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**W6b**

**Prepared July 29, 2009 (for August 12, 2009 hearing)**

**To:** Coastal Commissioners and Interested Persons

**From:** Charles Lester, District Director  
Dan Carl, District Manager  
Jonathan Bishop, Coastal Planner

**Subject: San Luis Obispo County LCP Major Amendment Number 1-08 (Agricultural Property Subdivision/Cluster Ordinance).** Proposed major amendment to the San Luis Obispo County certified local coastal program to be presented for public hearing and California Coastal Commission action at the Commission's August 12, 2009 meeting to take place at the Hyatt Regency Embarcadero, 5 Embarcadero Plaza, in San Francisco.

## Summary

San Luis Obispo County proposes to amend its certified Local Coastal Program (LCP) Implementation Plan (IP, the LCP's Coastal Zone Land Use Ordinance (CZLUO)) to change the minimum parcel sizes for proposed subdivisions of agricultural land and to allow for "cluster" subdivisions of such land. Although the amendment would generally increase the minimum parcel size for new parcels, it also proposes to remove the "averaging" requirement, which could result in a reduction in minimum parcel sizes in some cases. In addition, the amendment would remove the existing prohibition on creating new parcels and building sites on prime soils by allowing a new building site of up to 6,000 square feet on prime soils.

The County's proposed "cluster" subdivision rules would allow the clustering of small residential parcels up to the number of parcels allowed under a conventional land division (based on existing agricultural uses or land capability), with an additional number of parcels allowed up to 25% of the base number allowed. For example, on land that could be normally subdivided into 8 individually-viable agricultural parcels of a certain minimum parcel size (such as 40 acres each for prime soils), up to 10 smaller residential parcels could be clustered instead. Certain requirements would apply to the cluster, including that the cluster division would not adversely affect agricultural production on the site or surrounding area; that the minimum residential parcel size would be 20,000 square feet and the maximum would be 5 acres; and that the minimum open space remainder would be at least 90% of the total acreage involved in the division.

As submitted, the proposed amendments of the CZLUO are not in conformance with or adequate to carry out the County's certified LCP Land Use Plan (LUP), which is the standard of review. They also create internal inconsistencies with existing LCP standards. First and most fundamental, the amendment conflicts with the broad intent of Coastal Act Sections 30241 and 30242 and the County's corresponding Coastal Plan land use policies, all of which strictly limit the subdivision of agricultural lands. The proposed ordinance appears designed to facilitate the residential subdivision of agricultural lands,



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including through the use of density bonuses. This potential increase in residential density in agricultural areas could undermine the preservation of agricultural areas and exacerbate conflicts between agricultural and non-agricultural land uses. The Commission has been concerned with the trend toward non-agricultural rural-residential development in agricultural areas since at least 2001, when the Commission transmitted its Periodic Review of the San Luis Obispo County LCP to the County, which included recommendations about how to amend the LCP to address this adverse trend.

Second, the LCP amendment specifically conflicts with the LUP Policy 2 prohibition on creating new parcels where the only building site would be located on prime soils, because it would specifically allow the creation of a 6,000 square foot building site on prime soils. In addition, Policy 2 must be applied as a standard of the LCP; thus, the amendment would create an internal conflict between the Policy 2 standard and the County's proposed new CZLUO provisions.

Third, the amendment proposes to delete the averaging test for determining the size of new agricultural parcels. This test is a specific IP mechanism for assuring effective implementation of the LUP's requirements to protect and maintain agricultural lands, which derive from the Coastal Act Section 30250 policy to concentrate new development in existing developed areas. These existing IP provisions assure that parcels do not get subdivided into parcels that are significantly smaller than surrounding parcels, thereby maintaining rural agricultural densities and avoiding the growth of residential nodes or pockets in rural areas.

Fourth, the County has not provided a cumulative impacts analysis of the potential environmental impacts of the subdivision of agricultural areas under the proposed ordinance, so it is not possible to fully evaluate the consistency of the ordinance with the LUP requirement to maintain agricultural lands.

Finally, the County has not provided adequate information in support of the proposed changes in minimum lot sizes for agricultural subdivisions. Although the proposed amendment increases required minimum lot sizes in some cases, it allows for smaller minimum parcel sizes in others. The additional information is not critical for the proposed increases in minimum lot size, because these increases result in enhanced protection of agricultural lands, but decreased lot sizes may adversely affect the viability of agricultural land, inconsistent with the LUP. Thus, staff is unable to recommend approval of changes that reduce the potential minimum parcel size, without any information or analysis on the rationale for such reductions or how they are consistent with the LUP.

**Because of the above inconsistencies, the proposed amendment must be denied as submitted.** However, staff has been working closely with County planning staff over the last year on a revised CZLUO amendment to strengthen agricultural protection. This includes an amended subdivision ordinance for agricultural lands; a new clustering section that would apply only to proposals to adjust existing legal lots of record in order to cluster residential development that might otherwise occur in a more dispersed pattern; and revisions to related ordinances that govern residential development on agricultural lands. This revised approach is intended to address more comprehensively the adverse trend towards non-agricultural residential development in rural agricultural areas, which the Commission



identified in its 2001 Periodic Review of the County's implementation of its LCP. It also builds on recent Commission decisions to address this issue through appeals of rural residential development in agricultural areas of San Luis Obispo, San Mateo, and Marin Counties, including by identifying a strict limitation on the building envelope for new residences, and a requirement for an "affirmative" agricultural easement, to assure that the land being developed with a residential use will remain in agricultural production.

More specifically, changes are proposed to the subdivision standards for agricultural lands that both maintain existing protections of agricultural land and that build on the County's proposed enhancements of the standards. This includes adding language to assure that subdivisions of agricultural land result in continued and better protection of agriculture; strengthened requirements for assessing the viability of agricultural lands prior to subdivision approval (a Periodic Review recommendation); accepting County-proposed increases in minimum lot sizes but not allowing any potential decreases, including maintaining the existing parcel averaging requirement; minimizing the impacts of future residential development on created parcels by limiting the residential building envelope to 10,000 square feet; and clarifying existing LCP requirements that coastal development permits for subdivisions of agricultural land are appealable to the Coastal Commission.

Second, staff is recommending an alternative "cluster" ordinance, much of it drafted in collaboration with County staff, to provide a mechanism to address the potential adverse impacts of proposed residential development on existing legal lots of record in agricultural areas. The ordinance would require that any lots proposed for adjustment first establish their legality. Once lots were established and a baseline density determined, the ordinance would allow them to be clustered to facilitate residential development in a configuration that maximized protection of agricultural resources. The maximum lot size would be five acres or less, depending on the size of the existing parcels, and the maximum residential building envelope would be 10,000 square feet, to minimize conversion of agricultural soils. In addition, at least 95% of the land being adjusted would be placed into an affirmative agricultural easement, to assure both that the land is limited to agricultural uses and that the owner has an affirmative obligation to keep the land in agriculture, either personally or by making the land available for leasing by others. Future residential homeowners would also be subject to a "right-to-farm" restriction to assure that the surrounding agricultural activities were protected to the maximum extent. Finally, the cluster subdivision would need to avoid and minimize impacts related to sensitive habitat resources, scenic landscapes, and development hazards.

Third, to assure that the proper incentives for protection of agricultural lands are established, staff is recommending conforming amendments to existing standards for residential development in agricultural areas. This includes requirements for new residential development on agricultural lands that mirror the standards that would apply to a newly created agricultural parcel or a residential cluster division. These standards will assure that any new residential development in agricultural areas is treated the same, whether it is proposed through a conventional land division, cluster division, or simply on existing agricultural parcels previously undeveloped with such housing.



Fourth, amendments are proposed to the LCP's standards for the review of certificates of compliance in the coastal zone to assure the adequate implementation of the revised subdivision and new cluster ordinances. These proposed changes, which essentially require coordination between the County and the Commission when certificates for parcels are being reviewed by the County, also were identified in the Commission's Periodic Review as a necessary LCP improvement to address potential development on parcels that may have been previously unrecognized. The coordinated review would apply only to certificates applied for in agricultural areas.

Finally, staff is recommending that the new standards for residential clustering in agricultural areas not be extended to the Hearst Ranch at this time. The County already has proposed to not extend the cluster mechanism to certain areas in the South County and San Luis Bay planning areas, where the existence of prime soils and significant agricultural production make the amendment inappropriate. Likewise, extending the cluster concept to the Hearst Ranch is not appropriate at this time for different reasons. The Hearst Ranch comprises the vast majority of the agricultural land of the North Coast Area Plan of the County's LCP, encompassing approximately 49,000 acres in the coastal zone. The question of how to protect the agricultural lands of the ranch and what non-agricultural development to allow on the Ranch has been on-going since the passage of the Coastal Act, including major Commission reviews in the 1980s during initial LCP certification, in 1998 with the proposed update of the LCP's North Coast Area Plan, and in 2001 during the Commission's Periodic Review of the LCP.

In 2004, a conservation plan for the Ranch was completed with funding from the State that included, among other things, the transfer of much of the land west of Highway One to the state for public recreational and other purposes ("westside lands") and the placement of agricultural land east of the Highway into an agricultural easement ("eastside lands") with the California Rangeland Trust. Although Commission staff commented at the time on the proposed conservation plan, the Commission was not a party to the final agreements. As part of the negotiated easement, the Hearst Corporation retained the ability to pursue 25 new residential parcels and associated homesites in specifically identified cluster areas across the Ranch. The parcels each would be 25 acres with 5 acre building areas. Other performance standards apply as well to address the protection of sensitive biological, visual, and other resources from future residential development. In addition, for each residential development that went forward, approximately 10 existing legal lots of record on the Ranch (there are 271 identified by the County), would be merged.<sup>1</sup>

The Hearst Ranch presents a unique situation that should be considered separately by the Commission. First, there are no other land holdings in the County as extensive as the Ranch, and thus the question of potential residential development on the Ranch has a significantly different dimension than on any other land in the County's coastal zone. Second, the conservation plan has resulted in both the recordation of an agricultural easement over most of the eastside lands, and specific future development standards for residential development. Although not part of the certified LCP, these requirements are at once

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<sup>1</sup> The conservation plan also assumes two other residences on large ranch parcels.



significant but may also conflict with the standards that staff is recommending to protect the remainder of agricultural lands in the County. For example, staff is recommending a maximum parcel size of 5 acres with 10,000 square foot building envelopes for new residential sites, whereas the conservation plan imagines 25 acre parcels with 5 acre building envelopes. Ultimately, the approach of the conservation plan may or may not be determined to be consistent with the Coastal Act and the LCP; but it is important both that the proposed amendments of the agricultural subdivision ordinance and the new cluster ordinance not be driven by the conservation plan and, conversely, that the future implementation of the conservation plan not be prejudiced by the proposed LCP amendments. Therefore, staff is recommending that the cluster ordinance not be extended to the Hearst Ranch at this time.

**In conclusion, staff recommends that the Commission approve the proposed LCP amendment if modified as recommended herein.** The necessary motions and resolutions are on page 6.

**LCP Amendment Action Deadline:** This proposed LCP amendment was filed as complete on December 4, 2008. It is an IP amendment only and the original 60-day action deadline was February 2, 2009. On January 7, 2009 the Commission extended the deadline for final action on this LCP amendment by one year to February 2, 2010.

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## I. Staff Recommendation – Motion and Resolution

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

### 1. Denial of Implementation Plan Major Amendment Number 1-08 as Submitted

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

**Motion (1 of 2).** I move that the Commission **reject** Implementation Plan Major Amendment Number 1-08 as submitted by San Luis Obispo County.

**Resolution to Deny.** The Commission hereby **denies** certification of Implementation Plan Major Amendment Number 1-08 as submitted by San Luis Obispo County and adopts the findings set forth in this staff report on the grounds that, as submitted, the Implementation Plan amendment is not consistent with and not adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse effect which the Implementation Plan Amendment may have on the environment.

### 2. Approval of Implementation Plan Major Amendment Number 1-08 if Modified

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

**Motion (2 of 2).** I move that the Commission **certify** Implementation Plan Major Amendment Number 1-08 if it is modified as suggested in this staff report.

**Resolution to Certify with Suggested Modifications.** The Commission hereby **certifies** Implementation Plan Major Amendment Number 1-08 to San Luis Obispo County's Local Coastal Program if modified as suggested and adopts the findings set forth in this staff report on the grounds that, as modified, the Implementation Plan amendment is consistent with and adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment if modified as suggested complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment; or (2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Implementation Plan Amendment may have on the environment.



## **II. Suggested Modifications**

The Commission hereby suggests the following modifications to the proposed LCP amendment, which are necessary to make the required Land Use Plan conformance findings. If San Luis Obispo County accepts each of the suggested modifications within six months of Commission action (i.e., by February 12, 2010), by formal resolution of the Board of Supervisors, the modified amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished.

- 1. Amend the San Luis Obispo County Coastal Zone Land Use Ordinance as shown in Exhibit B.**

## **III. Findings and Declarations**

The Commission finds and declares as follows:

### **A. Description of Proposed LCP Amendment**

San Luis Obispo County proposes to amend Section 23.04.024 of its certified Implementation Plan (IP, the LCP's Coastal Zone Land Use Ordinance (CZLUO)), primarily to change the minimum parcel sizes for proposed subdivisions of agricultural land and to add new CZLUO Sections 23.04.037 and 23.04.038, that would allow for residential "cluster" subdivisions of agricultural land (see Exhibit A for detail).

#### **Agricultural Land Subdivision Ordinance (23.04.024)**

The amendment would generally increase the minimum parcel size for new parcels, including raising the minimum size of parcels with prime soils from 20 to 40 acres, with irrigated pasture from 30 to 40 acres, and with Class VI soils from 160 to 320 acres. The amendment would still allow 20 acre prime soil parcels if at least 18 acres (90%) were planted, an easement were recorded allowing only one residential use, and the parcels were put into a Williamson Act agricultural preserve (Exhibit A, pp. 3-5).

The amendment also proposes to reduce the minimum size for parcels with Class III and IV irrigated soils, and to remove the "averaging" requirement, which also could result in a reduction in minimum parcel sizes in some cases (Exhibit A, pp. 4-5).

In addition to changing minimum parcel sizes, the County's amendment proposes to remove the existing overriding prohibition of creating new parcels and building sites on prime agricultural soils, by allowing a new building site of up to 6,000 square feet on prime soils, if located to not interfere with agricultural production. (Exhibit A, pg. 6).

Finally, the amendment of Section 24.04.024 would also require the recordation of a restriction wherein



the property owner agrees that the land is designated for Agriculture and that the County has adopted a "Right to Farm" ordinance to protect agriculture (Exhibit A, pg. 6).

**Agricultural Lands Clustering Ordinance (23.04.037, 23.04.038)**

The County proposes to add two new sections to the CZLUO to "establish a set of regulations which encourages clustering as an alternative to a conventional lot split" of agricultural land. The proposed subdivision rules would allow the "clustering of allowable dwelling units on relatively small parcels in agricultural areas instead of the dispersal of such units on larger parcels." The maximum number of parcels allowed to be created would be the number of parcels allowed under a conventional land division (based on existing agricultural uses or land capability), with an additional number of parcels allowed up to 25% of the base number allowed. For example, on land that could be normally subdivided into 8 individually-viable agricultural parcels of a certain minimum parcel size (such as 40 acres each for prime soils), up to 10 smaller residential parcels could be clustered instead (Exhibit A, pp. 9-15).

Certain requirements also would apply to agricultural cluster subdivisions, including that the cluster division would not adversely affect agricultural production on the site or surrounding area; that the minimum residential parcel size would be 20,000 square feet and the maximum would be 5 acres; and that the minimum open space remainder would be at least 90% of the total acreage involved in the division. The agricultural/open space parcel could contain up to two of the residential units allowed. The ordinance would also require the maintenance of the open space/agricultural parcel for as long as the residential cluster existed, either through a recorded easement and Williamson Act contract, or through transfer of fee title or dedication of an easement to a qualified public or non-profit organization. Cluster divisions would also need to be designed to avoid and buffer agricultural soils, minimize new road construction, avoid ESHAs, minimize visual impacts, and minimize hazards (Exhibit A, pp. 9-15).

## **B. LUP Consistency Analysis**

### **1. Standard of Review**

Coastal Act Section 30513 requires that the proposed amendments to the LCP's CZLUO, which is the LCP's Implementation Plan (IP), be in conformance with and adequate to carry out the policies of the LCP's Land Use Plan (LUP).

### **2. Applicable Policies**

The proposed IP amendment primarily raises issues of conformance with the agricultural policies of the LUP, presented below. The amendment also raises issues concerning the protection of other sensitive coastal resources, such as environmentally sensitive habitat and scenic landscapes (see Exhibit C for selected LUP policies).



**Policy 1: Maintaining Agricultural Lands**

*Prime agricultural land shall be maintained, in or available for, agricultural production unless: 1) agricultural use is already severely limited by conflicts with urban uses; or 2) adequate public services are available to serve the expanded urban uses, and the conversion would preserve prime agricultural land or would complete a logical and viable neighborhood, thus contributing to the establishment of a stable urban/rural boundary; and 3) development on converted agricultural land will not diminish the productivity of adjacent prime agricultural land.*

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

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

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

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

**Policy 2: Divisions of Land**

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

- a. *The division of prime agricultural soils within a parcel shall be prohibited unless it can be demonstrated that existing or potential agricultural production of at least three crops*



*common to the agricultural economy would not be diminished.*

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

*Land divisions for non-prime agricultural soils shall be prohibited unless it can be demonstrated that existing or potential agricultural productivity of any resulting parcel determined to be feasible for agriculture would not be diminished. Division of non-prime agricultural soils shall be reviewed on a case-by-case basis to ensure maintaining existing or potential agricultural capability. (This may lead to a substantially larger minimum parcel size for non-prime lands than identified in the Coastal Zone Land Use Ordinance. Before the division of land, a development plan shall identify parcels used for agricultural and non-agriculture use if such uses are proposed. Prior to approval, the applicable approval body shall make a finding that the division will maintain or enhance agriculture viability.) [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

**Policy 3: Non-Agricultural Uses**

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

- a. No development is permitted on prime agricultural land. Development shall be permitted on non-prime land if it can be demonstrated that all agriculturally unsuitable land on the parcel has been developed or has been determined to be undevelopable.*
- b. Continued or renewed agricultural use is not feasible as determined through economic studies of existing and potential agricultural use without the proposed supplemental use.*
- c. The proposed use will allow for and support the continued use of the site as a productive agricultural unit and would preserve all prime agricultural lands.*
- d. The proposed use will result in no adverse effect upon the continuance or establishment of agricultural uses on the remainder of the site or nearby and surrounding properties.*
- e. Clearly defined buffer areas are provided between agricultural and non-agricultural uses.*
- f. Adequate water resources are available to maintain habitat values and serve both the*



*proposed development and existing and proposed agricultural operations.*

- g. Permitted development shall provide water and sanitary facilities on-site and no extension of urban sewer and water services shall be permitted, other than reclaimed water for agricultural enhancement.*
- h. The development proposal does not require a land division and includes a means of securing the remainder of the parcel(s) in agricultural use through agricultural easements. As a condition of approval of non-agricultural development, the county shall require the applicant to assure that the remainder of the parcel(s) be retained in agriculture and, if appropriate, open space use by the following methods:*

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

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

*Development proposals shall include the following:*

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

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



**Policy 4: Siting of Structures**

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

**Policy 5: Urban-Rural Boundary**

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

**Policy 6: Lot Consolidation**

*In some portions of the coastal zone where historical land divisions created lots that are now sub-standard, the Land Use Element shall identify areas where parcels under single contiguous ownership shall be aggregated to meet minimum parcel sizes as set forth in the Coastal Zone Land Use Ordinance. This is particularly important for protection of prime agricultural lands made up of holdings of small lots, that would not permit continued agricultural use if sold individually. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

**Policy 7: Water Supplies**

*Water extractions consistent with habitat protection requirements shall give highest priority to pre-serving available supplies for existing or expanded agricultural uses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

**Policy 8: Agricultural Practices**

*Proper soil conservation techniques and grazing methods should be encouraged in accordance with 208 Water Quality Standards adopted to meet the water quality requirements of the California Regional Water Quality Control Board. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]*

**Policy 12: Access in Agricultural Areas**

*Consistent with other applicable LCP access policies which provide for access dedications, the county shall require at the time a Coastal Development permit is processed, the establishment of vertical and/or lateral access to the beach for which no established vertical or lateral access exists. The county shall close undeveloped trails which are hazardous or conflict with existing agricultural operations and when an alternative safe, existing or potential access is available for the same beach. Access trails shall be located on agriculturally unsuitable land to the greatest extent possible. Where it is not possible to locate access on agriculturally unsuitable land, trails shall be located at the edge of the field and/or along parcel lines that would not significantly disrupt the agricultural operations.*



*Improvements and management of accessways shall be provided in agricultural areas adequate to avoid adverse impacts on, and protect the productivity of, adjacent agricultural soils. Improvement and management practices shall include, but not be limited to, the following:*

- a. Limit the seasons of the year when public access is permitted by using seasonal barriers and signs; and*
- b. Develop access trails with fences or other buffers to protect agricultural lands.*

*Consistent with the access section of the CZLUO access requirements may be waived if it can be conclusively demonstrated that the adverse impacts on agricultural operations are substantial and cannot be feasibly mitigated. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

### **3. Analysis**

#### **A. Denial of LCP Amendment as Submitted**

As submitted, the proposed amendments of the CZLUO are not in conformance with or adequate to carry out the County's certified Land Use Plan. They also create internal inconsistencies with existing LCP standards. Therefore, the LCP amendment must be denied as submitted.

#### **Background on Coastal Agricultural Lands in San Luis Obispo County**

According to the County's LCP, over 65% of the lands in the coastal zone were in agricultural use at the time of certification. County planning staff have recently confirmed the significant acreage of coastal zone land zoned for agriculture -- nearly 125,000 acres (see Table 1). About two-thirds of this acreage is in the North Coast area, and the majority of this acreage is on the Hearst Ranch (approximately 49,000 acres in the coastal zone, 82,000 in San Luis Obispo County).

Table 1. Agricultural Land in the San Luis Obispo County<sup>2</sup>

<b>LCP Area Plan</b>	<b>Agriculturally zoned acres in coastal zone</b>	<b>Number of parcels<sup>3</sup></b>	<b>Total acreage of parcels in &amp; out of coastal zone</b>	<b>Average parcel size (acres)</b>
<b>North Coast</b>	81,766	362	99,699	275
<b>Estero</b>	29,674	365	41,327	156
<b>San Luis Bay</b>	7,178	68	9,144	230
<b>South Coast</b>	6,043	66	7,269	110
<b>Totals</b>	<b>124,661</b>	<b>861</b>	<b>157,439</b>	<b>183</b>

<sup>2</sup> Source: San Luis Obispo County, Email communication from John Kelly to Charles Lester, June 5, 2009.

