should be in place before the start of the rainy season. Soil exposure should be kept to the smallest area and the shortest feasible period. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]*

***Policy 9: Techniques for Minimizing Sedimentation.*** *Appropriate control measures (such as sediment basins, terracing, hydro-mulching, etc.) shall be used to minimize erosion and sedimentation. Measures should be utilized from the start of site preparation. Selection of appropriate control measures shall be based on evaluation of the development's design, site conditions, predevelopment erosion rates, environmental sensitivity of the adjacent areas and also consider costs of on-going maintenance. A site specific erosion control plan shall be prepared by a qualified soil scientist or other qualified professional. To the extent feasible, non-structural erosion techniques, including the use of native species of plants, shall be preferred to*





*control run-off and reduce increased sedimentation. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]*

***LUP Policy 10: Drainage Provisions.*** *Site design shall ensure THAT drainage does not increase erosion. This may be achieved either through on-site drainage retention, or conveyance to storm drains or suitable watercourses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.034 OF THE CZLUO.]*

## B. Conformity of the IP amendment

The current LCP contains a number of policies and ordinances aimed at protecting coastal water quality. Through various requirements, the LCP focuses on measures to “improve land and water use, alleviate flooding, and reduce erosion and sedimentation.”<sup>2</sup> To address nonpoint source pollution from urban development, the LCP focuses on controlling erosion and sedimentation, on managing drainage patterns to reduce erosion and runoff, and on siting development off steeper slopes. Specifically, the LUP requires that: measures to control erosion and sedimentation be used at the start of site preparation; requires that land clearing and grading avoid the rainy season if there is a potential for “serious erosion and sedimentation; requires erosion control measures be in place before the rainy season; and requires that the area of exposed soil be minimized (see LUP watershed Policies 7, 8, 9, and 13 above).

Urban development can affect water quality a number of ways. The location and siting of development can be a key factor in minimizing the extent of erosion, sedimentation, and water runoff from a site, thereby reducing nonpoint source pollution and better protecting water quality. Other aspects of development that can affect water quality include impacts from construction activities and managing ongoing runoff from development after it is constructed. As highlighted in the 2001 Periodic Review, one of the main areas where the LCP needs to be updated is in addressing ongoing pollution and runoff from development. All development, regardless of whether it requires an erosion control or grading plan under the current LCP, has the potential to affect water quality through post construction runoff. Therefore, all new development should incorporate measures to address ongoing nonpoint source pollution, regardless of location, type or size of the development.

### Drainage Standards

The County is proposing to add a new ordinance section to the IP addressing polluted runoff from parking lots (Section 23.05.050f). The new ordinance requires parking lots and other paved areas where automobiles are parked that are 1-acre or greater to be equipped with sediment and grease traps, and requires the property owner to be responsible for funding an ongoing maintenance program.

One concern is that the proposed ordinance limits measures to sediment and grease traps. Prescribing only this technique limits the number of measures that can be implemented in new parking lot development and does not allow for new information and knowledge about effective best management practices for protecting water quality to be applied in the future. In some cases, for example, the use of

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<sup>2</sup> Coastal Plan Policies pg. 9-1



vegetated filter strips can be most effective in managing pollutants from parking lots. In other cases, engineered oil/water separators are needed.

A second concern is that the proposed ordinance limits application of these measures to parking lots 1 acre or greater in size. The county submittal does not include the rationale for 1 acre size threshold. Even small parking lots, and in particular those with high use, can contribute to polluted runoff and adversely impact coastal water quality. As described previously, water quality protection measures for urban development must be implemented irrespective of the size of the development.

To address these issues, the suggested modification prescribes general measures and lists sediment and grease traps as examples of measures to be considered. With respect to parking lots smaller than one acre, these would be addressed by 23.05.050(e), which requires BMPs, including the use of Low Impact Development (LID) techniques, for all residential and non-residential development (see Modifications 5 and 6).

In conclusion, the Commission finds the IP amendment, if modified as described above, is consistent with and adequate to carry out the water quality and drainage provisions of the Land Use Plan.

## 4. Cultural Resources

### A. Policy

LUP cultural resource policies include the following:

#### **Policy 1: Protection of Archaeological Resources**

The county shall provide for the protection of both known and potential archaeological resources. All available measures, including purchase, tax relief, purchase of development rights, etc., shall be explored at the time of a development proposal to avoid development on important archaeological sites. Where these measures are not feasible and development will adversely affect identified archaeological or paleontological resources, adequate mitigation shall be required. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

#### **Policy 4: Preliminary Site Survey for Development within Archaeologically Sensitive Areas**

Development shall require a preliminary site survey by a qualified archaeologist knowledgeable in Chumash culture prior to a determination of the potential environmental impacts of the project. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.106 OF THE CZLUO.]



## B. Conformity of the IP Amendment

The County proposes to amend the IP by adding a new CZLUO section 23.04.200 that would protect potential cultural resource sites within close proximity to streams that may not be currently identified in a mapping overlay. This is an important strengthening of the IP. The County also proposes to amend CZLUO 23.07.104 to emphasize the need to avoid disturbing cultural resources as a first priority, prior to pursuing mitigation measures that may disturb the resource. This also is an important addition to the IP.

In addition to these changes, modifications are suggested to the amended ordinance, based on consultation with the County, to address the need to engage in appropriate consultations with representatives of potentially affected native communities. These additions will assure the adequacy of the IP to carry out LUP requirements that require the use of “all available measures” to protect cultural resources, and that require site surveys based on knowledge of native culture (see Modification 7).

## 5. Miscellaneous Modifications.

Several miscellaneous modifications are necessary to assure that the IP is adequate to carry out the LUP. These include minor language corrections to CZLUO Section 23.01.043c regarding appeals to the Coastal Commission, in order to conform with the Coastal Act language (see Modification 8). In addition, proposed CZLUO Section 23.04.220 regarding energy conservation and solar design needs minor adjustment to not incorporate the County’s Energy Element into the LCP (which is not before the Commission) (see Modification 9). Finally, minor changes through Modification 10 are needed to the proposed road and bridge design ordinance (CZLUO Section 23.05.110).

## C. California Environmental Quality Act (CEQA)

The Secretary of Resources has certified the Coastal Commission’s review and development process for Local Coastal Programs and amendments as being the functional equivalent of the environmental review required by CEQA. Therefore, local governments are not required to undertake environmental analysis on LCP amendments, although the Commission can and does use any environmental information that the local government has developed. In this case the County approved a Negative declaration for the LCP amendment. Staff has used this information in the analysis of the amendment submittal, and has identified additional measures that need to be incorporated into the amendment in order to avoid adverse environmental impacts. These measures are embodied in the suggested modifications to the County’s amendment submittal. With these changes, approval of the amendment complies with the California Environmental Quality Act because as modified, the amendment will not have significant environmental effects for which feasible alternatives or mitigation measures have not been employed.