<sup>3</sup> Parcel numbers are based on current County Assessor data and do not necessarily equate to the number of legal parcels for purposes of evaluating development potential.



As described in the LCP, much of the agricultural land in the County is suitable for grazing, particularly in the North Coast and on the Hearst Ranch. There are some areas more suitable for crop production, especially with irrigation, along creek areas and in the valleys. Heading south, grazing lands continue to be significant, but there are also significant areas of higher class soils in crop production. In the South County, there are substantial areas of prime agricultural land and associated production, particularly in the Cienga and Oso Flaco Valleys.

Consistent with its rural agricultural character, the parcels designated for agriculture tend to be larger. The average parcel size of coastal agricultural parcels, including those with land in and out of the coastal zone, is over 180 acres County-wide, with the larger parcels being in the North Coast.<sup>4</sup> Significant acreages are in agricultural preserves pursuant to the Williamson Act. For example, at the time of LCP certification, over 40,000 acres were in agricultural preserves, and the average ownership size was approximately 740 acres.

**Maintaining Agricultural Lands**

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

*To carry out the goals of the Coastal Act, the Local Coastal Program delineates long-range urban/rural boundaries to support long-term agricultural use free from urban encroachment. The Coastal Zone Land Use Ordinance contains standards for minimum parcel size, limits on non-agriculture uses and other regulations consistent with preservation of agricultural lands.<sup>5</sup>*

Most important, LUP Policies 1, 2, and 3 establish strict basic requirements to achieve the broad intent of Coastal Act Sections 30241 and 30242. Policy 1 requires that agricultural lands be maintained, and limits conversions of such land to the circumstances enumerated by the Coastal Act. Thus, the intent of Policy 1 is that agricultural lands will be maintained as such unless there are circumstances in and around existing urban areas that make agriculture infeasible or that would make conversion of the land to a non-agricultural use a logical land use change to better protect agricultural lands and strengthen the urban-rural boundary. Policy 1 also establishes a presumption that all of the lands designated for Agriculture in the coastal zone are conclusively suitable for agriculture:

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

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<sup>4</sup> Id.

<sup>5</sup> LUP pg. 7-12.



Thus, at the time of LCP certification, it was presumed that lands designated for agriculture were appropriately maintained as such, and that conversion to non-agricultural uses was not appropriate.

LUP Policy 2, which more specifically governs the subdivision of Agricultural lands, is similarly protective. Land divisions, if allowed, "shall not limit existing or potential agricultural capability." In addition to adhering to the minimum parcel sizes in the CZLUO, prime soils cannot be subdivided unless it can be demonstrated that existing or potential production of at least three crops common to the area would not be diminished. As discussed further below, the creation of parcels with building sites on prime soils is prohibited; and, a division must assure adequate water for agricultural viability, habitat protection, and any proposed development.

Likewise, the division of non-prime agricultural soils is simply prohibited unless it can be demonstrated that "existing or potential agricultural productivity of any resulting parcel determined to be feasible for agriculture would not be diminished." If allowed, such divisions must "maintain existing or potential agricultural capability" and the approval body shall make a finding that the division will "maintain or enhance agriculture viability."

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

The overall import of LUP Policies 1, 2, and 3 is that agricultural lands should not be subdivided unless such division would maintain or enhance agriculture and that non-agricultural uses should not be allowed except under the limited circumstances where some supplemental income is needed and 98% of the land is kept in agriculture. This extremely protective approach is underscored by other provisions of the LCP as well. For example, the LCP's Framework for Planning document enumerates the purposes of the agricultural land use designation as including the following:

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



*of agriculture to continue agricultural uses, including the production of food and fiber.<sup>6</sup>*

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

- b. Areas for agricultural processing and its support services.*
- c. Areas where the residential uses allowed are for property owners or employees actively engaged in agricultural production on the same property.*
- f. Areas where existing land uses are mainly truck crops, specialty crops, row and field crops, irrigated crops and pasture, irrigated vineyards and orchards, dry farm orchards and vineyards, dry farm and grain, grazing and rangeland.*
- g. Areas where parcel sizes and ownership patterns are sufficiently large to make agricultural operations economically viable, given other features such as soil types, water supply, topography and commercial potential through optimum management.*
- h. Areas with an existing pattern of smaller parcels that cannot support self-sustaining agricultural operations, but where physical factors of soil, water supply and topography would support agricultural production.*

For purposes of evaluating the County's proposed residential cluster division amendment, it is significant that the purpose and character of agricultural lands in the coastal zone does not encompass rural residential development. Rather, allowed residences are supposed to be for property owners and employees "actively engaged in agricultural production." Likewise, parcel sizes and ownership patterns either are large enough to maintain agriculture, or contain the right physical features to support production. The primary use of agricultural land is supposed to be agricultural production, with all other land uses being "secondary, in direct support of agriculture."

The intended prohibition on rural residential development in agricultural areas is highlighted by the contrasting purpose and character of areas designated as "rural lands," which includes:

- a. To permit rural development to very low densities which will maintain the character of rural and open areas, and maximizes preservation of watershed and wildlife habitat areas.*
- b. To preserve large parcel sizes but allowing rural residences to be established on lands having open space value but limited agricultural potential.*
- c. To maintain low population densities in rural areas outside of urban and village reserve lines where an open and natural countryside with very low development intensity is intended.*
- d. To establish areas where commercial agricultural activities are not the primary use of the*

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<sup>6</sup> Framework, 6-10.



*land, but where agriculture and compatible uses may co-exist.*

*Character:*

*a. Areas outside urban and village reserve lines that have open space value for retaining large parcel sizes, in support of large acreage homesites for hobby farming or ranching, but are not feasible for commercial agriculture. ...*

*d. Areas where rural residences are the primary use of the land, but where agriculture and other compatible uses such as hunting clubs, dude ranches, etc., may be found or located. ...*

The limitation on land uses, including residences, in agricultural areas is also expressed in Table O of the LCP, which identifies the principally-permitted uses for each land use category. Significantly, there are only two land uses designated as a principally-permitted use, without qualification, on either prime or non-prime lands: “crop production and grazing” and “coastal accessways.” Concomitantly, all residential uses, including a primary residence, are designated as special uses, subject to various restrictions. This basic framework for residential development on agricultural land is stated in CZLUO 23.04.0167:

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

It is clear that the purpose of the agricultural land use designation is to support agricultural production, and to avoid non-agricultural land uses that do not support agriculture. In contrast, the County’s proposed ordinance is designed to allow, if not facilitate, the residential subdivision of agricultural lands, including through the use of density bonuses. This potential increase in residential density in agricultural areas is not consistent with the purpose of the agricultural designation, or the broadly protective policies of the LUP.<sup>7</sup> Increased residential density could undermine the preservation of agricultural areas and exacerbate conflicts between agricultural and non-agricultural land uses.

The Commission has been concerned with the trend toward non-agricultural rural-residential development in San Luis Obispo County agricultural areas since at least 2001, when the Commission transmitted its Periodic Review of the San Luis Obispo County LCP to the County, which included recommendations about how to amend the LCP to address this adverse trend. There is a valid concern for how to address proposed residential development on existing legal lots of record in the agricultural category, but this is a different issue than the residential subdivision proposal of the County (see findings

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<sup>7</sup> The County has recently begun to revisit the implementation of an agricultural lands cluster division outside of the coastal zone, due in part to criticism that the ordinance has not necessarily protected agricultural land but rather, has facilitated the subdivision of such land to the detriment of rural agricultural land values. Problems identified include that cluster divisions have not resulted in clustered development patterns, that agricultural lands are used for buffers, including removal of crops to create a buffer area, that homes have received priority for water, that intensive crops have been planted to increase allowable densities, and that homes have been used primarily for expensive rural homesites for non-agricultural residents (see memo, Chuck Stevenson to San Luis Obispo County Planning Commission, April 10, 2008).



below). Under the Coastal Act, the proper avenue for pursuing rural residential development in agricultural areas would be to evaluate the land for a change in land use designation, such as to rural residential, or a more urban category, if the circumstances underlying the land would allow for the conversion of the agricultural land consistent with the Coastal Act.

Because the proposed residential cluster ordinance is not in conformance with or adequate to carry out the LUP's agricultural protection policies, it must be denied as submitted.

**Protection of Prime Soils**

The LCP amendment specifically conflicts with the LUP Policy 2, which governs land divisions of Agricultural land, including the protection of prime soils. Specifically, LUP Policy 2(b) states:

*The creation of new parcels whose only building site would be on prime agricultural soils shall be prohibited.*

This policy is currently implemented nearly verbatim through CZLUO Section 23.04.024(e), which also prohibits the creation of new parcels with building sites on prime soils. The proposed LCP amendment would change this prohibition to allow the creation of a 6,000 square foot building site on prime soils if located to not interfere with agricultural production. There is no basis in the LUP for this change and thus it is not in conformance with or adequate to carry out the LUP.

In addition, even though the amendment proposes to raise the general minimum parcel size for prime soils from 20 to 40 acres, it would still allow 20 acre prime soil parcels that could be developed with a residential use if at least 18 acres (90%) of the parcel were planted, an easement were recorded allowing only one residential use, and the parcels were put into a Williamson Act agricultural preserve. Notwithstanding these qualifications, the allowance for a residential use on a newly created parcel containing 100% prime soils is also not in conformance with or adequate to carry out the LUP Policy 2(b) prohibition on the creation of building sites on prime soils.

Finally, in addition to being an LUP policy, Policy 2 must be applied as a standard of the LCP, i.e. equivalent to an IP or Planning Area standard. Thus, the IP amendment to allow a building site on prime soils would establish an internal conflict between two Implementation Plan standards – one that prohibited building sites on prime soils, and one that allowed them. Therefore, the amendment is not adequate to carry out the LUP.

**Maintaining the Averaging Requirement for New Parcels**

CZLUO Section 23.04.024 establishes three primary mechanisms for establishing minimum parcel sizes for proposed subdivisions of agricultural land. It sets minimum parcel sizes based on existing agricultural uses, the agricultural capability of a parcel's soils, and any minimums established in a Williamson Act preserve contract. However, the ordinance also provides an overriding criteria that requires that minimum parcel sizes not be less than the average of immediately surrounding parcels



(Sections 23.04.024(b)(4) and (c)(2)). This provision is an extension of the Coastal Act's Section 30250 policy to concentrate new development in existing developed areas. Section 30250 states, in part:

*...land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.*

This provision, and the corresponding requirements in the County's IP, are intended to help preserve rural agricultural lands by not allowing the progressive division of existing parcels outside of existing urban areas into smaller and smaller parcels.

The County's submitted amendment proposes to delete the averaging test for determining the size of new agricultural parcels, which is a specific mechanism in the certified IP for assuring effective implementation of the LUP's requirements to protect and maintain agricultural lands. Again, these existing IP provisions assure that parcels do not get subdivided into parcels that are significantly smaller than surrounding parcels, thereby maintaining rural agricultural densities and avoiding the growth of residential nodes or pockets in rural areas. Removing this protective requirement is not consistent with the LUP. In addition, the County has not provided an analysis of how the deletion of this requirement is in conformance with the LUP requirements to maintain agriculture and assure that any new parcels will maintain or enhance agriculture. Given the lack of any justification for removing this specific mechanism to implement the LUP, or any analysis of the implications of removing such on agricultural lands (see also below), the County's amendment must be denied as not in conformance with the LUP.

#### **Cumulative Impacts to Agriculture**

Given the potential reductions in minimum parcel sizes, the allowance for residential development on prime agricultural soils, and the cluster ordinance that may facilitate increased residential densities in agricultural areas, it is critical to understand the potential cumulative impacts of the proposed amendment in order to evaluate its conformance with the LUP. Commission staff have previously requested such analysis from the County in order to file the amendment for processing. However, in the context of a staff agreement to work together on a revised ordinance that would be in conformance with the LUP (see below), the County elected to not provide a cumulative impacts analysis of the potential subdivision of agricultural areas under the proposed ordinance. Because of this, it is not possible to fully evaluate the consistency of the proposed ordinance with the LUP requirement to maintain agricultural lands. Therefore, the proposed amendment must be denied as not in conformance with the LUP.

#### **Maintaining Minimum Parcel Sizes**

Finally, except for the proposed increase for prime soils, the County has not provided adequate information in support of the proposed changes in minimum lot sizes for agricultural subdivisions. The increase for prime soils from 20 to 40 acres apparently derives from work in the late 1990s and was based on concerns that the smaller 20 acre parcel size could result in the loss of prime farmland due to higher density residential development, an increase in conflict between agricultural and residential uses,



increased pressure to convert agricultural lands, competition for ground water, and the undermining of economic viability of agricultural parcels. Because of these issues, the County's Agricultural Commissioner's Office supported the change in the minimum parcel size for prime soils from 20 to 40 acres.<sup>8</sup>

Concerning other changes, in discussions between County and Commission staff, the County has indicated that the proposed new minimum parcel sizes were based on the professional judgment of staff involved with agricultural issues. However, no specific analysis of soil capabilities or updated requirements for specific crops has been provided. Although this information is not critical for the proposed increases in minimum lot size (such as from 20 to 40 acres for prime soils), because these result in enhanced protection of agricultural lands, there are some proposed provisions that would allow a decrease in the minimum lot size, which could adversely affect the viability of agricultural production on such sites. The Commission is therefore unable to recommend approval of changes that could reduce the potential minimum parcel size, without any information or analysis on the rationale for such reductions and how they are consistent with the certified LUP. In particular, it is not clear how such reductions will still meet the LUP requirements to maintain agricultural lands and assure that new parcels will be viable agricultural parcels. Therefore, the amendment is not in conformance with or adequate to carry out the LUP.

## **B. Approval of LCP Amendment as Modified**

### **Protection of Agriculture**

Commission staff have previously communicated the problems with the submitted amendment to the County (see Exhibit D). Commission staff also agreed to work with the County on proposed modifications to address the issues raised by the submittal. As indicated in Exhibit D, Commission staff suggested that the revised amendment focus on the problem of residential development on existing legal lots of record designated Agriculture, rather than creating a mechanism to potentially increase residential densities in agricultural areas through subdivision to the potential detriment of coastal agriculture. Commission staff have been working closely with County planning staff over the last year on a revised CZLUO amendment to strengthen agricultural protection. The proposed amendments to the CZLUO are presented as a modification in Exhibit B that would replace the County's submittal. Much of the proposed amendment is built around the County's current LCP, as well as portions of the County's submitted amendment.

Overall, the proposed modified amendment includes an amended subdivision ordinance for Agricultural lands; a new clustering section that would apply only to proposals to adjust existing legal lots of record in order to cluster residential development that might otherwise occur in a more dispersed pattern; and revisions to related ordinances that also govern residential development on agricultural lands. This revised approach is intended to address more comprehensively the adverse trend towards non-

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<sup>8</sup> See memo from Bob Lilley, Assistant Agricultural Commissioner, to Bryce Tingle, Assistant Planning Director, October 8, 1998.



agricultural residential development in rural agricultural areas, which the Commission identified in its 2001 Periodic Review of the County's implementation of its LCP. It also builds on recent Commission decisions to address this issue through appeals of coastal development permits for rural residential development in agricultural areas of San Luis Obispo, San Mateo, and Marin Counties, including by identifying a strict limitation on the building envelope for new residences, and a requirement for an "affirmative" agricultural easement, to assure that the land being developed with a residential use will remain in agricultural production.

**Assuring that Subdivisions Maintain and Enhance Agricultural Land**

LUP Policy 2 requires that land divisions in agricultural areas not limit existing or potential agricultural capability; prior to approval, the approval body must make a finding that the division will maintain or enhance agriculture viability. To address this basic requirement, the proposed revised CZLUO amendment would maintain existing minimum parcel sizes, or increase them consistent with the County's proposal. It would also maintain the averaging requirement of the certified IP to continue to assure that agricultural land is not progressively subdivided into smaller and smaller parcels.

The suggested amendment also proposes to strengthen the CZLUO requirements for subdividing agricultural land to address the various issues that have emerged since LCP certification in the 1980s. This includes issues related to the interpretation of the existing ordinance and its application to all subdivisions, including lot-line adjustments. Thus, the Coastal Act requires that all subdivisions, including lot-line adjustments, be reviewed through the coastal development permit process. The County and the Commission have disputed from time to time whether lot-line adjustments had to be evaluated for consistency with the LCP. The Commission notes, though, that Title 21 of the LCP clearly defines subdivisions to include not only tentative parcel maps, and tentative and vesting tract maps, but also lot-line adjustments and conditional certificates of compliance.<sup>9</sup> Therefore, the suggested modified ordinance uses language to assure that all "subdivisions" (as opposed to "land divisions", which the LCP also uses) meet the agricultural protection standards of the LCP. Provision is made, however, for "de minimis" lot-line adjustments that do not affect future development potential, so that the strict requirements for significant subdivisions or lot-line adjustments do not apply to minor lot-line changes.

The suggested ordinance also proposes new language to assure that subdivisions of agricultural land result in continued and better protection of agriculture. This is to address the potential for proposed subdivisions, including lot-line adjustments, whose primary purpose may not be the maintenance or enhancement of agriculture, as required by the LUP, but rather, the facilitation of future non-agricultural development, such as rural ranchette development. As submitted, the proposed IP amendment has the potential to encourage future residential development at the expense of agriculture. Thus, as recommended in the 2001 Periodic Review, the suggested modifications strengthen requirements for assessing the viability of agricultural lands prior to subdivision approval, to ensure the required

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<sup>9</sup> CZLUO Section 21.01.020(s) notes that subdivision development in the coastal zone is defined in Section 21.08.020, which includes the encompassing definition of subdivision consistent with the Coastal Act definition of development, including lot line adjustments.



protection of high-quality agricultural land.

In conjunction with the new ordinance to address clustering, and to better implement the LUP requirements to maintain and enhance the viability of subdivided agricultural land, the Commission also is suggesting that a new requirement for potential residential development on newly created agricultural parcels be put in place. This standard, which would also apply to new residential development on existing legal lots (see below), would address the potential impacts of future residential development on created parcels by limiting the residential building envelope to 10,000 square feet, consistent with recent Commission actions in other cases.<sup>10</sup> Other standards that would apply include a requirement for an affirmative agricultural easement, to assure that any new parcel that is developed with a residential use will maintain the agricultural use of the property, and that the residential use is secondary or accessory to agriculture, as is required by the LUP and existing IP standards.

Finally, the suggested modified ordinance also includes clarifying language to implement the Commission's understanding of existing LCP requirements that coastal development permits for subdivisions of agricultural land are appealable to the Coastal Commission. This is suggested to avoid future disputes on this question, and is based on the fact that all county-approved development that is not listed as a principally-permitted use in the LCP is appealable to the Commission, and subdivisions are not identified in the LCP as a principally permitted use. Thus, pursuant to Coastal Act 30603, they must be appealable development.

#### **Limiting the Cluster Mechanism to Existing Lots of Record**

The Commission also is suggesting an alternative "cluster" ordinance, much of it drafted in collaboration with County staff, to provide a mechanism to address the potential adverse impacts of proposed residential development on existing legal lots of record in agricultural areas. As discussed in the denial findings, a cluster division mechanism that potentially increases residential densities cannot be supported; however, addressing the question of potential residential development on existing lots of record should be addressed through a cluster ordinance. The Commission identified and addressed this issue, in addition to the general issue of non-agricultural residential development on agricultural parcels, in its 2001 Periodic Review of the County's LCP.<sup>11</sup> The Commission also encountered this issue directly in the Morro Bay Limited lot-line adjustment appeal wherein nine existing lots of record were proposed for adjustment to facilitate residential development along the ridgeline along the Harmony coast. Because of existing minimum parcel size rules (20 acre minimum), the Commission's options were constrained for allowing the proposed residential development on the existing lots, while maximizing protection of agricultural land and other coastal resources. A cluster mechanism may have proved useful in this circumstance to better protect coastal resources.

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<sup>10</sup> This approach was recently applied in San Luis Obispo County in the Schneider project decision, although the approved building envelope was approximately 14,000 square feet based on the specific circumstances at issue.

<sup>11</sup> See [www.coastal.ca.gov/recap/slosum.html](http://www.coastal.ca.gov/recap/slosum.html).



The suggested modified ordinance would require that any lots proposed for adjustment first establish their legality through a review process coordinated with the Coastal Commission (see below). Once lots were established, and a determination made about the baseline expected residential potential for the ownership, the ordinance would allow the residential potential to be clustered to facilitate residential development in a configuration that maximized protection of agricultural resources. The maximum lot size would be five acres or less, depending on the size of the existing parcels, and the maximum residential building envelope would be 10,000 square feet, to minimize conversion of agricultural soils.<sup>12</sup> In addition, at least 95% of the land being adjusted would be placed into an affirmative agricultural easement, to assure both that the land is limited to agricultural uses and that the owner has an affirmative obligation to keep the land in agriculture, either personally or by making the land available for leasing by others. The Commission has found in other recent cases that the affirmative easement addresses the potential that non-agricultural residential development will not undermine the future agricultural use of the surrounding land, whereas a traditional passive easement, that would merely restrict the use of agricultural land, does not assure that the land will remain in production. Consistent with LUP Policy 3, the required open space/agricultural parcel would increase to 98% for larger property ownerships.

The affirmative easement would also address the LUP Policy 7 requirement that “[w]ater extractions consistent with habitat protection requirements...give highest priority to preserving available supplies for existing or expanded agricultural uses” by ensuring that water supplies for the agricultural parcel will have priority over water rights and supplies for the new residential development. Future residential homeowners would also be subject to a “right-to-farm” restriction to assure that the surrounding agricultural activities were protected from potential future conflicts with adjacent residential development. Finally, as discussed below, the cluster subdivision would need to avoid and minimize impacts related to sensitive habitat resources, scenic landscapes, and development hazards.

### **Establishing Complementary Standards for New Residential Development**

To assure that the proper incentives for protection of agricultural lands are established, the Commission is recommending conforming amendments to existing LCP standards for residential development in agricultural areas. This includes requirements for new residential development on agricultural lands that mirror the standards that would apply to a newly created agricultural parcel or a residential cluster division. These standards will assure that any new residential development in agricultural areas is treated the same, whether it is proposed through a conventional land division, cluster division, or simply on existing agricultural parcels previously undeveloped with housing. This ensures that the County’s proposed amendments will be consistent with existing LCP policies.

This requirement is also suggested based on the Commission’s experience since LCP certification, which includes addressing the issue of non-agricultural residential development being proposed in

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<sup>12</sup> The ordinance would allow parcels as small as 2,000 square feet, as long as the parcels and cluster design addressed the specific requirements of Title 19 concerning the minimum parcel sizes for water supply and wastewater disposal.



agricultural areas. The Commission addressed this most recently in the Schneider project in the North Coast area, wherein a large residential development was proposed on the grazing lands zoned for agriculture. Other similar projects are pending as well, and as the Commission found in the Periodic Review, the cumulative impacts of such non-agricultural residential development on agricultural land may be significant. The Commission notes that the LUP currently requires that appropriate mitigation measures be incorporated into residential proposals:

**Policy 4: Siting of Structures**

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

Therefore, in order to ensure that the subject amendment is consistent with the LUP, the Commission is suggesting updated ordinance requirements to assure the protection of agricultural land where new residential development is proposed. This includes mitigation requirements to limit the footprint of residential development, assure the future right to farm, and an affirmative commitment to maintain the agricultural use of the property.

**Assuring Adequate Review of Parcel Legality in Agricultural Areas**

One of the threshold questions in addressing potential residential development on existing parcels is whether or not the identified parcels are legal. Identifying the number of legal parcels involved in a proposed lot-line adjustment is an important first step in determining the appropriate residential density to allow in proposed cluster division. The proposed amendment facilitates clustering of residential development without addressing how to resolve conflicts regarding the legality of parcels. As described above, without such provisions, the proposed amendment may not protect and enhance existing agricultural uses, as required by the LUP. The Commission's 2001 Periodic Review also identified this issue as a major concern for protecting not just agriculture but other coastal resources as well.

The County's LCP generally addresses lot legality issues by requiring coastal development permits for conditional certificates of compliance, which are certificates issued for parcels that were not legally created. When these conditional certificates are issued, they constitute subdivisions of land subject to CDP requirements because it is the first time that the parcel is being legally recognized under the Coastal Act. However, the LCP does not require a CDP for unconditional certificates, which merely certify, through a "ministerial review," the legality of an existing legal parcel. The problem identified by the Commission's Periodic Review, though, is that sometimes mistakes in analysis or decision may be made in the ministerial issuance of an unconditional certificate. If this occurs, it may mean that a parcel is certified, without a review under the CDP process, when it should have been reviewed for consistency with the LCP as a subdivision of land. In order to avoid unnecessary conflict concerning proposed residential cluster lot-line adjustments, which would be allowed after certification of this IP amendment,



it is important that the Commission and the County have an opportunity to coordinate the review of potential certificates of compliance that may be issued for lots proposed for adjustment. This review is necessary to assure, sooner rather than later, that the lots being recognized for adjustment do not require a coastal development permit review. This coordination requirement would not extend CDP review authority over COCs determined to be unconditional. Therefore the Commission is suggesting a modification that would amend Title 21 of the CZLUO to provide a review mechanism of COCs issued for agricultural residential development proposals (see Exhibit B). The requirement for coordinated review would apply only to certificates applied for in agricultural areas.

**Not Extending the Cluster Ordinance to the Hearst Ranch**

The Commission is not proposing to extend the new standards for residential clustering in agricultural areas to the Hearst Ranch at this time. The County already has proposed to not extend the cluster idea to certain areas in the South County and San Luis Bay planning areas, where the existence of prime soils and significant agricultural production make the amendment inappropriate. Likewise, extending the cluster concept to the Hearst Ranch is not appropriate at this time, for different reasons. The Hearst Ranch comprises the vast majority of the agricultural land of the North Coast Area Plan of the County's LCP, encompassing approximately 49,000 acres in the coastal zone. The question of how to protect the agricultural lands of the ranch and what non-agricultural development to allow on the Ranch has been on-going since the passage of the Coastal Act, including major Commission reviews in the 1980s during initial LCP certification, in 1998 with the proposed update of the LCP's North Coast Area Plan, and in 2001 during the Commission's Periodic Review of the LCP.

In 2004, a conservation plan for the Ranch (HRCP) was completed with funding from the State that included, among other things, the transfer of much of the land west of Highway One to the state for public recreational and other purposes ("westside lands") and the placement of agricultural land east of the Highway into an agricultural easement ("eastside lands") held by the California Rangeland Trust. Although Commission staff commented on the proposed conservation plan, the Commission was not a party to the final agreement. As part of the negotiated easement, the Hearst Corporation retained the ability to pursue up to 25 new residential parcels and associated homesites in specifically identified cluster areas across the Ranch. The parcels each would be 25 acres with 5 acre building areas. Other performance standards would apply to such development as well to address the protection of sensitive biological, visual, and other resources from future residential development. In addition, for each residential development, approximately 10 existing legal lots of record on the Ranch (there are 271 identified by the County), would be merged.<sup>13</sup>

The Hearst Ranch presents a unique situation that should be considered separately by the Commission. First, there are no other land holdings in the County as extensive as the Ranch, and thus the question of potential residential development on the Ranch has a significantly different dimension than on any other land in the County's coastal zone. Second, the conservation plan has resulted in both an existing

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<sup>13</sup> The HRCP also assumes two other residences on large ranch parcels.



agricultural easement over most of the eastside lands, and specific future development standards for residential development. Although not part of the certified LCP, these requirements are at once significant but may also conflict with the standards that the Commission is recommending to protect the remainder of agricultural lands in the County. For example, the Commission is suggesting a maximum parcel size of 5 acres (as did the County), with 10,000 square foot building envelopes for new residential sites, whereas the conservation plan imagines 25 acre parcels with 5 acre building envelopes. Ultimately, the approach of the conservation plan may or may not be determined to be consistent with the Coastal Act and the LCP; but it is important both that the proposed amendments of the agricultural subdivision ordinance and the new cluster ordinance not be driven by the conservation plan and conversely, that the future implementation of the conservation plan not be prejudiced by the proposed LCP amendments. Therefore, the Commission is not suggesting that the cluster ordinance apply to the Hearst Ranch at this time. At the same time, the Commission will seek to coordinate future reviews of potential residential development on the Hearst Ranch that may be proposed under the HRCF with the Hearst Corporation and the County in order to assure adequate conformance to the Coastal Act and LCP, as relevant, for this unique situation.<sup>14</sup>

#### **Protection of Other Coastal Resources**

The LCP requires the protection of environmentally sensitive habitat areas, scenic and visual resources, and the minimization of potential coastal hazards to new development (see Exhibit C for excerpts of LUP policies). In addition to addressing agriculture, the suggested modified ordinance includes new standards to assure that residential cluster divisions and the siting of new residential development do not create new adverse impacts inconsistent with the LUP. For example, the ordinance would require that new residential sites avoid ESHA and that new parcels not be created if they would result in adverse impacts to public views, unless such impacts result in better protection of agriculture. New parcels and development sites would also need to avoid steep slopes and other hazardous conditions, including geologic, flood, and fire risks. Finally, the new ordinance would allow for the provision of public access on agricultural lands unless such access would adversely impact agricultural production. These standards are needed to implement the LUP.

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

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

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<sup>14</sup> As part of the HRCF, the Hearst Corporation has the ability to exercise a "fall-back" right to pursue the 25 residential sites in other locations if the cluster sites identified by the HRCF are unreasonably denied.



The County, acting as lead agency, considered an initial study prepared for the proposed LCP amendments, and determined, pursuant to CEQA, that a proposed negative declaration was appropriate and that there was no substantial evidence that the ordinance would have a significant effect on the environment.

This report has discussed the relevant coastal resource issues with the proposal and has identified appropriate modifications to avoid and/or lessen any potential for adverse impacts to coastal resources, including the significant agricultural lands of the San Luis Obispo County coastal zone. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the amendment, as modified, would have on the environment within the meaning of CEQA. Thus, if so modified, the proposed amendment will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).



EXHIBIT G010014L:B

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

AN ORDINANCE AMENDING TITLE 23 OF THE SAN LUIS OBISPO COUNTY CODE, THE COASTAL ZONE LAND USE ORDINANCE, SECTION 23.04.024 RELATING TO MINIMUM PARCEL SIZES IN THE AGRICULTURE LAND USE CATEGORY

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

**SECTION 1:** Section 23.04.024 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended as follows:

**23.04.024 - Agriculture Category:** This section contains three methods for determining minimum parcel size in the Agriculture land use category for both prime and nonprime soils. Each proposed parcel must be able to qualify for the requested minimum parcel size using all tests within subsections b c or e d of this section. The applicant will disclose as part of the application which subsection (either c or d) is being used to determine the minimum parcel size for each of the proposed parcels. If the parcel is under agriculture preserve contract, subsection d e applies. All divisions in the aAgriculture category shall be consistent with applicable agriculture policies contained in the Local Coastal Plan policy document and with the applicable overriding findings contained in subsections e f and f g of this section.

a. Purpose. The purpose of this Section is to establish a set of regulations applicable to the division of land within the Agriculture land use category. In addition to complying with the standards set forth in this Section and all applicable policies of the general plan, proposed land divisions shall be specifically evaluated for consistency with the policies of the Agriculture and Open Space Element as follows:

(1) Agricultural Land Divisions

(i) Where a division of agricultural lands is proposed, a cluster division, where homes are clustered in a compact manner which reduces the agricultural/residential interface, is an alternative to a conventional "lot split" land division.

(ii) Where a division is proposed, the proposed parcels should be of adequate size and design to ensure the long term protection of agricultural resources.

(2) Minimum Parcel Size Criteria for the Division of Agricultural Lands. Minimum parcel sizes for the proposed division of land designated Agriculture shall be based upon either the existing or potential use of the land for cropland and grazing.

(3) Discretionary approval. The approval of a land division is discretionary and a parcel size larger than the minimum designated in the following Subsections may be required to ensure agricultural capability.

b. Application content. All applications for land divisions in the Agriculture land use category shall also include an agricultural viability report containing the following information, in addition to the information required by Title 21 of this code:

- (1) Existing land uses on the site;
- (2) Present annual income derived from agricultural operations and other income-generating operations on the site;
- (3) Site characteristics affecting agricultural land use and production, including topography, soils, climate, water availability and adjacent land uses;
- (4) The potential of the site to support future food-producing agricultural uses and estimated annual income from such uses;
- (5) Potential effects of the proposed land division development on agricultural food production, both short-term and long-term;
- (6) Recommendations and conclusions of the developments effect on agricultural production.

bc. Size based upon existing use. Where a legal lot of record is developed with agricultural uses at the time of application for land division, the minimum size for a new parcel is to be the largest area determined by the following tests, with the required minimum being the largest areas determined by the following tests. Where a site contains more than one agricultural use, each new parcel shall satisfy the minimum parcel size for its respective use the qualifying agricultural land use:

(1) Crop production:

AGRICULTURAL LAND USE	MINIMUM PARCEL SIZE
<u>Irrigated</u> row crops, specialty crops, nurseries, field crops, orchards and vineyards (examples: vegetables, strawberries, cut flowers and flower seed, corn, sugar beets, cotton, avocados, kiwi, other fruits and nuts, wine grapes)	<del>20 acres</del> 40 acres; except parcels may be as small as 20 acres as provided in subsection (ii)
<u>Irrigated</u> pasture, <del>field crops</del> , grain and hay (examples: <del>sugar beets</del> , alfalfa, irrigated grain and hay) and <u>Dry Farm</u> orchards, vineyards <del>Dry Farm orchards, vineyards.</del>	40 acres <sup>1</sup> (80 acres) <sup>1</sup> 30 acres 40 acres
<del>Dry Farm</del> field crops (examples: beans, specialty field crops.)	80 acres
<u>Dry Farm</u> field crops (examples: beans, specialty field crops) and grain and hay (examples: barley, wheat, oats, hay)	160 acres
Grazing	320 acres
Notes: 1. A larger minimum parcel size (80 acres) may be required where that parcel size will ensure agricultural capability in accordance with the provisions of the Agriculture Preserve Rules of Procedure and the adopted Agriculture and Open Space Element of the general plan.	

(2) Proposed parcels less than 40 acres, but no smaller than 20 acres, may be proposed if all of the following criteria are met:

- (a) the proposed parcels must be Class I or II soils irrigated, or other soils listed as prime by NRCS;
- (b) there must be at least 18 acres or 90 percent of the acreage of the total site, whichever is larger, planted in irrigated row crops, specialty crops, field crops, orchards or vineyards (as defined in the preceding Table);
- (c) there must be a production water source currently installed;

(d) that prior to or concurrent with recordation of a final or parcel map, the applicant shall execute and record a declaration of restrictions in a form approved by County Counsel, wherein the owner(s) agrees on their behalf and all successors in interest to the parcel that, unless a Land Use Element amendment is first approved to change the classification of the site to a land use category other than Agriculture, approval or establish of more than one residential use (other than farm support quarters) on the parcel will not be requested. The declaration of restrictions shall not be amended or terminated without the prior approval of the Board of Supervisors.; and

(e) the resulting parcels must enter into a Williamson Act agricultural preserve contract in accordance with the county Rules of Procedure. Separate sale of parcels of record must be consistent with Table 1 of the Agriculture Preserve Rules of Procedure.

~~Specialized animal facilities: The minimum size for a new parcel occupied by a dairy, feedlot, hog ranch, horse ranch or poultry ranch with related permanent structures consistent with applicable requirements of Section 23.08.046, is 20 acres. In order to qualify for a 20-acre minimum parcel size, at least 18 acres of the proposed parcel must be occupied by one of the specialized animal facilities identified by this subsection.~~

(3) Agricultural processing: The minimum size for a new parcel with established agricultural processing facilities and structures shall be 20 acres.

~~(4) Averaging test. Where the average size of parcels in the agriculture category with equivalent uses immediately adjacent to the proposed division is higher than the sizes given in this subsection, the minimum parcel size shall be the average of abutting parcels (including those that are separated only by a right of way).~~

ed. Size based upon land capability. Where a parcel legal lot of record in the agriculture category is not developed with an agricultural use at the time of application for land division, or where an applicant chooses this subsection as the basis for determining allowable minimum parcel size, the minimum area for each new parcel is the largest determined by the following tests:

(1) Land capability test. The minimum parcel size for new parcels is to be based on the ~~Soil Conservation Service~~ Natural Resources Conservation Service (NRCS) classification, as set forth in the following table. Where a site contains more than one soil type classification, ~~each new parcel is to be designed so as to contain sufficient area of one soil type to satisfy the minimum parcel size requirement for each respective soil type.~~ each new parcel shall satisfy the minimum parcel size for the qualifying NRCS classification.

Land Capability Classification <sup>1</sup> NRCS Classification	Minimum Parcel Size	
	Irrigated <sup>1</sup>	Non-irrigated
Class I and II	20-40 acres <sup>2</sup>	N/A
Class II	40	
Class III and IV	40 acres <sup>3</sup> (80 acres) <sup>3</sup>	160 acres
Class IV- VI, VII and VIII	160-320 acres	320 acres
Class VII- VIII	320	

Notes:

- ~~1. Soil Conservation Soil Classification~~
1. Irrigated - this means an installed production water source from underlying ground water basins, permitted, riparian or other appropriative water rights that would deliver adequate, reliable water.
2. Proposed parcels may be as small as 20 acres if planted and if all of the criteria in subsection c(1)(ii) are met.
3. A larger minimum parcel size (80 acres) may be required where that parcel size will ensure agricultural capability in accordance with the provisions of the Agriculture Preserve Rules of Procedure and the adopted Agriculture and Open Space Element of the general plan.

~~(2) Averaging test. Where the average size of parcels in the agriculture category with equivalent soils immediately adjacent to the proposed division is higher than the sizes in subsection c(1), the minimum parcel size shall be the average of abutting parcels (including those which are separated only by a right-of-way).~~

de. Size based on Agricultural preserves: Where a legal lot of record in the Agriculture category is under Williamson Act agricultural preserve contract, the minimum parcel size is based on subsections c and d, unless a larger minimum parcel size is specified in an existing Williamson Act land conservation contract, the terms of the preserve contract. However, ~~approval of a land division under agricultural preserve contract is discretionary and a parcel size larger than the minimum designated in the contract may be required to ensure agricultural sustainability in accordance with the provisions of the adopted agricultural preserve rules of procedure.~~

~~(1) Existing preserves: The minimum parcel size for lands under agricultural preserve contract before the effective date of this title is to be no smaller than that defined by the terms of the executed preserve contract, as long as the contract remains in effect. The minimum parcel size is to be no smaller than that applicable to the preserve at the time of contract execution.~~

~~(2) New preserves: The minimum parcel size for lands under agricultural preserve contract executed after the effective date of this ordinance is to be no smaller than that determined through the process of contract negotiation, approval and execution, based upon the adopted agricultural preserve rules of procedure.~~

e f. Overriding Requirements for Division on Prime Agricultural Soils. Land divisions on prime agricultural soils as defined by this title shall be subject to the following requirements:

- (1) The division of prime agricultural soils within a parcel shall be prohibited unless it can be demonstrated that existing or potential agricultural production of at least three crops common to the local agricultural economy would not be diminished;
- (2) The creation of new parcels where the only building site would be on prime agricultural soils shall be prohibited, except where a building site of no more than 6,000 square feet, located so as to not interfere with agricultural production, is defined on the tentative and final map.
- (3) Adequate water supplies shall be available to maintain habitat values and to serve any proposed development and support existing agricultural viability.

f g. Overriding Requirements for Division of Nonprime Agricultural Soils. Land divisions on nonprime agricultural soils as defined by this title shall be subject to the following requirements:

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

h. Declaration of restrictions required. Prior to or concurrent with recordation of a final or parcel map, the applicant shall execute and record a declaration of restrictions in a form approved by County Counsel, wherein he agrees on behalf of himself and all successors in interest to the parcel that the property is within the Agriculture land use category and the county has adopted a "Right to Farm Ordinance" that protects agricultural operations. The declaration of restrictions shall not be amended or terminated without the prior approval of the Board of Supervisors.

SECTION 2. 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 3. 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 4. 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 5: This ordinance shall take effect and be in full force on and after 30 days from the date of its passage hereof. Before the expiration of 15 days after the adoption of this ordinance, it shall be published once in a newspaper of general circulation published in the County of San Luis Obispo, State of California, together with the names of the members of the Board of Supervisors voting for and against the ordinance.

INTRODUCED at a regular meeting of the Board of Supervisors held on the twenty second day of June, 2004, 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:

ABSTAINING:

\_\_\_\_\_  
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]

ORDINANCE CODE PROVISIONS APPROVED  
AS TO FORM AND CODIFICATION:

JAMES B. LINDHOLM, JR.  
County Counsel

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

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

EXHIBIT G010014L:D

ORDINANCE NO. 3039

AN ORDINANCE AMENDING TITLE 23 OF THE SAN LUIS OBISPO COUNTY CODE, THE COASTAL ZONE LAND USE ORDINANCE, SECTION 23.04.037 RELATING TO CLUSTER DIVISIONS IN THE AGRICULTURE LAND USE CATEGORY

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

**SECTION 1:** Add new Section 23.04.037 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, as follows:

**23.04.037 - Agricultural Lands Clustering:**

It is the policy of the Board to encourage the preservation of agricultural lands in San Luis Obispo County for the continuing and enhanced production of food and fiber through the use of a variety of policy and regulatory techniques. One technique, provided by this Section, is the clustering of allowable dwelling units on relatively small parcels in agricultural areas instead of the dispersal of such units on larger parcels.

**a. Purpose.** The purpose of Sections 23.04.037, 23.04.038 is to establish a set of regulations which encourages clustering as an alternative to a conventional lot split where an agricultural land division is proposed consistent with Section 23.04.024. In addition to complying with the standards set forth in this Section and Section 23.04.038, proposed cluster land divisions shall be specifically evaluated for consistency with the following:

**(1) Minor Agricultural Cluster Projects**

- (i)** Properties throughout the unincorporated areas of the county that meet the locational criteria in Section 23.04.038a, including the coastal zone, can apply for a minor agricultural cluster project.
- (ii)** The maximum number of residential parcels allowed in a minor agricultural cluster project shall be equivalent to the number of parcels that would result from a conventional land division in the Agriculture land use category based on the minimum parcel size criteria in Section 23.04.024, with an increase of at least one more parcels or up to a maximum 25 percent increase in the number of parcels that could be achieved with a conventional land division.

**b. Applicable requirements.** The following requirements apply to Minor Agricultural Cluster projects.

- (1) Eligibility of lands under Agricultural Preserve Contract. Lands in the Agriculture land use category under Williamson Act contract shall not be used as the location for clustered parcels; provided that where an ownership includes contiguous contracted and non-contracted lands, the number of parcels and dwelling units normally allowable under the terms of the Agricultural Preserve contract and the provisions of this Title may be clustered on the non-contracted lands within the same ownership in the Agriculture or Rural Lands land use categories in compliance with to this Section.
- (2) Permit requirement. Development Plan approval pursuant to Section 23.02.034, shall occur at the same time as approval of a tentative map. Development Plan approval shall include conditions specifying a phasing schedule for the filing of a final tract or parcel map, where applicable, the installation of required improvements and a date for termination of the entitlement in the event the use is not established within the specified schedule.
- (3) Application content. In addition to the information required by Section 23.04.034a, the Development Plan application for a cluster project shall also include a written explanation by the applicant of how the proposed project will satisfy all the required findings specified in Subsection b(5).
- (4) Environmental review. After acceptance of an application for cluster development pursuant to Section 23.02.022, an initial study on the project shall be prepared in compliance with the California Environmental Quality Act (CEQA) and the Environmental Review Process Guidelines. The initial study shall closely examine the potential impacts on the long-term protection of the agricultural, environmental and biological resources, as well as the availability of, and potential impacts on, resources such as water, traffic, air quality, schools and other public services and facilities. Whether or not an Environmental Impact Report must be prepared will be determined by the initial study.
- (5) Required findings. Approval of a Minor Agricultural Cluster project shall not occur unless the Review Authority first makes all findings required by Section 23.02.034c(4) of this title and also finds that:
  - (i) The proposed project will result in the continuation, enhancement and long-term preservation of agricultural resources and operations consisting of the production of food and fiber on the subject site and in the surrounding area.
  - (ii) The proposed project has been designed to:
    - (a) Locate proposed development to avoid and buffer all prime agricultural soils on the site, other agricultural production areas on the site, as well as agricultural operations on adjoining properties;
    - (b) Minimize to the maximum extent feasible, the need for construction of new roads by clustering new development close to existing roads;
    - (c) Avoid placement of roads or structures on any environmentally sensitive habitat areas;
    - (d) Minimize impacts of non-agricultural structures and roads on public views from public roads and public recreation areas;

- (e) Cluster proposed residential structures, to the maximum extent feasible, so as to not interfere with agricultural production and to also be consistent with the goal of maintaining the rural character of the area;
  - (f) Minimize risks to life and property due to geologic, flood and fire hazard and soil erosion.
  - (iii) The proposed project will not result in any significant land use compatibility impacts affecting on-site or off-site agricultural operations, including but not limited to trespass, vandalism, and complaints about agricultural practices.
  - (iv) The water resources and all necessary services are adequate to serve the proposed development, including residential uses, as well as existing and proposed agricultural operations on the subject site and in the site vicinity.
  - (v) The proposed clustered development and the conditions, covenants and restrictions governing the Homeowners Association and/or individual lots are adequate to ensure permanent maintenance of the lands to remain in agricultural production and/or open space.
- (6) Access. Clustered developments in compliance with this Section shall be allowed only on ownerships with access to an existing paved, county or state maintained road.
- (i) Ownership and maintenance of roads. Unless otherwise required by the Review Authority, all interior roads and utilities shall be privately-owned and maintained and the applicant shall demonstrate through conditions, covenants and restrictions or other means that the project residents shall maintain all private roads and utilities for the life of the project.
- (7) Site layout criteria.
- (i) No structural development shall occur on soils with a Natural Resources Conservation Service classification of I or II, except that agricultural accessory structures and agricultural processing uses may be allowed on sites up to 2.5 acres in size, subject to Minor Use Permit, approval where the applicant can demonstrate that no other suitable area is available for such uses and that the proposed uses are directly related to maintaining and enhancing on-site agricultural operations.
  - (ii) Residential building sites and access drives shall be located within the boundaries of the overall ownership with sufficient separation from exterior property lines in order that the Review Authority can find that the clustered development will not result in adverse impacts on off-site agricultural operations in the site vicinity consistent with agricultural buffer policies adopted by the Board.
  - (iii) Roads and building sites shall be located to minimize site disturbance and visibility from public roads.
  - (iv) Driveway access intersections with off-site roads shall be minimized.
- (8) Agricultural land/open space preservation.

- (i) Requirements for preservation. Clustered developments in compliance with this Section and Section 23.04.038 shall provide for the long-term preservation of portions of the site proposed to meet the open space requirements of Section 23.04.038d. All open space parcels shall be of a minimum size to qualify as a separate parcel consistent with Section 23.04.024 (Parcel Size - Agriculture Category). In addition, the parcel(s) shall qualify for a stand alone Williamson Act preserve and contract under the current county Rules of Procedure and must be covered by a permanent agricultural open space easement.
- (ii) Areas included in open space. The open space area provided may include all areas in agricultural production (including directly related infrastructure such as roads and wells), but shall not include any portion of the proposed clustered residential parcels.
- (iii) Structural uses allowed in defined open space areas. The area proposed for agricultural land and/or open space preservation is not to be developed with structural uses other than:
- (a) A ranch/farm headquarters including up to two of the residential units allowed pursuant to Subsection b(9), residential accessory structures and farm support housing, which may be approved or modified after the initial Development Plan approval through Minor Use Permit, provided that the building site does not exceed 2.5 acres.
- (b) Areas set aside for the preservation of historic buildings identified by the Land Use Element, to be delineated on the recorded map.
- (c) Agricultural accessory structures or agricultural processing uses essential to the continuing agricultural production of food and fiber in the immediately surrounding area, which may be approved or modified after the initial Development Plan approval through Minor Use Permit, which shall not occupy an aggregate area of the site larger than five acres.
- (iv) Nonstructural uses allowed in defined open space areas. The following nonstructural uses may be allowed in the open space areas: crop production and grazing; animal raising and keeping; specialized animal facilities; nursery specialties (nonstructural); range land or wildlife preserves; water storage or recharge; leachfield or spray disposal area; scenic area protection or buffers from hazardous areas; public outdoor recreation uses on non-prime lands, or other similar open space uses; and roads/turnarounds directly serving the agricultural use.
- (v) Guarantee of open space. The required open-space parcel(s) are to be maintained as open space as long as the clustered lots exist. This shall be guaranteed by either of the following methods:
- (a) A recorded, permanent agricultural open-space easement granted to the county and placement in a stand alone Land Conservation Act (Williamson Act) preserve and contract in the Williamson Act Agricultural Preserve Program.
- (b) Transfer of fee title, free and clear of any liens, or dedication of a perpetual

easement to a qualified public or private non-profit organization (as defined by the regulations of the Internal Revenue Service) created for the purposes of protecting and managing resources.

- (9) **Number of dwellings.** Residential units within a cluster project shall be limited to a ratio of one dwelling unit per clustered parcel, except that farm support housing may be authorized in addition to the units allowed by this Subsection through the approval of the overall project Development Plan, or subsequent Minor Use Permit approval, in compliance with the standards of Section 23.02.033.
- (10) **Homeowners association.** A homeowners association shall be formed and membership shall be mandatory for each home buyer and successive buyer if there are open space areas held in common by the homeowners. The homeowners association shall be responsible for the permanent maintenance of the open space areas held in common, if any, by the homeowners. An assessment system, or other form of subsidy shall be required to ensure compliance with this provision.

SECTION 2: Add new Section 23.04.038 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, as follows:

**23.04.038 - Minor Agricultural Cluster:**

- a. **Eligible areas of the county.** The use of clustering in the Agriculture or Rural Lands categories may be considered on ownerships that are in agricultural use at the time of application. Use of the provisions of this Section may occur on any property in the Agriculture or Rural Lands land use category.
- b. **Excluded areas of the county.** Properties located in the Arroyo Grande, Cienega and Oso Flaco valleys as identified by the San Luis Bay and South County Area Plans of the Land Use Element are excluded from such use.
- c. **Allowed number of parcels:**
- (1) **Base parcel calculation.** The base parcel calculation shall be equivalent to the number of parcels that would result from a conventional land division in the Agriculture land use category based on the minimum parcel size criteria specified in Section 23.04.024 (Parcel Size - Agriculture Category).
- (2) **Bonus Parcel Calculation.** The maximum number of residential parcels allowed in a Minor Agricultural Cluster division shall be equivalent to the number of base parcels calculated in compliance with Subsection c(1), with a parcel bonus of at least one additional parcel, up to a maximum of 25 percent.
- d. **Lot size and open area requirements.** The minimum size of clustered residential parcels in a Minor Agricultural Cluster project, and the area of the site required for open space preservation shall be as follows:

Clustered Residential Parcel Size		Open Space Parcel Minimum Area
Minimum	Maximum	
20,000 Sq. Ft.	5 Acres	90%

Notes:

1. Net area.
2. A minimum lot size less than 2-1/2 acres may be granted only when community water is provided. A minimum lot size less than one acre may be granted only where the leaching capacity of site soils for septic tank use is from 0 to 5 minutes per inch, or where community sewer is provided.
3. The minimum area is expressed as a percentage of the gross site area.
4. Larger parcel sizes may be approved by the Review Authority where requested by the applicant and justified based on specific site characteristics, provided that the minimum open space area requirement is met.

**SECTION 2.** 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 3.** 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 4.** 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 5:** This ordinance shall take effect and be in full force on and after 30 days from the date of its passage hereof. Before the expiration of 15 days after the adoption of this ordinance, it shall be published once in a newspaper of general circulation published in the County of San Luis Obispo, State of California, together with the names of the members of the Board of Supervisors voting for and against the ordinance.

INTRODUCED at a regular meeting of the Board of Supervisors held on the tenth day of August, 2004, and PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the fourteenth day of September, 2004, 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]

ORDINANCE CODE PROVISIONS APPROVED  
AS TO FORM AND CODIFICATION:

JAMES B. LINDHOLM, JR.  
County Counsel

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

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

## **Exhibit B. Suggested Modifications for San Luis Obispo County LCP Major Amendment Number 1-08 (Agricultural Property Subdivision/Cluster Ordinance)**

### **1. Amend CZLUO Section 23.04.024 as follows:**

#### **23.04.024 -- Agriculture Category**

This section contains three methods for determining minimum parcel size in the Agriculture land use category for both prime and non-prime soils. Unless otherwise authorized pursuant to 23.04.037, all subdivisions, as defined in 21.08.020, of land designated Agriculture, except for *de minimis* lot-line adjustments determinations pursuant to subsection 23.04.024(h), shall comply with this section. Each proposed parcel must be able to qualify for the requested minimum parcel size using all tests within subsections ~~c~~ or ~~e~~ d of this section. The applicant will disclose as part of the application which subsection (either c or d) is being used to determine the minimum parcel size for each of the proposed parcels. If the parcel is under agriculture preserve contract, subsection ~~d~~ e applies. All subdivisions shall assure, through appropriate restrictions, that any future development, including residential dwellings, proposed on parcels created pursuant to this section will not limit existing or potential agricultural capability. New primary residential dwellings on parcels created through this section shall comply with 23.08.167(b), in addition to any other applicable policies and standards. All subdivisions in the ~~a~~ Agriculture category shall be consistent with applicable agriculture policies contained in the Local Coastal Plan policy document and with this section, including Coastal Plan Policy 2 (Divisions of Land) and the applicable overriding findings contained in subsection ~~f~~ e and ~~g~~ f of this section.

**a. Purpose.** The purpose of this section is to further the maximum protection of coastal agricultural lands and rural landscapes through regulations applicable to the subdivision of land in the Agriculture land use category. In addition to complying with the standards set forth in this section, proposed subdivisions shall be specifically evaluated for consistency with the Coastal Plan Agriculture Policies, and as follows:

#### (1) Agricultural Resource Protection

- i. All subdivisions pursuant to this section shall assure the maximum protection of agricultural resources, and shall not limit existing or potential agricultural capability.
- ii. The minimum parcel size and design of proposed parcels shall ensure the maximum long term viability and protection of agricultural resources.

(2) Discretionary Approval. The approval of a subdivision is discretionary and a parcel size larger than the minimum designated in the following subsections may be required to ensure agricultural capability.

**ab. Application content – Agricultural Viability Report.** In addition to information required by Title 21 of this code, ~~a~~All applications for subdivisions in the Agriculture land use category shall also

include an agricultural viability report ~~containing the following information, in addition to the information required by Title 21 of this code, as defined in 23.11.030, that assesses the existing and future viability of existing and proposed parcels as agricultural units, given existing conditions and proposed or potential development.~~

- ~~(1) Existing land uses on the site;~~
- ~~(2) Present annual income derived from agricultural operations and other income generating operations on the site;~~
- ~~(3) Site characteristics affecting agricultural land use and production, including topography, soils, climate, water availability and adjacent land uses;~~
- ~~(4) The potential of the site to support future food producing agricultural uses and estimated annual income from such uses;~~
- ~~(5) Potential effects of the proposed land division development on agricultural food production, both short term and long term;~~
- ~~(6) Recommendations and conclusions of the developments effect on agricultural production;~~

**bc. Size based upon existing use.** Where a legal lot of record is developed with agricultural uses at the time of application for land division, the minimum size for a new parcel shall be based on the type of existing agricultural use, with the required minimum being the largest area determined by the following tests. Where a site contains more than one agricultural use, each new parcel shall satisfy the minimum parcel size for its respective use a qualifying agricultural land use.

- (1) Crop production:

AGRICULTURAL LAND USE	MINIMUM PARCEL SIZE
<u>Irrigated</u> row crops, specialty crops, nurseries, <u>field crops</u> , orchards and vineyards (examples: vegetables, strawberries, cut flowers and flower seed, <u>corn</u> , sugar beets, cotton, avocados, kiwi, other fruits and nuts, wine grapes)	<u>420</u> acres;
<u>Irrigated</u> pasture, <del>field crops</del> , grain and hay (examples: <u>sugar beets</u> , alfalfa, irrigated grain and hay) <u>and Dry Farm orchards, vineyards</u>	<u>40</u> acres <u>30</u> acres
<del>Dry Farm orchards, vineyards.</del>	<u>40</u> acres
<del>Dry Farm field crops (examples: beans, specialty field crops.)</del>	<u>80</u> acres
<u>Dry Farm field crops (examples: beans, specialty field crops) and grain and hay (examples: barley, wheat, oats, hay)</u>	<u>160</u> acres
<u>Grazing</u>	<u>320</u> acres

- (2) Parcels less than 40 acres, but no smaller than 20 acres, may be proposed if (a) the proposed parcels are entirely Class I or II soils irrigated; (b) there is an onsite production water source currently installed; (c) that prior to or concurrent with recordation of a final or parcel map, the applicant executes and records against all parcels subject to the proposed subdivision a deed restriction, in a form approved by County Counsel, wherein the owner(s) agree on their behalf and all successors in interest to the parcel that, unless a Land Use Element amendment is first approved to change the land use designation of the site to a land use category other than Agriculture, use of the parcel shall be limited exclusively to crop production and incidental support uses (e.g. water well, equipment and material storage), or public access where such access shall not interfere with agricultural activities. No residential uses shall be permitted. The deed restriction shall not be amended or terminated without the prior approval of the Board of Supervisors; and (d) the resulting parcels must enter into a Williamson Act agricultural preserve contract.

~~Specialized animal facilities: The minimum size for a new parcel occupied by a dairy, feedlot, hog ranch, horse ranch or poultry ranch with related permanent structures consistent with applicable requirements of Section 23.08.046, is 20 acres. In order to qualify for a 20-acre minimum parcel size, at least 18 acres of the proposed parcel must be occupied by one of the specialized animal facilities identified by this subsection.~~

- (3) Agricultural processing: The minimum size for a new parcel with established agricultural processing facilities and structures shall be 20 acres; provided, that prior to or concurrent with recordation of a final or parcel map, the applicant executes and records against all parcels subject to the proposed subdivision a deed restriction, in a form approved by County Counsel, wherein the owner(s) agree on their behalf and all successors in interest to the parcel that, unless a Land Use Element amendment is first approved to change the land use designation of the site to a land use category other than Agriculture, use of the parcel shall be limited exclusively to uses in the Agricultural Use Group of Table O of the Framework or public access, where such access shall not interfere with on-going agricultural uses. No residential uses shall be permitted. The deed restriction shall not be amended or terminated without the prior approval of the Board of Supervisors.
- (4) Except as provided in subsections (2) and (3) above, prior to or concurrent with recordation of a final or parcel map, the applicant shall execute and record against all parcels subject to the proposed subdivision a deed restriction, in a form approved by County Counsel, wherein the owner(s) agree on their behalf and all successors in interest to the parcels that any future residential use shall be limited to one single family residence per parcel within a defined building site that is located outside of any existing agricultural use and/or prime soils, minimizes site disturbance, and that is no more than 10,000 square feet in size, excluding area necessary for: (1) a driveway or site access; (2) onsite septic system (subsurface); (3) water supply/well; and (4) other incidental residential uses. The deed restriction shall not be amended or terminated without the prior approval of the Board of Supervisors. Agricultural use shall be defined as the use of land for the purpose of producing an agricultural commodity for commercial purposes.
- (5) Averaging test. Where the average size of parcels in the agriculture category with equivalent uses immediately adjacent to the proposed division is higher than the sizes given in this subsection, the minimum parcel size shall be the average of abutting parcels (including those that are separated only by a right-of-way).

**ed. Size based upon land capability.** Where a parcel legal lot of record in the agriculture category is not developed with an agricultural use at the time of application for land division, or where an applicant chooses this subsection as the basis for determining allowable minimum parcel size, the minimum area for each new parcel is the largest determined by the following tests:

- (1) Land capability test. The minimum parcel size for new parcels is to be based on the ~~Soil Conservation Service~~ Natural Resources Conservation Service (NRCS) classification, as set forth in the following table. Where a site contains more than one soil type classification, ~~each new parcel is to be designed so as to contain sufficient area of one soil type to satisfy the minimum parcel size requirement for each respective soil type.~~ each new parcel shall satisfy the minimum parcel size for the qualifying NRCS classification.

Land Capability Classification <sup>1</sup> NRCS Classification	Minimum Parcel Size	
	<u>Irrigated</u> <sup>1</sup>	<u>Non-irrigated</u>
Class I <u>and II</u>	20-40 acres <sup>2</sup>	N/A
<del>Class II</del>	40	
Class III	80 acres	<u>160 acres</u>
Class IV - VI	160 acres	<u>320 acres</u>
Class VII - VIII	320 acres	<u>320 acres</u>

Notes:  
~~1. Soil Conservation Soil Classification~~  
 1. Irrigated - this means an installed production water source from underlying ground water basins, permitted, riparian or other appropriative water rights that would deliver adequate, reliable water.  
 2. Proposed parcels may be as small as 20 acres if they are in cultivation and if all of the criteria in subsection c(2) are met.

- (2) Averaging test. Where the average size of parcels in the agriculture category with equivalent soils immediately adjacent to the proposed division is higher than the sizes in subsection c(1), the minimum parcel size shall be the average of abutting parcels (including those which are separated only by a right-of-way).
- (3) Prior to or concurrent with recordation of a final or parcel map, the applicant shall execute and record against all parcels subject to the proposed subdivision a deed restriction, in a form approved by County Counsel, wherein the owner(s) agree on their behalf and all successors in interest to the parcel that any future residential use shall be limited to one single family residence per parcel within a defined building site that is located outside of any existing agricultural use and/or prime soils, minimizes site disturbance, and that is no more than 10,000 square feet in size, excluding area necessary for: (1) a driveway or site access; (2) onsite septic system (subsurface); (3) water supply/well; and (4) other incidental residential uses. The deed restriction shall not be amended or terminated without the prior approval of the Board of Supervisors. Agricultural use shall be defined as the use of land for the purpose of producing an agricultural commodity for commercial purposes.

**de. Size based on Agricultural preserves:** Where a legal lot of record in the Agriculture category is under Williamson Act agricultural preserve contract, the minimum parcel size is based on subsections c and d, unless a larger minimum parcel size is specified in an existing Williamson Act

~~land conservation contract. the terms of the preserve contract. However, approval of a land division under agricultural preserve contract is discretionary and a parcel size larger than the minimum designated in the contract may be required to ensure agricultural sustainability in accordance with the provisions of the adopted agricultural preserve rules of procedure. Prior to or concurrent with recordation of a final or parcel map, the applicant shall execute and record against all parcels subject to the proposed subdivision a deed restriction, in a form approved by County Counsel, wherein the owner(s) agree on their behalf and all successors in interest to the parcel that any future residential use shall be limited to one single family residence per parcel within a defined building site that is located outside of any existing agricultural use and/or prime soils, minimizes site disturbance, and that is no more than 10,000 square feet in size, excluding area necessary for: (1) a driveway or site access; (2) onsite septic system (subsurface); (3) water supply/well; and (4) other incidental residential uses. The deed restriction shall not be amended or terminated without the prior approval of the Board of Supervisors. Agricultural use shall be defined as the use of land for the purpose of producing an agricultural commodity for commercial purposes.~~

- ~~(1) Existing preserves: The minimum parcel size for lands under agricultural preserve contract before the effective date of this title is to be no smaller than that defined by the terms of the executed preserve contract, as long as the contract remains in effect. The minimum parcel size is to be no smaller than that applicable to the preserve at the time of contract execution.~~
- ~~(2) New preserves: The minimum parcel size for lands under agricultural preserve contract executed after the effective date of this ordinance is to be no smaller than that determined through the process of contract negotiation, approval and execution, based upon the adopted agricultural preserve rules of procedure.~~

**ef. Overriding Requirements for Division on Prime Agricultural Soils.** Land divisions on prime agricultural soils as defined by this title shall be subject to the following requirements:

- (1) The division of prime agricultural soils within a parcel shall be prohibited unless it can be demonstrated that existing or potential agricultural production of at least three crops common to the local agricultural economy would not be diminished;
- (2) The creation of new parcels where the only building site would be on prime agricultural soils shall be prohibited.
- (3) Adequate water supplies shall be available to maintain habitat values and to serve any proposed development and support existing agricultural viability.
- (4) Subdivisions shall result in better protection of agricultural resources in the area over existing conditions.
- (5) Coastal development permits approved for subdivisions on prime agricultural soils shall be appealable to the Coastal Commission pursuant to Coastal Act section 30603(a)(4) because they consist of development approved by the county that does not fit within the exception in 30603(4) for principally permitted uses.

**fg. Overriding Requirements for Division of Nonprime Agricultural Soils.** Land divisions on nonprime agricultural soils as defined by this title shall be subject to the following requirements:

- (1) Mandatory Findings. A proposed land division shall not be approved unless the ~~approval body~~ Review Authority first finds that the division will maintain or enhance the agricultural viability of the site.
- (2) Application Content. The land division application shall identify the proposed uses for each parcel.
- (3) Subdivisions shall result in better protection of agricultural resources in the area over existing conditions.
- (4) Coastal development permits approved for subdivisions on nonprime agricultural soils shall be appealable to the Coastal Commission pursuant to Coastal Act section 30603(a)(4) because they consist of development approved by the county that does not fit within the exception in 30603(4) for principally permitted uses.

**h. De Minimis Lot-line Adjustment Determination.** Lot-line adjustments proposing minor changes in the location of a lot-line for purposes unrelated to future development proposals and that do not result in a significant change in the underlying lot sizes may be determined to be *de minimis* by the Planning Director. Examples include adjustments to lot-lines to reflect existing improvements such as a fence or road, or a major watercourse. *De minimis* adjustments shall not result in an increase in the number of potential building sites, buildable lots, or density of permitted development.

## **2. Amend CZLUO Section 23.08.167 as follows:**

**23.08.167 - Residential Uses in the Agriculture Category:** Dwellings in the Agriculture land use category, including primary housing and farm support quarters are allowed accessory uses on the same site as an agricultural use, subject to the standards of this section. Such dwellings may include mobilehomes, subject also to the standards in Section 23.08.163 (Individual Mobilehomes).

- a. **Limitation on dwelling location - prime soils.** Primary family farm housing and farm support quarters shall not be located on prime agricultural soils unless there is no other building site on the ownership that is all of the following:
  - (1) On other than prime soils;
  - (2) Less than 20 percent in slope;
  - (3) Not within a designated Flood Hazard Combining Designation;
  - (4) Not within an environmentally sensitive habitat area.
- b. **Primary family farm housing:** Unless otherwise authorized and required by a coastal development permit issued pursuant to 23.04.037, and Except as otherwise provided by subsection a. above, a parcel in the Agriculture category may be used for one primary dwelling, as follows:

(1) **Permit requirements:** Plot Plan approval appealable to the Coastal Commission pursuant to Coastal Act section 30603(a)(4) as a development that is not a principally-permitted use in Table O of the Framework for Planning. Additional dwellings are subject to the provisions of subsections c and d of this section (Farm Support Quarters).

(2) **Density:** Primary dwellings in the Agriculture category are allowable at a ratio of one primary unit for each legal parcel, as defined in Chapter 23.11 (Definitions - Parcel). Two or more dwellings per legal parcel shall only be allowed pursuant to and shall satisfy all provisions of subsections c. and d. of this section (Farm Support Quarters).

(3) **New Residential Uses on Agricultural Parcels.** A new residential dwelling on a legal lot of record designated for Agriculture and previously undeveloped with a primary family farm house as of the effective date of this subsection, shall comply with the following provisions:

**i. Legal Lot Certification Required.** Parcels proposed for residential development under this subsection shall be recognized by Certificates of Compliance issued pursuant to Title 21, section 21.02.020.

**ii. Application Requirements.** In addition to any other application requirements of the CZLUO, applications for residential development pursuant to this subsection shall include the following:

1. Site Plan. A site plan illustrating existing and proposed: development envelopes, development, land uses, access roads, utilities, water wells, and any easements or other land use restrictions.
2. Viability Report. A report evaluating the agricultural viability of the land and area proposed for residential development, pursuant to 23.04.024(b).
3. Additional Information. Any information necessary and sufficient to address the standards and required findings specified in the following subsections.

**iii. Protection of Agriculture.**

1. Urban Services Prohibited. A residence shall be served by adequate onsite water and wastewater.
2. Water for Agriculture. Applications for new residential development shall assure adequate water supply for habitat and existing and potential future agricultural uses of the parcel.
3. Clustering Required. A new residential dwelling shall be clustered with existing development as feasible to maximize protection of existing and potential agriculture. Residential development shall be as close as possible to existing access roads and new road or driveway development shall be avoided to the maximum extent feasible.

4. Agricultural Buffers. Residential siting shall consider adjacent agricultural uses and minimize potential adverse impacts between residential and agricultural uses.
5. Development Envelope. Development envelopes for residential uses shall not exceed 10,000 square feet, excluding area necessary for: (1) a driveway or site access; (2) onsite septic system (subsurface); (3) water supply/well; and (4) other incidental residential uses.
6. Agricultural Management Plan. New residential development shall include a management plan identifying the existing and potential agricultural uses of the parcel, measures needed to support on-going agricultural production on the parcel, and any necessary management measures to assure protection of environmentally sensitive habitats such as wetlands and riparian areas, and to minimize erosion.
7. Affirmative Agricultural Protection Required. Prior to issuance of the permit for a new residential dwelling, the applicant shall execute and record a deed restriction against the parcel in a form approved by County Counsel, wherein the owner(s) agrees on their behalf and all successors in interest to the parcel being developed with a residential use that all areas outside of the approved residential envelope shall be maintained in active agricultural use. The deed restriction shall not be amended or terminated without the prior approval of the Board of Supervisors, and shall be consistent with the following:
  - a. Agricultural use shall be defined as the use of land for the purpose of producing an agricultural commodity for commercial purposes.
  - b. The Permittee may satisfy this requirement either by engaging in good faith in agriculture at a commercial scale and/or by leasing the area of the Property outside of the residential development areas, in whole or in part, to a farm operator for commercial agricultural use. The terms of any lease agreement for purposes of this condition shall not exceed the current market rate for comparable agricultural land in the region and shall reflect a good faith effort on the part of the Permittee to maintain agricultural use of the property. Except as provided in subsection (f), the Permittee shall be responsible for ensuring that an adequate water supply and other necessary infrastructure and improvements are available for the life of the approved development to sustain the agricultural viability of the property. Future subdivision of the property shall be prohibited.
  - c. Prior to issuance of the coastal development permit, the applicant shall dedicate an agricultural conservation easement to a public agency or private association approved by the Planning Director (hereinafter referred to as the "Grantee") for the purposes of implementing the requirements of this subsection. Such easement shall be located over the entire agricultural parcel except for the area contained within any approved non-agricultural development areas. After acceptance, this easement may be transferred to and held by any entity that qualifies as a Grantee under the criteria stated above. The easement shall be subject to a covenant that runs with the land providing that the Grantee may not abandon the easement until such time as Grantee effectively transfers the easement to an entity that qualifies as a Grantee under the criteria stated herein.

- d. In the event that an acceptable Grantee cannot be identified, the applicant may in the alternative execute and record a document in a form and content acceptable to the Planning Director, irrevocably offering to dedicate to a public agency or private association approved by the Planning Director an agricultural conservation easement consistent with the purposes and requirements described above. The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area. The recorded document shall also reflect that development in the easement area is restricted as required herein. The offer shall be recorded free of prior liens and encumbrances which the Planning Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.
- e. The landowner shall submit to the Planning Director and/or Grantee such information as may reasonably be required to monitor the landowner's compliance with the terms of this condition. Such information may include a written report describing current uses and changes in uses (including residential uses). The written report and any other required information shall be provided as needed upon the request of the Planning Director and/or Grantee, in a form as shall be reasonably required by same. If the landowner enters into a lease agreement with a farm operator for any portion of the property, a copy of the lease agreement may also be required as further documentation of compliance with this condition.
- f. Infeasibility Allowance. If circumstances arise beyond the control of the landowner or operator that render continued agricultural production on the property infeasible, the easement may be converted to an open space easement or other appropriate land use restriction upon Coastal Commission certification of an amendment to the LCP changing the land use designation of the parcel to Open Space, or other land use designation in accordance with all applicable policies of the certified LCP and the Coastal Act, and the affirmative agricultural easement requirements may be extinguished upon approval of an amendment to the coastal development permit.
8. Right to Farm. Prior to or concurrent with recordation of a final or parcel map, the applicant shall execute and record a deed restriction in a form approved by County Counsel, wherein the owner(s) agrees on their behalf and all successors in interest to the parcels created for residential use (a) that the permitted residential development is located on and adjacent to land used for agricultural purposes; (b) users of the property may be subject to inconvenience, discomfort or adverse effects arising from adjacent agricultural operations including, but not limited to, dust, smoke, noise, odors, fumes, grazing, insects, application of chemical herbicides, insecticides, and fertilizers, and operation of machinery; (c) users of the property accept such inconveniences and/or discomforts from normal, necessary farm operations as an integral part of occupying property adjacent to agricultural uses; (d) to assume the risks to the Permittee and the property that is the subject of this permit of inconveniences and/or discomforts from such agricultural use in connection with this permitted development; and (e) to indemnify and hold harmless the owners, lessees, and agricultural operators of adjacent agricultural lands against any and all liability, claims, demands, damages, costs (including costs and fees incurred in

defense of such claims), expenses, and amounts paid in settlement arising from or in any way related to the property that is the subject of the subdivision. The deed restriction shall not be amended or terminated without the prior approval of the Board of Supervisors.

**iv. Sensitive Habitat Protection.** All development shall avoid and buffer adjacent ESHA, including wetlands, riparian areas, and other identified sensitive habitats.

**v. Visual Resources.** Residential development shall not require new roads that are visible from public roads and other public viewing locations unless allowing such impacts would result in better protection of agricultural resources and/or ESHA.

1. Roads and building sites shall be located to minimize, to the maximum extent feasible, site disturbance and visibility from public roads.
2. Where permitted, new development shall avoid impacts on public views from public roads, trails, and other recreational areas. Access road development shall be the minimum necessary to provide safe access to the site.
3. New development visible to the public shall provide for protection of rural agricultural design and character for buildings.
4. Any necessary road development in the public viewshed seaward of Highway One shall be mitigated through the provision of public viewing areas such as lateral accessways or other publicly available viewing areas.

**vi. Steep Slopes.** Development shall not be located on lands with greater than 20% slopes.

**vii. Hazards.** Siting of residential development shall minimize risks to life and property due to geologic, flood, and fire hazard and soil erosion.

### **3. Amend CZLUO Section 23.04.050 as follows:**

#### **23.04.050 - Non-Agricultural uses in the Agriculture Land Use Category:**

This section establishes permit requirements and standards for non-agricultural uses in the Agriculture category consistent with Local Coastal Plan Agricultural policies 3, 4, and 5.

- a. **Sighting of structures.** A single-family dwelling and any agricultural accessory buildings supporting the agricultural use shall, where feasible, be located on other than prime soils and shall comply with 23.08.167(b) incorporate mitigation measures necessary to reduce negative impacts on adjacent agricultural uses.

#### **4. Amend CZLUO Section 23.11.030 to add a definition of Agricultural Viability Study as follows:**

**Agricultural Viability Study.** A study that assesses the existing and future viability of existing and proposed parcels as agricultural units given existing conditions and proposed or potential development. The report should analyze both the site and the larger area's current and past productivity as an agricultural unit for at least the preceding five (5) years and shall evaluate the factors below as applicable. For purposes of this definition "area" means a geographic area of the County of sufficient size to provide an accurate evaluation of the economic feasibility of agricultural uses.

**(1) Mapping.** Maps, photos and aerial photography adequate to identify the parent parcel, the proposed parcels, easements, restrictions, existing development and uses, wells and/or any other water supply lines, NRCS soils classifications, slopes, roads and any other relevant physical features.

#### **(2) Soils.**

- (a) The identification of all soil types that are found in the area (as stated in the most recent information published by the NRCS, United States Department of Agriculture);
- (b) Storie index and Capability Classification or equivalent ratings of all identified soil types (as published by the NRCS, United States Department of Agriculture);
- (c) The expected animal unit month (AUM) yield for each identified soil type (NRCS);
- (d) The expected net dollar return for crops that are currently cultivated on each soil type;
- (e) An identification of crop types that could be potentially grown on each identified soil type, and also the expected net dollar return for such crops;
- (f) An identification of soil types used exclusively for grazing;
- (g) An identification of agricultural uses in the area that are not dependent upon the soil (e.g., greenhouses), and where identified, a description of their location and nature of operation(s).

#### **(3) Geographic.**

- (a) Existing land uses on the site;
- (b) Potential effects of the proposed land division development on agricultural food production, both short-term and long-term; and recommendations and conclusions of the developments effect on agricultural production;
- (c) The description of factors such as slope, temperature, adequate sunlight, length of growing season, precipitation, soil quality (depth, drainage, capability classification rating, storie index rating, texture, development, unique qualities) affecting agricultural operations in the area;

- (d) The description of management techniques that are currently used, or could be used, in order to improve soil quality for agricultural operations;
- (e) An identification of agricultural operations that use more than one parcel for production in the area, and where identified, a description of their current practice and average acreage for each individual operation;
- (f) A description of the relationship or proximity of agricultural and urban land uses.

**(4) Water.**

- (a) The availability of water in the area;
- (b) An identification of the water source for any existing agricultural uses;
- (c) An identification of whether poor water quality impacts agricultural operations in the area;
- (d) The current cost of water as applicable.

**(5) Access.**

- (a) Description of whether adequate access to agricultural operations in the area currently exist.

**(6) History.**

- (a) An identification of the types of agricultural operations that have taken place in the area in the past and where have they occurred;
- (b) An identification of how long agricultural operations have been conducted in the area;
- (c) An identification of those parcels that have been used for agricultural operations in the area consistently in past, and where applicable an identification of such time periods.

**(7) Risk factors.**

- (a) An identification of whether drought years affect agricultural operations in the area and, if so, what the cost of water is during these periods;
- (b) An identification of whether the costs of production and labor are unpredictable for agricultural operations in the area;
- (c) An identification of whether commodity prices are consistent or inconsistent from year to year for crops grown in the area;
- (d) An identification of whether salt water intrusion into well water supply is an issue, and if so, how it affects agricultural operations in the area;
- (e) An identification of whether there is a problem with crop quality in the area;

(f) An identification of whether the agricultural market is volatile for crops grown in the area.

**(8) Economics.**

(a) The expected net dollar return for crops that are currently cultivated on each soil type;

(b) Present annual income derived from agricultural operations and other income-generating operations on the site;

(c) An analysis of the gross revenue from the agricultural products grown in the area for the five (5) years immediately preceding the date of the filing of the application for coastal development;

(d) An analysis of the operational expenses excluding the cost of land, associated with the production of the agricultural products grown in the area for the five (5) years immediately preceding the date of the filing of the application for coastal development.

(e) Cost shall be determined by, and consist of, the following variables:

(i) Fixed costs for any given crop are assumed to be constant, regardless of the annual yield. Fixed costs shall include only current costs and shall not speculate on potential future circumstances.

(ii) Land cost (i.e. rent, lease, property tax, etc.) shall not be included into the cost analysis (See Coastal Act Section 30241.5);

(iii) Capital costs including: (1) land improvements (i.e., fences, roads, clearing, leveling, wells and pumps, etc.); (2) equipment (i.e., trucks, tractors, buildings, special equipment (e.g. irrigation), etc.); (3) herd expenses (i.e., payment for bulls and heifers); and (4) miscellaneous expenses. Cost determination must also include depreciation and interest expenses;

(iv) Cultivating cost including operating costs for: (1) labor (i.e., the amount of hours necessary for planting and the rate of pay per hour including benefits); (2) materials (i.e., water, seed, feed supplements, salt, fertilizer, and pesticides); (3) machinery; (4) fuel and repair; and (5) outside consultants (i.e., veterinary and management).

(v) Variable costs are the harvest costs and are based on the amount of yield only. Depending on the crop yield, variable costs fluctuate for any given year. In most cases, this is expressed as the cost per unit of yield (tons, 100 weight, or pounds).

(f) Gross Revenue shall be determined by and consists of the following variables:

(i) Gross returns for each crop type as detailed in the annual crop report issued by the County Agriculture Commissioner; and

(ii) Past return figures should factor in the appropriate Producer Price Index (PPI) figure in order to account to inflation over time.

(g) Evaluative methods to incorporate the above cost and revenue figures shall include:

- (i) Determination of the net economic impact on private and public sectors and, second, a test for agricultural viability. Net economic impact refers to change in dollar flow within the community brought about by a given change in land use. "Net economic impact" equals total public revenues minus total public costs, plus private sector income. This should be computed according to the existing land use, the proposed development, and any viable project alternatives. This may be accomplished through the following process:
- (ii) Cost/Revenue analysis that determines public costs associated with conversion of agricultural land and also revenues generated by increases in property tax within the project site. Public service marginal costs should compute the new and/or incremental costs of adding development to the public service system, which includes the cost of capital improvements necessary to accommodate such development. This should also state, and if possible quantify, those costs or externalities not easily accounted for in cost computations. One externality could include the probable change in assessed value of parcels adjacent to the development. Public service revenues are generated by increases in property tax within the project site; and
- (iii) Input/Output analysis that looks at the private sector of the areas economy in terms of its purchases and sales to other sector both locally and from outside the area. From this information, multipliers for each sector should be developed. Determination of the input figures will reveal the affect of removing the subject number of acres, for the subject crop, from agricultural production. This will reveal the effect to the private sector economy.
- (iv) Determination of the minimum acreage for a viable agricultural operation (farm family approach). In order to determine net income, production costs by crop should be computed on a per acre basis and subtracted from gross market receipts expected from that crop, as detailed in the County Agricultural Commissioner's annual crop report. The resulting figure represents the farmer's income per acre of productive land. The per acre income figure should then be divided into the County's Median Income figure to compute the number of acres required to support a farm family.
- (v) Determination of net return per acre, per crop type, for the area only. By crop type, determine gross revenue per acre for subject crop types as listed in the County Agricultural Commissioner's annual crop report. Then subtract from gross revenue figures the cost per acre associated with each crop type.

**9. Prime agricultural land determination.** All agricultural land proposed for conversion to nonagricultural use shall be evaluated for a determination of whether it should be categorized as prime or nonprime agricultural land. As defined in the Coastal Act, "prime agricultural land" is "those lands defined in paragraph (1), (2), (3), or (4) of subsection (c) of Section 51201 of the Government Code" (Coastal Act Section 30113). Government Code Sections 51200 through 51296, also known as the Williamson Act, lists the following definitions of prime agricultural land under the applicable four subsections of Section 51201(c):

- (a) All land that qualifies for rating as Class I or Class II in the Natural Resource Conservation Service land use capability classifications;
- (b) Land which qualifies for rating eighty (80) through 100 in the Storie Index Rating;
- (c) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture;
- (d) Land planted with fruit or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five (5) years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than Two Hundred and no/100ths (\$200.00) Dollars per acre.

## **5. Add new CZLUO Section 23.04.037:**

### **23.04.037 – Agricultural Lands Clustering**

It is the policy of the Board to assure the preservation of agricultural lands in San Luis Obispo County for the continuing and enhanced production of food and fiber through the use of a variety of policy and regulatory techniques. One technique, provided by this section, is the clustering of existing legal lots of record and potential residential development in agricultural areas on smaller parcels instead of development of the existing larger parcels.

- a. Purpose.** The purpose of this section is to provide for the maximum protection of agricultural lands through the clustering, to the maximum extent feasible, of existing legal lots of record and any associated residential development potential as an alternative to development of existing legal lots of record in their current configuration.
- b. Discretionary Approval.** The approval of an agricultural lands cluster is discretionary. The number of parcels shall be based on ensuring agricultural capability and may be less than the number of existing legal lots of record.
- c. Permit Requirement.** Development Plan approval pursuant to Section 23.02.034, shall occur at the same time as approval of a tentative map. Development Plan approval shall include conditions specifying a phasing schedule for the filing of a final tract or parcel map, where applicable, the installation of required improvements and a date for termination of the entitlement in the event the use is not established within the specified schedule.
- d. Appealability.** Coastal development permits approved for an agricultural lands cluster pursuant to this section shall be appealable to the Coastal Commission.

e. Standards for Clustering. Legal lots of record in the Agriculture land use category may be adjusted to sizes smaller than the minimum parcel sizes required by Section 23.04.024, if all of the following requirements are met:

1. Areas Excluded. Properties located in the Arroyo Grande and Cienega valleys identified by the South County Area Plans, Oso Flaco valley as identified by the San Luis Bay, and the Hearst Ranch in the North Coast planning area, are excluded from and ineligible for agricultural lands clustering subdivision.
2. Legal Lot Certification Required. Parcels proposed for subdivision under this subsection shall be recognized by Certificates of Compliance issued pursuant to section 21.02.020.
3. Application Requirements. In addition to any other application requirements of the CZLUO, applications for an agricultural lands cluster pursuant to this section shall include the following:
  - a. Purpose Statement. A statement of the purpose for the subdivision, including a description of future proposed land uses on each resulting parcel.
  - b. Lot Certification. Evidence that each lot proposed for division has been legally certified. Where deemed necessary by the Director of Planning, applicants proposing to subdivide land pursuant to this section shall provide a complete chain of title and any other relevant information requested by the Director about the lots proposed for subdivision, prior to filing the application.
  - c. Site Plan. A site plan illustrating existing and proposed: development envelopes, development, land uses, access roads, utilities, water wells, and any easements or other land use restrictions.
  - d. Viability Report. A report evaluating the agricultural viability of the land and area proposed for subdivision consistent with the definition of agriculture viability report in Section 23.11.030.
  - e. Required Findings. A written explanation of how the proposed project will satisfy all of the required findings specified in subsection (g).
  - f. Additional Information. Any information necessary and sufficient to address the standards and required findings specified in the following subsections.
4. Maximum Density Determination. The number of parcels authorized for subdivision shall be based on the number of existing legal lots, ownership patterns, and any other factors relevant to allocating entitlements for residential uses on the agricultural lands proposed for subdivision. This number shall not exceed the number of existing certified legal parcels.
5. Protection of Agriculture.
  - a. Clustering Required. Parcels recognized for subdivision pursuant to subsection (4) shall be designed and clustered to assure the maximum protection of agricultural land.

- b. **Minimum Agricultural Area Retained.** One parcel shall be designated as an open space/agricultural parcel encompassing a minimum of 95% of the land proposed for the agricultural lands cluster.
- c. **Residential Parcel Sizes.** Proposed residential parcel sizes shall be as small as practicable to maximize preservation of agricultural land, consistent with the following table:

<u>Existing Average Parcel Size</u>	<u>Minimum Parcel Size*</u>	<u>Maximum Parcel Size</u>
0-125 acres	2,000 sq. ft.	2.5 acres
126-250 acres	2,000 sq. ft.	2% of average parcel size
>250 acres	2,000 sq. ft.	5 acres

\* Parcel sizes may be smaller than 2.5 acres if the parcel will be served by a water supply and sewage treatment system authorized consistent with Title 19, Chapter 7, of the San Luis Obispo County code and other applicable CZLUO standards.

- d. **Eligibility of lands under Agricultural Preserve Contract.** Lands in the Agriculture land use category under Williamson Act contract shall not be used as the location for clustered parcels; provided that where a project site includes contiguous contracted and non-contracted lands, the number of existing underlying legal lots of record not under contract may be clustered on the non-contracted lands within the same project site in compliance with this Section.
- e. **Urban Services Prohibited.** Residential parcels shall be served by adequate water and wastewater systems located on the project site and that are sized and restricted to serve only the residential density authorized pursuant to this section.
- f. **Water for Agriculture.** Cluster divisions shall assure adequate water supply for existing and potential agricultural uses, habitat resources and proposed residential development.
- g. **Parcel Design.** Residential parcels shall be configured and clustered immediately adjacent to each other to maximize protection of agriculture. Residential clusters shall be as close as possible to existing access roads and new road or driveway development shall be avoided to the maximum extent feasible.
- h. **Building Sites.** Residential building sites shall be clustered to maximize protection and buffering of adjacent agricultural land, except that a single family residence may be located on the agricultural parcel separate from the residential cluster if it is determined that this would result in superior protection of existing and potential agricultural use of the site.
- i. **Protection of Prime Soils.** The creation of new parcels where the only building site would be on prime agricultural soils shall be prohibited.
- j. **Future Subdivision Prohibited.** Future subdivision of the property approved for subdivision under this section shall be prohibited.
- k. **Development Envelopes.**

1. **Size.** Development envelopes for residential uses shall not exceed 10,000 square feet, excluding area necessary for: (1) a driveway or site access; (2) onsite septic system (subsurface); (3) water supply/well; and (4) other incidental residential uses.
2. **Agricultural Buffers Required.** Agricultural buffers shall be located, to the maximum extent feasible, on the proposed residential lots and shall be at least 50 feet. Buffers shall assure the maximum protection of agriculture and be based on site specific factors, including existing and potential crop types, topography, prevailing winds, and elevation differences. Residential uses are prohibited within buffers, provided that a driveway access and subsurface utilities (including wastewater system components) may be located within the buffer area where necessary.
- l. **Agricultural Management Plan.** Subdivisions shall include a management plan identifying the existing and potential agricultural uses of the open space/agricultural parcel(s), measures necessary to maintain agricultural production, and any necessary management measures to assure protection of environmentally sustainable agriculture, including protection of sensitive habitats such as wetlands and riparian areas, and minimizing erosion.
- m. **Affirmative Agricultural Protection Required.** Prior to or concurrent with recordation of a final or parcel map, the applicant shall execute and record a deed restriction in a form approved by County Counsel, wherein the owner(s) agrees on their behalf and all successors in interest to the parcel created for agricultural use that all areas outside of the approved residential cluster envelope shall be maintained in active agricultural use. The deed restriction shall not be amended or terminated without the prior approval of the Board of Supervisors, and shall be consistent with the following:
  1. **Agricultural use shall be defined as the use of land for the purpose of producing an agricultural commodity for commercial purposes.**
  2. **The Permittee may satisfy this requirement either by engaging in good faith in agriculture at a commercial scale and/or by leasing the area of the Property outside of the residential development areas, in whole or in part, to a farm operator for commercial agricultural use. The terms of any lease agreement for purposes of this condition shall not exceed the current market rate for comparable agricultural land in the region and shall reflect a good faith effort on the part of the Permittee to maintain agricultural use of the property. Except as provided in subsection (l), the Permittee shall be responsible for ensuring that an adequate water supply and other necessary infrastructure and improvements are available for the life of the approved development to sustain the agricultural viability of the property. Future subdivision of the property shall be prohibited.**
  3. **Prior to issuance of the coastal development permit, the applicant shall dedicate an agricultural conservation easement to a public agency or private association approved by the Planning Director (hereinafter referred to as the "Grantee") for the purposes of implementing the requirements of this subsection. Such easement shall be located over the entire agricultural parcel except for the area contained within any approved non-agricultural development areas. After acceptance, this easement may be transferred to and held by any entity that qualifies as a Grantee under the criteria stated above. The easement shall be subject to a covenant that runs with the land providing that the Grantee**

may not abandon the easement until such time as Grantee effectively transfers the easement to an entity that qualifies as a Grantee under the criteria stated herein.

4. In the event that an acceptable Grantee cannot be identified, the applicant may in the alternative execute and record a document in a form and content acceptable to the Planning Director, irrevocably offering to dedicate to a public agency or private association approved by the Planning Director an agricultural conservation easement consistent with the purposes and requirements described above. The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area. The recorded document shall also reflect that development in the easement area is restricted as required herein. The offer shall be recorded free of prior liens and encumbrances which the Planning Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.
5. The landowner shall submit to the Planning Director and/or Grantee such information as may reasonably be required to monitor the landowner's compliance with the terms of this condition. Such information may include a written report describing current uses and changes in uses (including residential uses). The written report and any other required information shall be provided as needed upon the request of the Planning Director and/or Grantee, in a form as shall be reasonably required by same. If the landowner enters into a lease agreement with a farm operator for any portion of the property, a copy of the lease agreement may also be required as further documentation of compliance with this condition.
6. Open Space requirement. If circumstances arise in the future beyond the control of the landowner or operator that render continued agricultural production on the property infeasible, the easement may be converted to an open space easement upon Coastal Commission certification of an amendment to the LCP changing the land use designation of the parcel to Open Space in accordance with all applicable policies of the certified LCP and the Coastal Act, and the affirmative agricultural easement requirements may be extinguished upon approval of an amendment to the coastal development permit.
- n. **Right to Farm.** Prior to or concurrent with recordation of a final or parcel map, the applicant shall execute and record a deed restriction in a form approved by County Counsel, wherein the owner(s) agrees on their behalf and all successors in interest to the parcels created for residential use (a) that the permitted residential development is located on and adjacent to land used for agricultural purposes; (b) users of the property may be subject to inconvenience, discomfort or adverse effects arising from adjacent agricultural operations including, but not limited to, dust, smoke, noise, odors, fumes, grazing, insects, application of chemical herbicides, insecticides, and fertilizers, and operation of machinery; (c) users of the property accept such inconveniences and/or discomforts from normal, necessary farm operations as an integral part of occupying property adjacent to agricultural uses; (d) to assume the risks to the Permittee and the property that is the subject of this permit of inconveniences and/or discomforts from such agricultural use in connection with this permitted development; and (e) to indemnify and hold harmless the owners, lessees, and agricultural operators of adjacent agricultural lands against any and all liability, claims,

demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from or in any way related to the property that is the subject of the subdivision. The deed restriction shall not be amended or terminated without the prior approval of the Board of Supervisors.

6. **Sensitive Habitat Protection.** The creation of new parcels where the only building site would be on Environmentally Sensitive Habitat shall be prohibited. All development shall avoid and buffer adjacent ESHA, including wetlands, riparian areas, and other identified sensitive habitats.
7. **Visual Resources.** Subdivisions shall comply with Coastal Plan Visual and Scenic Resource Policies and the following:
  - a. Subdivisions shall not create parcels or require new roads that are visible from public roads and other public viewing locations unless allowing such a design would result in better protection of agricultural resources and/or ESHA.
  - b. Roads and building sites shall be located to minimize, to the maximum extent feasible, site disturbance and visibility from public roads and viewing locations.
  - c. Where permitted, new development shall avoid, to the maximum extent feasible, impacts on public views from public roads, trails, and other recreational areas. Access road development shall be the minimum necessary to provide safe access to the site.
  - d. New development visible to the public shall provide for protection of rural agricultural design/character for buildings.
  - e. Any necessary road development in the public viewshed seaward of Highway One shall be mitigated through the provision of public viewing areas such as lateral accessways or other publicly available viewing areas.
8. **Steep Slopes.** Parcels that cannot accommodate a development envelope on slopes less than 20% are prohibited.
9. **Site Access.** Subdivisions shall be allowed only on land with access to an existing paved, county or state maintained road.
  - a. Ownership and maintenance of roads. Unless otherwise required by the Review Authority, all interior roads and utilities shall be privately-owned and maintained and the applicant shall demonstrate through conditions, covenants and restrictions or other means that the current and/or future property owners shall maintain all private roads and utilities for the life of the project.
  - b. Driveways and connecting roads visible from public viewing areas shall be avoided to the maximum degree feasible. Any unavoidably visible driveways and connecting roads shall be sited and designed, including screening (e.g., landscaping, etc.), in such a way as limit reduce visibility and visual impacts of said driveways/roads to the maximum degree feasible.
  - c. Access intersections with off-site roads shall be minimized.

**10. Hazards.** Subdivision design shall minimize risks to life and property due to geologic, flood, and fire hazard and soil erosion.

**f. Environmental review.** After acceptance of an application for cluster development pursuant to Section 23.02.022, an initial study on the project shall be prepared in compliance with the California Environmental Quality Act (CEQA) and the Environmental Review Process Guidelines. The initial study shall closely examine the potential impacts on the long-term protection of the agricultural, environmental and biological resources, as well as the availability of, and potential impacts on, resources such as water, traffic, air quality, schools and other public services and facilities. Whether or not an Environmental Impact Report must be prepared will be determined by the initial study.

**g. Required Findings.** Approval of a subdivision under this section shall not occur unless the Review Authority makes all findings required by Section 23.02.034c(4) of this title and also finds that:

1. The proposed project will result in the continuation, enhancement and long-term preservation of agricultural resources and operations consisting of the production of food and fiber on the subject site and in the surrounding area.
2. The proposed project has been designed in conformance with this section.
3. The minimum parcel size and design of proposed agricultural lands cluster-ensures the maximum long term protection of agricultural resources.
4. Non-agricultural (i.e. residential) parcels created are as small as practicable, and designed and clustered to assure the maximum protection of agricultural land.

## **6. Add new CZLUO Section 21.02.020(c)(4):**

### **4. Consultation with Coastal Commission for Agricultural Lands**

- a. **Pre-existing Certificates.** For lots in the Agriculture land use category with Certificates of Compliance issued prior to the adoption date of this ordinance, the County shall consult with the California Coastal Commission regarding the basis for such lot certification prior to the filing of an application for subdivision pursuant to sections 23.04.024 or 23.04.037. Any dispute concerning the basis for certificate issuance shall be resolved prior to filing of the application, pursuant to 23.01.041(g) and CCR 13569.
- b. **New Certificates.** Prior to issuing a Certificate of Compliance for a lot proposed for subdivision in the Agriculture land use category pursuant section 23.04.037, the County shall consult with the California Coastal Commission regarding the basis for certification of the lot. Any dispute concerning the basis for certificate issuance shall be resolved prior to accepting an application for a subdivision involving the lot in question, pursuant to 23.01.041(g) and CCR 13569.

- c. **Chain of Title/Lot Information.** Where deemed necessary by the Director of Planning, applicants proposing to subdivide land pursuant to this subsection (f) shall provide a complete chain of title and any other relevant information requested by the Director about the lots proposed for subdivision, prior to filing the application.

Other areas, such as Pirate's Cove at Mallagh Landing, are private property currently used for public recreation. Access corridors in these areas need to be established in order to guarantee continued accessibility to these beaches for the future. Generally, where ownership is private and anticipated to remain so, proposals for future development could provide public access as a permit condition unless access is available within a close proximity.

**7. Protection of Public Safety**

Portions of the county coastline are steep bluff and rocky areas with safety hazards, but design solutions can overcome many of such problems. Fences along bluff edges, stairways down steep bluffs, signs and handrails can be built where problems are identified. However, where severe hazards exist, physical access may not be prudent and the area may most appropriately be restricted to use as a vista point.

**8. Agriculture**

The Coastal Act policies to protect agricultural land affect access locations, types and intensities. While actual beach use does not have a negative impact on agriculture, the conflict between agriculture and access is related to trails through agricultural land. Public use of such trails often results in problems related to trash, crop theft, trespassing and vandalism of agricultural property or equipment. Fenced trails or natural physical features which confine both vehicle and pedestrian/equestrian access are necessary. The large agricultural areas of the county include the Oso Flaco Lakes area, the area between Cambria and Cayucos and the Hearst Ranch. New public access in some of the agricultural areas of the county may be inappropriate.

**POLICIES FOR SHORELINE ACCESS**

To implement the provisions of the Coastal Act, the following policies represent the commitment of San Luis Obispo County to preserving, protecting and providing access to the coast.

**Policy 1: Protection of Existing Access**

Public prescriptive rights may exist in certain areas of the county. Development shall not interfere with the public's right of access to the sea where acquired through historic use or legislative authorization. These rights shall be protected through public acquisition measures or through permit conditions which incorporate access measures into new development. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.04.420 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]

This policy provides protection for the possible existence of public prescriptive rights as required by Coastal Act Policies 30211 and 30000.5. The establishment of prescriptive rights can be resolved between the property owners and interested individuals or groups. However, where this cannot be resolved, the government or an individual or group may bring suit on behalf of the public to confirm that the prescriptive rights of use exist. The Local Coastal Plan identifies areas where prescriptive rights may exist, and sets standards and programs (such as public acquisition) for new development regarding these potential public access rights. Development which incorporates these standards would not interfere with the possible existence of prescriptive rights and thus would be permitted. However, the Local Coastal Plan may not have identified all areas where prescriptive rights exist and for such areas the appropriate amount of public use should be established through the review process at the time of development.

Procedures for ensuring public input on existing prescriptive rights that may exist on projects between the first public road and the shoreline are included in the Coastal Zone Land Use Ordinance.

## **Policy 2: New Development**

Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development. Exceptions may occur where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as those accessways that provide for public access and use along the shoreline. Vertical access is defined as those accessways which extend to the shore, or perpendicular to the shore in order to provide access from the first public road to the shoreline. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.420 a. AND c. OF THE CZLUO.]

Lateral accessways must be a minimum of 25 feet wide of dry sandy beach wherever possible. Where topography limits the sandy beach to less than 25 feet, the lateral access will extend from mean high tide to the toe of the bluff. More than 25 feet may be required to ensure that the public may use the sandy beach at all times.

Wherever possible, the accessway should be measured and established from a fixed line landward of and parallel to the mean high tide line, such as a parcel boundary. To assure that the public will have the ability to use some dry sandy beach at all times of the year, site review should consider: 1) variations of the high water line during the year, 2) topography of the site, 3) the location of other lateral accessways on neighboring or adjacent property, and 4) the privacy needs of the property owner.

Vertical accessways will be required at the time of new development when adequate vertical access is not available within a reasonable distance of (one-quarter mile within urban areas and one mile in rural areas) and where prescriptive rights may exist. The vertical accessways should usually be sited along the borders of the project site and should extend from the road to the shoreline (or bluff edge if access is required to reach a bluff top viewing area).

The size and location of vertical accessways should be based upon the level and intensity of proposed or existing access. Site review shall consider: safety hazards; adequate parking provisions; privacy needs of adjacent residential property owners; provisions for requiring adequate public notification of accessway; and levels of improvements or facilities necessary to provide for existing level of access.

A vertical accessway in existing subdivided areas should be a minimum of five feet and should be sited no closer than five feet to an existing or proposed residential structure. In unsubdivided areas, vertical accessways should normally be a minimum of 10 feet. Vertical bluff top access between residential structures shall be limited to pass and repass use of the accessway. This provides for public access along the shoreline but would not allow for any additional use of the vertical accessway. Access activities on these accessways are limited to walking to pass through. Pass and repass right of access is usually applied to areas where topographic constraints make use of the beach dangerous, where habitat values of the shoreline would be adversely impacted by public use of the shoreline or where the accessway may encroach closer than 20 feet to a residential structure.

In some areas of the county, access may need to be limited and controlled such that adequate protection is given to agricultural uses and sensitive habitat areas. The level and intensity of access should be consistent with the following considerations:

Within agricultural holdings, new vertical access shall be required only where the access can be sited along a property boundary (to minimize impacts on the agricultural operation) unless a more appropriate location exists.

Maximum access within new development may be inconsistent with the protection of sensitive habitats. To optimize public access while protecting resources and land uses, limited forms of access and mitigation methods should be considered. Such mitigation methods may include establishment of a monitoring and maintenance program to assess the impacts of public use and to propose protection limitations. For example, access near a sensitive habitat may be restricted to a particular time of year to avoid conflicts with nesting seasons or other seasonal conditions. In other areas, such as Dune Lakes, this may require limitation on access to scientific or educational study, at the discretion and with the permission of the property owner.

In some areas it may be appropriate to require no new vertical access. This may be where adequate access exists nearby, or where adequate mitigation cannot be given to protect agricultural operations or sensitive habitat areas.

### **Policy 3: Access Acquisition**

In implementing the above policies, purchase in fee (simple) is to be used only after all other less costly alternatives have been studied and rejected as inappropriate or infeasible. In addition to fee simple purchase and offers of dedication or deed restriction for public access as a condition of development approval, other alternatives may include the purchase of easements, or the establishment of in-lieu fees where access is not appropriate. Offers-to-dedicate and deed restrictions to allow for public access are the most frequently used means of guaranteeing public access. Deed restrictions are most appropriate for large projects which are in single ownership and where continuity can be maintained over time. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

The Land Use Element for the coastal zone areas has been amended to specify actions needed to ensure public access for portions of the coast and implement access policies. These are established as programs and standards through the Local Coastal Plan (LCP) combining designation. Programs are the actions which should be undertaken by a public agency to provide and maintain public access. Standards are the actions by which private development must incorporate access conditions and will indicate the need for lateral and/or vertical accessways and necessary improvement.

### **Policy 4: Provision of Support Facilities and Improvements**

Facilities necessary for public access shall be provided. This may include parking areas, restroom facilities, picnic tables or other such improvements. The level of these facilities and improvements should be consistent with the existing and proposed intensity and level of access use and provisions for on-going maintenance. Requirements for coastal access and improvements are identified in the specific Planning Area Standards and the Land Use Ordinance for the coastal zone. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.420 h. OF THE CZLUO.]

**Policy 5: Acceptance of Offers to Dedicate**

Dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept the responsibility for maintenance and liability of the accessway. New offers to dedicate public access shall include an interim deed restriction that restricts the property owner from interfering with the present use by the public of the areas subject to the easement prior to acceptance of the offer. Existing offers for dedication having such an interim deed restriction, shall remain open and unobstructed during the period when the offer is outstanding. Once a public agency or private association agrees to accept the responsibility for maintenance and liability of the access, the property owner's responsibility under the interim deed restriction may be relinquished. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.420g. OF THE CZLUO.]

Examples of public and private agencies which may be appropriate to accept offers of dedication include the California State Department of Parks and Recreation, State Department of Fish and Game, State Lands Commission, the Coastal Conservancy, the county or local community service districts. In addition, private agencies may include local, state and national conservation organizations.

In general, the responsibility for accepting and maintaining public access should be based upon the expected users of the accessway. For example, where the principal users will be local residents and limited facilities are needed for visitors to the coast, the county, local districts or homeowners associations should assume this responsibility. Detailed recommendations are provided in the LCP combining designation in the four coastal planning areas. Where easements (road right-of-ways, etc.) extend to the shoreline, and have been previously offered to and/or accepted by the county, these easements should be accepted, improved and maintained for shoreline access by the county or other appropriate public agency. Where vertical accessways are required over a private road, a recorded easement over the private road should extend to the specific access point at the shoreline.

Where access is largely for visitors to the community, the responsibility should rest with the most appropriate state agency and the costs borne statewide.

**Policy 6: Public Safety**

The level and intensity of shoreline access is to be consistent with public safety concerns related to bluff stability, trail improvements as well as the provision of adequate facilities such as signs, fences and stairways. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.420h. OF THE CZLUO.]

**Policy 7: Development of Uniform Access Signs**

A uniform signing system PROGRAM should be developed. Such signs would assist the public in locating and recognizing access points. Where agriculture and sensitive habitats are located, signs may be posted indicating the permitted level of access, the restrictions on access and a description of the sensitive habitat resource. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.420i. OF THE CZLUO.]

Once accessways are accepted by a public agency, they shall be signed and posted to indicate any restrictions or presence of sensitive habitats or hazards.

**Policy 8: Minimizing Conflicts with Adjacent Uses**

Maximum access shall be provided in a manner which minimizes conflicts with adjacent uses. Where a proposed project would increase the burdens on access to the shoreline at the present time or in the future, additional access areas may be required to balance the impact of heavier use resulting from the construction of the proposed project. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.420k. OF THE CZLUO.]

**Policy 9: Restoration and Enhancement of Shoreline Access Areas**

Areas that have been severely degraded through overly intense and unrestricted use should be restored by such techniques as revegetation with native plants, trail consolidation and improvement and through the provision of support facilities such as parking, defined trail and/or beach walk stairway systems, trash receptacles, restrooms, picnic areas, etc. In extremely degraded areas (especially sensitive habitat areas), a recovery period during which public access would be controlled and limited may be necessary. This should be determined through consultation with the property owner and appropriate public agencies to establish the means of controlling public access that is reasonable and cost effective. Any limitation of use shall be evaluated periodically to determine the need for continued limited use. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.420j. OF THE CZLUO.]

**Policy 10: Protection of Property Rights and Privacy**

The acquisition of rights for access and view purposes and other uses by the public should be consistent with the protection of the property and use rights of property owners. Access routes should be selected and designed so as to minimize the public impact on private property.

This is not meant to be exclusionary against public access rights but to cause a balance to be struck in protecting the individual citizen's property and privacy. Nothing in the Local Coastal Program is to be construed as encouraging, permitting, or endorsing trespass or invasion of private property rights or privacy. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.04.420k. OF THE CZLUO.]

**Policy 11: Taking of Private Property**

In meeting the foregoing policies for ensuring public access to the shoreline, careful consideration must be given to the requirements of Section 30010 which declares that no local governments may "... exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation...." [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**Policy 12: Comprehensive Public Access Planning**

As part of the periodic update of an area plan, the draft plan shall include development of a Comprehensive Public Access Component consistent with Section 30500 of the California Coastal Act:

1. **Contents.** The update of the area plan shall include the following information:
  - a. **Goals and Objectives.** Statements of the public access goals, objectives, policies, ordinances, standards, programs, fiscal implications and other management objectives relevant to each planning area; and



**Erosion Control.** Uncontrolled erosion through natural or development activities can threaten the stability of an environmentally sensitive area. Specific recommendations for erosion control are discussed in the Watershed chapter.

Other habitat types pose individualized needs and demand special management strategies. Coastal streams that serve as anadromous fish habitats are susceptible to impacts from surrounding properties. In-stream alterations, riparian vegetation removal, water diversions and pollution contribute to the need to protect streams that provide fish and other habitat values.

A second unique concern is the impact of off-road vehicles on habitat areas. Uncontrolled ORV use of bayfront areas and the coastal dunes can damage the habitat of a variety of species. Where this access is appropriate, it must be provided at a level which is consistent with the carrying-capacity of the area.

The recommendations of the Local Coastal Program address these concerns by ensuring protection of environmentally sensitive habitat areas, by establishing programs, policies, standards and ordinances.

## **POLICIES FOR ENVIRONMENTALLY SENSITIVE HABITATS**

### **A. SENSITIVE HABITATS**

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. While each of these habitat types is discussed in greater detail, general policies for protection of habitats are as follows:

#### **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. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]

#### **Policy 2: Permit Requirement**

As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE CZLUO.]

**Policy 3: Habitat Restoration**

The county or Coastal Commission should require the restoration of damaged habitats as a condition of approval when feasible. Detailed wetlands restoration criteria are discussed in Policy 11. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.170 OF THE CZLUO.]

**Policy 4: No Land Divisions in Association with Environmentally Sensitive Habitats**

No divisions of parcels having environmentally sensitive habitats within them shall be permitted unless it can be found that the buildable area(s) are entirely outside the minimum standard setback required for that habitat (100 feet for wetlands, 50 feet for urban streams, 100 feet for rural streams). These building areas (building envelopes) shall be recorded on the subdivision or parcel map. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.170 OF THE CZLUO.]

**Policy 5: Supporting Greenbelt Formation and Maintenance**

The county shall continue programs and policies that support greenbelt and open space areas on the urban fringe of coastal communities. In conjunction with the development of Habitat Conservation Plans (HCP's), certain greenbelt areas may be suitable as habitat mitigation banks to help offset impacts from development in adjacent urban areas. Other areas may be best utilized for open space, agriculture, or public recreation. Mitigation banking shall be further evaluated as a potential implementation mechanism. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

[Added 2004, Ord. 3006]

**Policy 6: Off-Site Mitigation Bank for Urban Development**

The county shall participate in creating a program (e.g. through the update of area plans) that would allow development to occur on sites in urban areas that contain sensitive species habitat but do not represent long-term viable habitat in exchange for participation in an off-site mitigation program. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

[Added 2004, Ord. 3006]

**B. WETLANDS**

Coastal wetlands, tidal marshes, mudflats, freshwater marshes and related bodies of water are a dynamic, fragile link between oceanic and terrestrial ecosystems. Wetlands help improve the quality and quantity of water, as well as providing important wildlife habitats. By slowing run-off water, wetland vegetation causes silt to settle out, improving water quality. By retaining water during dry periods and holding it back during floods, wetlands will keep the water table high and relatively stable. By providing nesting, breeding and feeding grounds, wetlands support the diversity as well as health of wildlife. Several rare and/or endangered species are found within local coastal wetlands, including the California Brown Pelican and the California Least Tern.

The Coastal Act identifies wetlands and estuaries as environmentally sensitive habitats and requires that the biological productivity and the quality of such areas be maintained and, where feasible, restored. The special value of wetlands and estuaries is further recognized in Section 30603 of the Act in that the Coastal Commission retains appeal authority for any development approved by the county within 100 feet of any wetland after certification of the Local Coastal Program.

The Coastal Act defines "wetland" in Section 30121 as follows:

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and includes salt-water marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats and fens.

To provide accurate delineation of wetlands within the coastal zone, the United States Fish and Wildlife Service and California Department of Fish and Game are conducting field surveys of wetlands within the county. These wetlands are being mapped using the following criteria established by the Fish and Wildlife Service.

"Wetland" is defined as land where the water table is at, near, or above the land surface long enough to do either of the following: a) promote the formation of (hydric) soils that are saturated with water at or near the surface and are deficient of oxygen long enough during the growing season to result in soil properties that reflect dominant wetness characteristics near the soil surface (within 10"); or b) support the growth of hydrophytic plants which grow in water or in wet habitats.

The primary wetland areas within San Luis Obispo County include: San Carpoforo Creek Lagoon, Arroyo de La Cruz Creek Lagoon, San Simeon Creek Lagoon, Santa Rosa Creek Lagoon, Pico Creek Lagoon, Morro Bay (includes Sweet Springs, Cuesta-by-the-Sea Marsh and Los Osos Estuary), Pismo Marsh, Oceano Lagoon, Dune Lakes, Oso Flaco Lake and the Santa Maria River mouth. East of these wetlands is identified as a Sensitive Resource Area and specific recommendations are included in the Land Use Element by planning area. Other small isolated wetlands exist and would need to be addressed at the time of a specific development project.

In general, the upland extent of a wetland is determined to be land that is flooded or saturated at some time during years of normal precipitation. Because of their proximity to the heavily populated coastline, coastal wetlands are especially vulnerable to disturbance. To ensure their protection, a wide range of resource management techniques will be necessary.

**Fee Simple Acquisition.** The most obvious method of wetland protection is through acquisition by a public agency. All coastal wetlands below the mean high tide line are historically state property and are administered by the State Lands Commission. Various programs are available to provide funding for wetland acquisition. The State Department of Parks and Recreation is the county's largest public owner of wetlands. The Bagley Conservation Fund provides funds and the State Beach, Park, Recreational, and Historical Bond Act of 1974 allows for the issuance of bonds to raise funds for the State Department of Parks and Recreation to acquire wetlands. Money raised through the sale of hunting and fishing licenses as well as funds provided by the Environmental Protection and Research Act of 1970 allows the California Department of Fish and Game to acquire coastal wetlands. Under the Federal Coastal Zone Management Act of 1972, wetlands designated as Estuarine Sanctuaries may allow the State to receive matching federal funds for acquisition of the wetland. The State Coastal Conservancy was established by the State Legislature in 1977 to implement a program of resource protection including wetland preservation and restoration.

**Dedication or Easement.** A much less used method of wetland preservation within this county is public easement or dedication, which in most instances involves surrender of development rights by the property owner within the wetland in return for lowered assessments. The county does not currently have complete guidelines for an Open Space Easement Program though open space easements have been granted. Usually, an easement would be granted for at least 10 or 20 years. Coastal wetlands may also be preserved from development through the Agricultural Preserve Program. This method does not require that adjoining land be eligible for inclusion under the agricultural preserve program; however, unless wetland is designated by the county (after consulting the Department of Fish and Game) as an area of great importance for protection or enhancement of state wildlife resources or to be a managed wetland, it will not qualify. A managed wetland is an area that is diked off, to which water is occasionally admitted, and for three years prior to the agricultural contract was used as a waterfowl hunting preserve, game refuge or used for agricultural purposes (Williamson Act, 41201, J & L). Based on this, most county wetlands would not be eligible unless adjoining agriculture lands are included.

**Permit Process.** Development within coastal wetlands has been subject to a number of permit procedures from various state and federal agencies. Under Section 10 of the Rivers and Harbor Act of 1899, it is unlawful to build, excavate, or fill or modify any navigable water of the United States unless permitted by the Army Corps of Engineers. Under Section 404 of the Federal Water Pollution Control Act Amendments of 1972, this was expanded to cover all waters of the United States. Most coastal wetlands within this county are covered by these laws.

Section 208 of the Federal Water Pollution Control Act Amendments of 1972 controls water quality problems related to nonpoint pollution sources, primarily sedimentation. Within San Luis Obispo County, this program is administered by the California Regional Water Quality Control Board; which also controls discharge of sewage and other wastewaters into wetlands.

Sections 1601 and 1603 of the Fish and Game Code require that any party planning any significant streambed alteration reach an agreement with the Department of Fish and Game.

**Watershed Control.** Within the watershed of a wetland, two key natural processes are directly related to the condition of the wetland. These are the processes of erosion and runoff and will be discussed under the section entitled Coastal Watersheds. The county's major role in wetland protection, up to now, has been through the control of adjacent land uses.

The following policies are established for protection of the wetland habitat areas within the coastal zone:

**Policy 7:                    Protection of Environmentally Sensitive Habitats**

Coastal wetlands are recognized as environmentally sensitive habitat areas. The natural ecological functioning and productivity of wetlands and estuaries shall be protected, preserved and where feasible, restored. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE CZLUO.]

**Policy 8:                    Principally Permitted Use**

Principally permitted uses in wetlands are as follows: hunting, fishing and wildlife management; education and research projects. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-172 OF THE CZLUO.]

**Policy 9: Public Acquisition**

The California Department of Parks and Recreation, the California Department of Fish and Game and other public and private sources should be encouraged to acquire or accept offers-to-dedicate coastal wetlands wherever possible.

Priorities for acquisition should be:

- . Sweet Springs Marsh
- . Santa Maria River mouth
- . Villa Creek Lagoon
- . Properties surrounding Morro Bay which include wetland habitat.

[THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

**Policy 10: Open Space Easements and Williamson Act Contracts**

San Luis Obispo County shall continue to encourage the use of open space easements or Williamson Act contracts to ensure preservation of coastal wetlands. The county will develop guidelines to facilitate use of open space easements to include requirements for length of dedication (i.e., perpetuity or 10 years), appropriate management responsibility, etc. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

**Policy 11: Regional Water Quality Control Board "208" Program**

California Regional Water Quality Control Board shall administer programs identified through the "208" nonpoint source studies to ensure protection of coastal wetlands and water quality. (The county has incorporated the Basin Plan Amendment requirements into the COASTAL ZONE Land Use Ordinance.) [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

**Policy 12: State Department of Fish and Game Review**

The State Department of Fish and Game shall review all applications for development in or adjacent to coastal wetlands and recommend appropriate mitigation measures where needed which should be incorporated in the project design. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

**Policy 13: Diking, Dredging or Filling of Wetlands**

All diking, dredging and filling activities shall conform to the provisions of Section 30233, 30411 and 30607.1 of the Coastal Act. These policies establish the appropriate uses, criteria for evaluation of a project and requirements for restoration or replacement. Allowable activities within open coastal waters, wetlands (with the exception of Morro Bay and the Santa Maria River mouth), estuaries and lakes include:

- a. New or expanded port, energy, and coastal dependent industrial facilities, including commercial fishing facilities.
- b. Maintenance dredging of existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

- c. In wetlands areas only, entrance channels for new or expanded boating facilities, and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411 for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland; provided, however, that in no event shall the size of the wetland area used for such boating facility, including berthing space, turning basins, necessary navigational channels, and any necessary support service facilities be greater than 25 percent of the total wetland area to be restored.
- d. In open coastal waters, other than wetlands, including streams, estuaries and lakes, new or expanded boating facilities.
- e. Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- f. Mineral extraction, including sand for restoration of beaches, except in environmentally sensitive areas.
- g. Restoration purposes.
- h. Nature study, aquaculture, or similar resource-dependent activities.
- i. Maintenance of flood control facilities by permit.

The wetlands of Morro Bay and the Santa Maria River mouth are identified in Section 30233(c) as among those identified by the Department of Fish and Game in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California." Under this section, allowable uses within these wetlands shall be restricted and limited to very minor incidental public facilities, restorative measures consistent with PRC Section 30411 of the Coastal Act and nature study.

Diking, dredging, and filling for these types of development in wetlands, estuaries, coastal waters and lakes shall be permitted only where there is no feasible, less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental impacts, and where consistent with the maintenance of the tidal flow and continued biological viability of the wetland habitat. The development must meet the following conditions:

- a. Diking, dredging and filling shall be prohibited in breeding and nursery areas and during periods of fish migration and spawning.
- b. Diking, dredging and filling shall be limited to the smallest area feasible that is necessary to accomplish the project.
- c. Designs for diking, dredging and filling and excavation projects shall include protective measures such as silt curtains, and weirs to protect water quality in adjacent areas during construction by preventing the discharge of refuse, petroleum spills and unnecessary dispersal of silt materials.

Dredge spoils shall not be deposited in areas where public access or environmental habitats would be significantly or adversely affected. Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore currents. Limitations may be necessary on the timing of the operation, the type of operations and the quality and location of the spoils site.

Other mitigation measures are required under Section 30607.1. Where any dike fill development is permitted in wetlands in conformity with Chapter 3 of the Coastal Act, mitigation measures shall include, at a minimum, either acquisition of equivalent areas of equal or greater biological productivity or opening up equivalent areas to tidal action; provided however, that if no appropriate restoration site is available an in-lieu fee sufficient to provide an area of equivalent productive value or surface area shall be dedicated to an appropriate public agency or such replacement site shall be purchased before the dike or fill development may proceed. Such mitigation measures shall not be required for temporary or short-term fill or diking; provided that a bond or other evidence or financial responsibility is provided to assure that restoration will be accomplished in the shortest feasible time. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

**Policy 14: Mosquito Abatement Practices**

Mosquito abatement practices shall be limited to the minimum necessary to protect health and prevent damage to natural resources. Biological control measures are encouraged. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**Policy 15: Vehicle Traffic in Wetlands**

No vehicle traffic shall be permitted in wetlands. This shall not restrict local and state agencies or the property owner from completing the actions necessary to accomplish a permitted use within the wetland. Pedestrian traffic shall be regulated and incidental to the permitted uses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**Policy 16: Adjacent Development**

Development adjacent to coastal wetlands shall be sited and designed to prevent significant impacts to wetlands through noise, sediment or other disturbances. Development shall be located as far away from the wetland as feasible, consistent with other habitat values on the site. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

**Policy 17: Wetland Buffer**

In new development, a buffer strip shall be required and maintained in natural condition along the periphery of all wetlands. This shall be a minimum of 100 feet in width measured from the upland extent of the wetland unless a more detailed requirement for a greater or lesser amount is included in the LUE or the LUO would allow for adjustment to recognize the constraints which the minimum buffer would impose upon existing subdivided lots. If a project involves substantial improvements or increased human impacts, necessitating a wide buffer area, it shall be limited to utility lines, pipelines, drainage and flood control facilities, bridges and road approaches to bridges, and roads when it can be demonstrated that: a) alternative routes are infeasible or more environmentally damaging, and b) the adverse environmental effects are mitigated to the maximum extent feasible. Access paths and/or fences necessary to protect habitats may also be permitted.

The minimum buffer strip may be adjusted by the county if the minimum setback standard would render the parcel physically unusable for the principal permitted use. To allow a reduction in the minimum standard set-back, it must be found that the development cannot be designed to provide for the standard. When such reductions are permitted, the minimum standard shall be reduced to only the point at which the principal permitted use (development), modified as much as is practical from a design standpoint, can be accommodated. At no point shall this buffer be less than 25 feet. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

**Policy 18: Wetland Buffers Less than 100 Feet**

For buffers less than 100 feet as established consistent with Policy 15 (above) mitigation measures to ensure wetland protection shall be required, and shall include (where applicable) vegetative screening, landscaping with native vegetation, drainage controls and other such measures.

When the minimum buffer strip is adjusted by the county, it shall be done on a case-by-case basis only after the investigation of the following factors:

- a. Soil type and stability of development site, including susceptibility to erosion.
- b. Slope of land adjacent to the wetland and the ability to use natural topographic features to locate development.
- c. Types and amount of vegetation and its value as wildlife habitat including: 1) the biological significance of the adjacent lands in maintaining the functional capacity of the wetland, and 2) the sensitivity of the species to disturbance.
- d. Type and intensity of proposed uses.
- e. Lot size and configuration, and the location of existing development.

[THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

**Policy 19: Open Space Easement for Wetlands**

Open space easements or offers to dedicate the wetland shall be a condition of major structural development (including single-family residence) for all property larger than one acre which contain wetlands habitat. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

**C. COASTAL STREAMS**

Coastal streams directly affect the coastal environment. They significantly influence flooding, natural ecosystems, sediment transport, agricultural water supply and groundwater recharge within the coastal zone. There are numerous coastal streams within San Luis Obispo County, both perennial (running year round) and ephemeral (during the rainy season only) as identified as dotted or dashed lines on USGS quadrangle maps.

Degradation of coastal streams results from many causes, including stream channelization, water diversion and intensive land uses adjacent to and within the watershed of streams. A major concern of the Coastal Act is to prevent unnecessary stream alterations and projects which significantly increase sedimentation.

The Coastal Act identifies coastal streams as environmentally sensitive habitat areas and requires that their biological productivity and quality be protected. Stream alterations are limited to water supply projects, flood control projects when there are no other methods available for protecting existing development and projects for improvement of fish and wildlife habitat. Any alteration must employ the best mitigation measures feasible. In Section 30603, the Coastal Commission retains appeal authority after certification of the Local Coastal Plan for any development approved by the county within 100 feet of any stream.

Riparian vegetation plays an important role in the coastal stream environment, acting as a filter to remove sediment before it reaches the stream. By shading the stream, riparian vegetation keeps the water's temperature within a narrow range. This is important to many fish species, especially for steelhead trout which require a fairly constant water temperature. The interaction of the stream environment with the surrounding streamside riparian vegetation makes it necessary to provide as much protection as possible for this vegetation. The United States Fish and Wildlife Service in cooperation with the California Department of Fish and Game are currently mapping riparian vegetation within the coastal zone.

Anadromous fish are those that move from the oceans into fresh waters to reproduce. An important recreation species, the steelhead rainbow trout, have suffered a marked decline within this county. San Luis Obispo County is the southern-most area in the State where runs still occur. Since the steelhead trout has undergone marked declines and current data was inadequate to ensure proper management of the resource, a special study was undertaken to survey six coastal streams--representing a cross section of stream conditions and impacts. The study identified specific activities impinging upon the steelhead streams including modification of riparian vegetation, de-watering and impoundment, channelization and agricultural/urban developments. The loss of riparian vegetation is the consequence of channelization (Arroyo Grande Creek), urban intrusion (Santa Rosa, Arroyo Grande, and Morro Creeks) and agricultural appropriation (all streams).

Streams and creeks are sensitive areas. Development activity within and adjacent to a watercourse has profound effects on stream hydrology and water quality. To ensure protection of the coastal stream environment, a variety of resource management techniques are available. Since fee simple acquisition would not be practical, current protection is afforded by permit requirements.

**Development Permits.** Sections 1601 and 1603 of the California Fish and Game Code require that any party planning any significant (for private parties) streambed alteration reach an agreement with the California Department of Fish and Game. Section 5650 of the Code also makes it unlawful to place in or allow to pass into any stream any material deleterious to fish, plant life or birdlife. Under Section 404 of the Federal Water Pollution Control Act, the Army Corps of Engineers has permit control over filling in or modification of most of our coastal streams. Under Section 208 of this same act, the California Regional Water Quality Control Board is given permit authority over most types of discharge into coastal streams. A special study has been completed for the regional board to implement Section 208 in regard to nonpoint pollution sources. Specifically, this study identified county water bodies where sedimentation has become a problem.

**Land Use.** The county's major role in protection of the stream environment has been control over development of adjacent land uses and within the watershed.

The following policies provide protection for coastal stream habitats:

**Policy 20: Coastal Streams and Riparian Vegetation**

Coastal streams and adjoining riparian vegetation are environmentally sensitive habitat areas and the natural hydrological system and ecological function of coastal streams shall be protected and preserved. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.07.174 OF THE CZLUO.]

**Policy 21: Development in or Adjacent to a Coastal Stream**

Development adjacent to or within the watershed (that portion within the coastal zone) shall be sited and designed to prevent impacts which would significantly degrade the coastal habitat and shall be compatible with the continuance of such habitat areas. This shall include evaluation of erosion and runoff concerns. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.07.174 OF THE CZLUO.]

**Policy 22: Fish and Game Review of Streambed Alterations**

Significant streambed alterations require the issuance of a California Department of Fish and Game 1601-1603 agreement. The Department should provide guidelines on what constitutes significant streambed alterations so that the county and applicants are aware of what is considered a "significant" streambed alteration. In addition, streambed alterations may also require a permit from the U.S. Army Corp of Engineers. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.07.174 OF THE CZLUO.]

**Policy 23: County and State Review of Coastal Stream Projects**

The State Water Resources Control Board and the county shall ensure that the beneficial use of coastal stream waters is protected, for projects over which it has jurisdiction. For projects which do not fall under the review of the State Water Resources Control Board, the county (in its review of public works and stream alterations) shall ensure that the quantity and quality surface water discharge from streams and rivers shall be maintained at levels necessary to sustain the functional capacity of streams, wetland, estuaries and lakes. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.07.174 OF THE CZLUO.]

**Policy 24: Program to Control Grazing Impacts**

As recommended in the conclusions of the stream survey study, the California Department of Fish and Game may institute a pilot program on publicly owned land utilizing fencing and sediment basins to control grazing impacts on riparian vegetation and costal streams. If the project is successful, the Department of Fish and Game shall institute a voluntary program providing funds to interested local ranchers who wish to utilize this program. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

**Policy 25: Streambed Alterations**

Channelizations, dams or other substantial alterations of rivers and streams shall be limited to: a) necessary water supply projects, b) flood control projects when there are no other feasible methods for protecting existing structures in the flood plain and where such protection is necessary for public safety or to protect existing development, and c) development where the purpose is to improve fish and wildlife habitat. All projects must employ the best feasible mitigation measures. Maintenance and flood control facilities shall require a coastal development permit. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.174 OF THE CZLUO.]

**Policy 26: Riparian Vegetation**

Cutting or alteration of naturally occurring vegetation that protects riparian habitat is not permitted except for permitted streambed alterations (defined in Policy 23) and where no feasible alternative exists or an issue of public safety exists. This policy does not apply to agricultural use of land where expanding vegetation is encroaching on established agricultural uses. Minor incidental public works project may also be permitted where no feasible alternative exists including but not limited to utility lines, pipelines, driveways and roads. Riparian vegetation shall not be removed to increase agricultural acreage unless it is demonstrated that no impairment of the functional capacity of the habitat will occur. Where permitted, such actions must not cause significant stream bank erosion, have a detrimental effect on water quality or quantity, or impair the wildlife habitat values of the area. This must be in accordance with the necessary permits required by Sections 1601 and 1603 of the California Fish and Game Code. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.174 OF THE CZLUO.]

**Policy 27: Stream Diversion Structures**

Stream diversion structures on streams appearing as dotted or dash lines on the largest scale U.S.G.S. quadrangle maps shall be sited and designed to not impede up and downstream movement of native fish or to reduce stream flows to a level which would significantly affect the biological productivity of the fish and other stream organisms. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.174 OF THE CZLUO.]

**Policy 28: Buffer Zone for Riparian Habitats**

In rural areas (outside the USL) a buffer setback zone of 100 feet shall be established between any new development (including new agricultural development) and the upland edge of riparian habitats. In urban areas this minimum standard shall be 50 feet except where a lesser buffer is specifically permitted. The buffer zone shall be maintained in natural condition along the periphery of all streams. Permitted uses within the buffer strip shall be limited to passive recreational, educational or existing nonstructural agricultural developments in accordance with adopted best management practices. Other uses that may be found appropriate are limited to utility lines, pipelines, drainage and flood control facilities, bridges and road approaches to bridges to cross a stream and roads when it can be demonstrated that: 1) alternative routes are infeasible or more environmentally damaging and 2) adverse environmental effects are mitigated to the maximum extent feasible. Lesser setbacks on existing parcels may be permitted if application of the minimum setback standard would render the parcel physically unusable for the principal permitted use. In allowing a reduction in the minimum setbacks, they shall be reduced only to the point at which a principal permitted use (as modified as much as is practical from a design standpoint) can be accommodated. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.174 OF THE CZLUO.]

**D. TERRESTRIAL ENVIRONMENTS**

Terrestrial environments within San Luis Obispo County's coastal zone include unique plant habitats and rare and endangered animal habitats. Unique plant habitats include endemics (only found in one place) plant species, endangered plant species and representative natural plant communities. Those species that have been identified as rare or endangered, or their habitats, are discussed.

The high ecological value of these areas is reflected by the fact that most are within public holdings. All these areas (whether in public or private holdings) are also sensitive to disturbance by man's activities. Management techniques available are:

1. **Fee Simple Acquisition.** Many designated areas have been acquired through this method and it is still the most desired resource management technique available.
2. **Easements.** As described under wetlands, there are open space easements or Williamson Act contracts available for preservation of habitat areas within this county.
3. **Development Permits.** The county has established a review process for impacts to designated wildlife or vegetation habitat areas in the CZLUO. They are mapped as terrestrial habitats on the LUE combining designation maps.

Under the 1973 Endangered Species Act, the federal government will not allow federal funding for any project that will adversely impact designated species. Within the coastal zone this would specifically relate to the designated Morro Bay Kangaroo Rat habitat area located west of Pecho Road in South Bay, though it would also relate to several bird species with extensive habitat areas within the county.

The California Department of Fish and Game currently exercises control over designated critical habitat areas for rare or endangered wildlife species.

This applies to the designated Morro Bay Kangaroo Rat habitat in South Bay. The Department of Fish and Game also designates rare or endangered plant species. Since the program has just begun, there are currently no designated plant species within this county. For designated plant species, the Department of Fish and Game must be contacted concerning development that would adversely impact the plant species for development of mitigation measures. As plant species and habitat areas are recognized through this program, protection should be extended.

4. **Resource Protection Zones.** The Coastal Act required state agencies with property within the coastal zone to develop and recommend Resource Protection Zones (RPZs) identifying adjoining properties where development could adversely impact their holdings. For San Luis Obispo County, this specifically pertained to holdings of the State Department of Parks and Recreation and the Department of Fish and Game. Though this section of the Coastal Act was subsequently amended, the conversations between the appropriate staffs and the Local Coastal Program staff has served to bring to the county's attention the agency's concerns.

The following policies related to protection of identified terrestrial habitats within the coastal zone:

**Policy 29: Protection of Terrestrial Habitats**

Designated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site.

Development adjacent to environmentally sensitive habitat areas and holdings of the State Department of Parks and Recreation shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]

**Policy 30: Protection of Native Vegetation**

Native trees and plant cover shall be protected wherever possible. Native plants shall be used where vegetation is removed. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]

**Policy 31: Design of Trails In and Adjoining Sensitive Habitats**

San Luis Obispo County, or the appropriate public agency, shall ensure that the design of trails in and adjoining sensitive habitat areas shall minimize adverse impact on these areas. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**Policy 32: Public Acquisition**

The California Department of Parks and Recreation, Department of Fish and Game and other public and private organizations should continue to acquire or accept offers-to-dedicate for sensitive resource areas wherever possible. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

**Policy 33: Agriculture and Open Space Preserves**

The county should encourage the uses of Agriculture Preserves or Open Space Preserves to protect sensitive habitat areas where public acquisition is not feasible. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT AS A PROGRAM.]

**Policy 34: Rare and Endangered Species Survey**

The State Department of Fish and Game should continue to identify rare or endangered plant and animal species within the county. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

**Policy 35: Protection of Vegetation**

Vegetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disruption of habitat value. All development shall be designed to disturb the minimum amount possible of wildlife or plant habitat. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]

**Policy 36: Protection of Dune Vegetation**

Disturbance or destruction of any dune vegetation shall be limited to those projects which are dependent upon such resources where no feasible alternatives exist and then shall be limited to the smallest area possible. Development activities and uses within dune vegetation shall protect the dune resources and shall be limited to resource dependent, scientific, educational and passive recreational uses. Coastal dependent uses may be permitted if it can be shown that no alternative location is feasible, such development is sited and designed to minimize impacts to dune habitat and adverse environmental impacts are mitigated to the maximum extent feasible.

Revegetation with California native plant species propagated from the disturbed sites or from the same species at adjacent sites shall be necessary for all projects. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**Policy 37: Recreational Off-Road Vehicle Use of Nipomo Dunes**

Within designated dune habitats, recreational off-road vehicle traffic shall only be allowed in areas identified appropriate for this use. Detailed recommendations concerning protection of the dune habitat within Pismo State Beach and Pismo Vehicular Recreation area are found in the chapter regarding Recreation and Visitor-Serving Facilities. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**E. MARINE HABITATS**

Marine habitats include rocky points, near-shore reefs, rocky intertidal areas, offshore rocks and kelp beds. These near and onshore areas provide habitat for marine birds, mammals, fish and invertebrates. The Coastal Act requires that the biological productivity and the quality of coastal waters appropriate to maintain optimum populations of marine organisms be maintained and that habitat areas be enhanced and, where feasible, restored. While these habitat areas are sensitive to disturbance, they have, for the most part, suffered very little degradation. Three potential impacts that might adversely affect these resources are: increased coastal access, offshore drilling and expanded marine terminal facilities. Since much of the sensitive marine habitat areas are already within state holding, protection for these areas from other potential impacts are readily available.

Recreational or commercial harvesting of any marine species is strictly controlled by the Fish and Game Code. Marine mammals are protected by the Marine Mammal Protection Act of 1972. In addition, the Endangered Species Act provides special protection to those species identified as threatened or endangered and includes the California Sea Otter and the Gray Whale. Under the Federal Water Pollution Control Act, the Regional Water Quality Control Board has authority over any waste discharge into coastal waters. The county's principal role in protection of marine habitats includes control of access and regulation of development adjacent to these areas.

The following policies relate to protection of marine habitat areas along the coast:

**Policy 38: Protection of Kelp Beds, Offshore Rocks, Rocky Points, Reefs and Intertidal Areas**

Uses shall be restricted to recreation, education and commercial fishing. Adjacent development shall be sited and designed to mitigate impacts that would be incompatible with the continuance of such habitat areas. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**Policy 39: Siting of Shoreline Structures**

Shoreline structures, including piers, groins, breakwaters, seawalls and pipelines, shall be designed or sited to avoid and minimize impacts on marine habitats. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.178 OF THE CZLUO.]

**Policy 40: Shoreline Access Consistent with Habitat Protection**

Coastal access shall be monitored and regulated to minimize impacts on marine resources. If negative impacts are demonstrated, then the appropriate agency shall take steps to mitigate these impacts, including limiting the use of coastal access. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.178 AND 23.04.420j OF THE CZLUO.]

**Policy 41: Habitat Signs**

The appropriate agency (in conjunction with the county Fish and Game Commission) should provide signs indicating that collecting from tide pools, etc., is illegal. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

**Policy 42: Marine Sanctuary Designation**

The county should continue to investigate whether appropriate offshore areas should be nominated for Marine Sanctuary Designation. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

**Relationship to the Land Use Element / Coastal Zone Land Use Ordinance**

Environmentally sensitive habitat areas are mapped and discussed in the Local Coastal Plan as Sensitive Resource Areas (SRA). SRA's are applied in addition to a basic land use as a combining overlay designation. Combining designations are established to highlight the need for more intensive project review in areas where additional performance standards may be required. These designations are applied through both the text and the maps of the Land Use Element, and are used in conjunction with the land use categories to guide land use patterns. Proposed development within or near a sensitive resource area will be reviewed in accordance with these policies, applicable planning area standards for the SRA and ESH combining designations, and Sections 23.07.160-178 of the Coastal Zone Land Use Ordinance.

Note that not all areas identified as Sensitive Resource Areas (SRA) reflect an environmentally sensitive habitat as defined by the Coastal Program. The SRA combining designation has also been used to identify non-habitat related concerns for visual siting issues. The overlay process allows for a more specific review of siting alternatives to ensure protection of both habitat and scenic values.

The principal implementation tool for applying Land Use Element policies to land development activities is the Coastal Zone Land Use Ordinance. The Coastal Zone Land Use Ordinance establishes performance criteria and procedures for development review.

## **POLICIES FOR PUBLIC WORKS**

The following public works policies address and implement Coastal Act provisions concerning public services and capacities.

### **Policy 1: Availability of Service Capacity**

New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable. Permitted development outside the USL shall be allowed only if:

- a. It can be serviced by adequate private on-site water and waste disposal systems; and
- b. The proposed development reflects that it is an environmentally preferable alternative.

The applicant shall assume responsibility in accordance with county ordinances or the rules and regulations of the applicable service district or other providers of services for costs of service extensions or improvements that are required as a result of the project. Lack of proper arrangements for guaranteeing service is grounds for denial of the project or reduction of the density that could otherwise be approved consistent with available resources. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.021c (DIVISIONS OF LAND), 23.04.430 AND 23.04.432 (OTHER DEVELOPMENT) OF THE CZLUO.]

[Amended 2004, Ord. 3006]

### **Policy 2: New or Expanded Public Works Facilities**

New or expanded public works facilities shall be designed to accommodate but not exceed the needs generated by projected development within the designated urban reserve lines. Other special contractual agreements to serve public facilities and public recreation areas beyond the urban reserve line may be found appropriate. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.430 OF THE CZLUO.]

### **Policy 3: Special Districts**

The formation or expansions of special districts shall not be permitted where they would encourage new development that is inconsistent with the Local Coastal Program. In participation on LAFCo actions, the county should encourage sphere-of-influence and annexation policies which reflect the Local Coastal Program. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

### **Policy 4: Urban Service Line Amendments**

Amendments to an urban service line must be found consistent with the Coastal Act and the Local Coastal Program. Approval of LCP amendment by the Coastal Commission or its successor in interest is required. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**Policy 5: Capital Improvement Projects**

To fully realize the potential of all capital improvement projects, the county will institute a coordinated capital improvement review process. Special districts and other governmental entities within the coastal zone shall:

- a. Be encouraged to annually prepare a report on current service capabilities, including existing levels of service and present or proposed service capacities.
- b. Be encouraged to prepare a list of proposed public works recommended for planning, initiation or construction during future years in accordance with the requirements of the Capital Improvement Program Guidelines.
- c. Submit proposed construction projects recommended for the ensuing fiscal year to the county for review, comment and findings as to the conformity of proposed projects with the Coastal Plan.

[THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**Policy 6: Resource Management System**

The county will implement the Resource Management System to consider where the necessary resources exist or can be readily developed to support new land uses. Permitted public service expansions shall ensure the protection of coastal natural resources including the bio- logical productivity of coastal waters. In the interim, where they are identified public service limitations, uses having priority under the Coastal Act shall not be precluded by the provision of those limited services to non-priority uses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**Policy 7: Permit Requirements**

The county shall require a permit for all public works projects located within the coastal zone except:

- a. For maintenance or repair activities that do not result in an enlargement or expansion of the facility.
- b. Where the development is a state university, college, public trust lands or tidelands (which require a permit from the State Coastal Commission that must meet the require-ments of Chapter 3 of the Coastal Act. The county Local Coastal Program will serve in an advisory function).
- c. For those minor projects that can be categorically exempted as provided for in the Coastal Act on account of geographic area or function per Section 30610(e) where the categorical exclusions has been approved by the county and Coastal Commission.
- d. The installation, testing and placement in service or the replacement of any necessary utility connection between an existing service facility and any development approved pursuant to this division; provided that the county may, where necessary, require reason-able conditions to mitigate any adverse impacts on coastal resources including scenic resources.

[THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO CHAPTER 23.03 OF THE CZLUO.]

**Policy 8: Priority Development**

Where existing or planned public works facilities can accommodate only a limited amount of new development, the following land uses shall have priority for services in accordance with the Coastal Act and be provided for in the allocation of services in proportion to their recommended land use within the service area.

- a. Uses which require location adjacent to the coast (coastal-dependent uses).
- b. Essential public services and basic industries vital to the economic health of the region, state or nation including agriculture, visitor-serving facilities and recreation.

Priority for development of such uses shall be given to lands within the USL that are already subdivided with services available and then to unsubdivided parcels within the USL with services available. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**Policy 9: Review of Treatment Works**

For any development that constitutes a treatment works (PRC 30120), issuance of a permit shall be consistent with the certified LCP and PRC 30412 and shall address the following aspects of such development:

- a. The siting and visual appearance of treatment works within the coastal zone.
- b. The geographic limits of the service area within the coastal zone which is to be served by the treatment works and the timing of the extension of services to allow for phasing of development consistent with the certified LCP.
- c. Projected growth rates used to determine the sizing of treatment works.

[THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

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

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

[Added 2004, Ord. 3006]

**Resource Conservation Districts.** Coastal San Luis Resource Conservation District is authorized to develop general conservation plans for practices associated with agriculture, recreation, urban development and watershed to preserve water and soil resources. The districts have no regulatory powers and serve only an advisory role.

**Soil Conservation Service (SCS).** The Soil Conservation Service is responsible for developing and carrying out national soil and water conservation programs. The service is mandated to prevent erosion and control floods by providing technical assistance to other agencies and property owners. The SCS has no regulatory powers and serves in only a purely advisory manner.

**Cooperative Extension Service.** The Cooperative Extension is managed by the University of California. The service provides for the improvement of agricultural production and practices through its research and educational program. The Cooperative Extension Service has no regulatory powers.

**Army Corps of Engineers.** The Army Corps of Engineers requires permits on certain streams for depositing of materials within the stream. In addition, the Corp requires permits for activities within all navigable waters.

The county's primary role in watershed management is through approval of the location and design of new development. Setting of priorities for allocation of new development that is in coordination with available water resources can ensure protection of existing and potential agricultural viability. This must be balanced with phasing of urban growth and providing for priority uses under the Coastal Act including visitor-serving and other coastal-dependent uses. Policies regarding public works are found in the Public Works chapter.

The second role is concerned with control of erosion and sedimentation sources. Traditionally, watershed management concerns have not played an important role in development approval of small projects. Construction of single family homes on an existing lot is exempt from CEQA requirements, and the cumulative impacts of development often escape scrutiny. Once a site has been developed, the county's role in erosion and sedimentation control is minor.

The Coastal Zone Land Use Ordinance (CZLUO) establishes standards for new development concerning grading, drainage and other site alterations. The CZLUO adopted new grading and drainage plan requirements that will be tied to slope, area graded or paved, and flood and geologic study area considerations. These proposed ordinance requirements will fulfill the basin plan amendment requirements which requires local jurisdictions to enact ordinances consistent with the basin plan.

## **POLICIES FOR COASTAL WATERSHEDS**

To implement the provisions of the Coastal Act regarding watershed management, the following policies represent a commitment that all new development ensure watershed protection.

### **Policy 1: Preservation of Groundwater Basins**

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

**Policy 2: Water Extractions**

Extractions, impoundments and other water resource developments shall obtain all necessary county and/or state permits. All pertinent information on these uses (including water conservation opportunities and impacts on in-stream beneficial uses) will be incorporated into the data base for the Resource Management System and shall be supplemented by all available private and public water resources studies available. Groundwater levels and surface flows shall be maintained to ensure that the quality of coastal waters, wetlands and streams is sufficient to provide for optimum populations of marine organisms, and for the protection of human health. (Public works projects are discussed separately.) [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**Policy 3: Monitoring of Resources**

In basins where extractions are approaching groundwater limitations, the county shall require applicants to install monitoring devices and participate in water monitoring management programs. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 8.40.065 OF THE COUNTY CODE (WATER WELL REGULATIONS).]

**Policy 4: Chorro and Morro Basins**

The county and the city of Morro Bay will jointly develop a groundwater management program which provides for agricultural demand and for phased urban growth consistent with available groundwater resources and with the protection of aquatic habitats. The Chorro and Morro groundwater basins have been identified as experiencing potential for seawater intrusion, usually during drought conditions. Development of a successful groundwater management program for these basins necessitates coordinating both urban and agricultural/rural extractions. The city of Morro Bay has completed an investigation of the groundwater capacity of these basins. (*City of Morro Bay, Preliminary Water Management Plan*, February, 1981.) This includes the evaluation of existing and potential agricultural demand. A variety of management techniques are suggested, including development of recharge basins, well site relocations and use of reclaimed water to satisfy agricultural demands.

In the interim, before development of a management program, to ensure that agricultural and residential demand doesn't negate the alternative management strategies, or adversely impact aquatic habitats, all development which would cause an intensification of groundwater use in the basins shall be evaluated for conformity with the recommended management techniques and the protection of aquatic habitats. This will apply where a development project would require more than one acre-foot of water annually.

A county/city program shall be established which would result in the following:

- a. Referral of any division of land, permit activity or grading in the Morro and Chorro watershed within the city of Morro Bay's Sphere of Influence, as contained in the coastal zone boundary, to the city for review and comment.
- b. Consideration of "Best Management Practices" during the review of permit application on agricultural parcels or parcels suitable for agricultural use in order to control agricultural practices that would result in sedimentation, contamination of the groundwater basin, misuse of water resources or otherwise adversely affect the groundwater basins.
- c. Water basin management planning in cooperation with other affected agencies.

[THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM EXCEPT THAT PARAGRAPH 2 SHALL BE IMPLEMENTED AS A STANDARD.]

**Policy 5: Los Osos Groundwater Management**

The county Planning and Engineering Departments should work with communities, property owners and the Regional Water Quality Control Board to develop and implement a basin-wide water management program for the Los Osos groundwater basin which addresses:

- existing and potential agricultural demand,
- urban expansion in relation to water availability,
- groundwater quality,
- possible need for alternative liquid waste disposal,
- protection of aquatic habitats including coastal waters, streams and wetlands.

The Resource Management System of the Land Use Element provides a framework for implementing this policy and an interim alert process for timely identification of potential resource deficiencies, so that sufficient lead time is allowed for correcting or avoiding a problem. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

**Policy 6: Priority for Agriculture Expansion**

Agriculture shall be given priority over other land uses to ensure that existing and potential agricultural viability is preserved, consistent with protection of aquatic habitats. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**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 approved 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).]

**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.]

**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.]

**Policy 11: Preserving Groundwater Recharge**

In suitable recharge areas, site design and layout shall retain runoff on-site to the extent feasible to maximize groundwater recharge and to maintain in-stream flows and riparian habitats. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**Policy 12: Agricultural Practices**

Agricultural practices shall minimize erosion and sedimentation through accepted management practices that aid soil conservation. The Soil Conservation Service should be encouraged to continue education programs regarding soils management. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**Policy 13:           Vegetation Removal**

Vegetation clearance on slopes greater than 30% in geologically unstable areas or on soils rated as having severe erosion hazards shall require an erosion and sedimentation control plan. Stream vegetation removal is discussed in greater detail in the Sensitive Habitat chapter. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]

**Policy 14:           Soil Conservation Techniques**

Proper soil conservation techniques and grazing methods shall to the maximum extent feasible be employed in accordance with the 208 water quality standards adopted by the California Water Quality Control Board. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**Relationship to the Land Use Element/Coastal Zone Land Use Ordinance**

The Land Use Element identifies the types and intensity of development and the detailed standards by which proposed development will be reviewed. The patterns of use and the services necessary to serve the identified areas must address watershed management issues. In the critical groundwater basins, management programs must be completed. In the interim, specific measures are proposed to ensure that a full range of management options are available.

Detailed performance criteria for grading and drainage requirements in new development are found in the Coastal Zone Land Use Ordinance. In critical areas, detailed sedimentation and drainage plans must be submitted. It should be noted, however, that some aspects of agricultural practices which can contribute to erosion sources are not addressed.

**Findings**

The Coastal Act requires that new development not create nor contribute to long-term erosion (30253). The policies discussed in this chapter, as well as the Coastal Zone Land Use Ordinance requirements for grading and drainage plans, will fulfill the requirements of this Coastal Act policy. Implementation of the policies and plans will ensure the protection of the biological productivity and the quality of coastal waters (Section 30231) through the control of sediment entering coastal waters. Adoption of buffers as proposed within the chapter on Environmentally Sensitive Habitat Areas will also help protect coastal waters.

## **POLICIES FOR VISUAL AND SCENIC RESOURCES**

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

Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved protected, and in visually degraded areas restored where feasible. [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.]

**Relationship to the Land Use Element Coastal Zone Land Use Ordinance**

The four Land Use Element planning areas within the coastal zone include programs and standards that provide for the protection of visual and scenic resources. These programs and standards can be found in Chapters 7 and 8 of the specific Planning Area document. In addition to the programs and standards, the land use and combining designations will be used to protect scenic qualities. For example, designation of a scenic coastal terrace for agriculture will require that the development be consistent with agricultural use. Scenic bayfront areas may be designated with the Sensitive Resource Area combining designation, which provides for a more intense level of review for proposed new development.

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
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July 9, 2008

John Euphrat  
Division Manager  
Department of Planning and Building  
San Luis Obispo, CA 93408

Dear Mr. Euphrat,

I write in response to your June 20, 2008 letter to Peter Douglas regarding the County's pending Ag Cluster LCP amendment. As your letter summarizes, Commission staff have agreed to bring forward a staff recommendation to the Coastal Commission on the Ag Cluster LCP amendment no later than December, 2008, once the pending amendment is withdrawn and resubmitted. To further address your concerns, and to preface our continued collaboration on reviewing this LCP submittal, we offer the following bullet points on some of the Coastal Act/LCP issues that remain, in our view, to be evaluated. I note that as we work toward resolution of issues, other concerns not identified here may arise, but that is always the case when new information or changed circumstances warrant addressing such an issue.

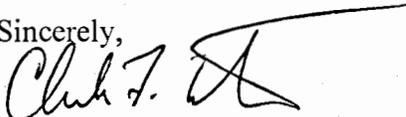
- Contrary to Coastal Act sections 30241 and 30242 and the County's Coastal Plan policies (LUP), which strictly limit the subdivision of agricultural lands, the current ordinance appears to be designed to facilitate the residential subdivision of agricultural lands, including through the use of density bonuses. This potential increase in residential density in agricultural areas appears to directly conflict with Coastal Act and LCP objectives to preserve agricultural areas, and to minimize conflicts between agricultural and non-agricultural land uses.
- The LCP amendment specifically conflicts with the LUP prohibition on creating new parcels where the only building site would be located on prime soils, because it would specifically allow the creation of a 6,000 square foot building site on prime soils. This per se inconsistency of the amendment needs to be addressed.
- The amendment also proposes to delete the averaging test for determining the size of new agricultural parcels, which is a specific mechanism in the certified IP for assuring effective implementation of the LUP's requirements to maintain agricultural lands and the Coastal Act's section 30250 policy to concentrate new development in existing developed areas. These existing IP provisions assure that parcels do not get subdivided into parcels that are significantly smaller than surrounding parcels, thereby maintaining rural agricultural densities and avoiding the growth of residential nodes or pockets in rural areas. This inconsistency with the submittal needs to be addressed.

- Commission staff have previously requested that the County provide a cumulative impacts analysis of the potential subdivision of agricultural areas under the proposed ordinance so that we may evaluate the consistency of the ordinance with the LUP. Even if the ordinance is restructured along the lines that we outline in this letter (i.e limited to legal lots of record), this kind of information may be important to understanding the implications of the ordinance for the protection of agricultural areas.
- Commission staff have requested information supporting the proposed changes in minimum lot sizes for any subdivisions that may be appropriate. Staff is unable to recommend approval of such changes without any information on this question. However, if the ordinance is limited to the issue of reconfiguring existing legal lots to better protect agricultural capability, this information is less important.
- In 2001 the Commission adopted SLO County LCP Periodic Review recommendations to address the trend towards rural residential development in agricultural areas on existing legal lots of record. In contrast to the current submittal, which again, appears to contemplate the creation of new residential lots in agricultural areas, we would encourage a refocusing of the amendment on the issue of residential development on existing legal lots of record. That is, the primary focus of the ordinance should be to provide for lot line adjustments or resubdivision of existing legal lots to better protect agricultural lands and capability. The Periodic Review provides a general framework for our discussions.
- Specific concerns that should be considered in the context of an ordinance addressing residential development in agricultural areas include
  - Clarifying that Lot-line adjustments (LLA) and non-agricultural residential development in the AG category are a conditional use/appealable development (Table O)
  - Limiting the application of the AG cluster ordinance to LLAs of existing legal lots of record in AG zoning only
  - Establishing clear thresholds/criteria to assure maximum protection of agricultural land and limit application of the cluster ordinance to legal lots of record that must be accorded an expectation for residential development to avoid a takings of private property
  - Requiring evaluation of consolidation/merger of lots in single ownership where appropriate
  - Prohibition of LLAs that result in new visually-intrusive lots and/or lots with other site constraints other than agriculturally productive areas (ESHA, riparian, steep slopes, etc.)
  - Limiting the maximum lot size to 5 acres or less (e.g. 1-2.5) and require that lots abut each other, to minimize conversion of agricultural land.
  - Requiring residential clusters to be as close as possible to existing access roads and minimizing new road/driveway development

- Limiting the total non-agricultural residential development area to a maximum of 2% of the holding (LUP std); requiring the remainder to be placed in permanent Open Space/Agricultural easement
  - Specifying a maximum non-agricultural development footprint to minimize conversion of agricultural land.
  - Providing adequate buffers between residential development and agricultural areas
  - Providing for recorded right to farm restrictions
  - Providing for recorded prohibitions of future subdivision
  - Consideration of Affirmative Agricultural easements that require agricultural lands to be kept in or made available for agriculture.
  - Providing for reservation of adequate water to support existing and potential Agricultural operations
  - Providing for protection of rural agricultural design/character for buildings
- Commission staff is aware of significant issues being raised with respect to implementation of an agricultural cluster ordinance in the inland areas of the County, and these concerns should be addressed in any new ordinance for the coastal zone. These include, but are not limited to, assuring that urban services are not extended beyond USLs/URLs and addressing the potential growth inducement of package wastewater plants or mutual water companies in rural areas.

We hope that this list is helpful in framing our discussions over the coming months, and we look forward to working closely with County staff on the resubmitted ordinance to address our mutual concerns. As a next step, we suggest that we establish a schedule of staff to staff meetings, so that we may begin discussing potential amendments to the LCP that will effectively implement the Coastal Act objectives to provide the maximum protection of agricultural lands in San Luis Obispo County.

Sincerely,



Charles Lester  
Senior Deputy Director