

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
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# Th 16a

## ADOPTED



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

**To:** Commissioners and Interested Persons

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

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

### Synopsis

San Luis Obispo County proposes to amend its Local Coastal Program (LCP) by updating the Estero Area Plan component of the Land Use Plan (LUP). The proposed LUP amendment is a comprehensive update to the policies, programs, maps, and standards that guide and regulate development in the Estero Area. The amendment updates the background information included in the existing Estero Area regarding both urban and rural areas, but does not change existing standards or programs applicable to the urban area of Los Osos.

### Summary of Staff Recommendation

The submitted update is the result of many years of significant effort by San Luis Obispo County, the public, and other significant stakeholders. Based on this work, the County has effectively addressed many of the outstanding issues in Estero. Nonetheless, certain modifications are required to fully address consistency with the requirements of the Coastal Act. **Therefore, staff is recommending that the update be approved if modified as recommended in this staff report.** In summary, major suggested modifications include:

- Updating public service capacity and new development standards related to services, roads, and schools.
- Ensuring a stable rural-urban boundary for Cayucos.
- Maintaining opportunities for lower-cost visitor serving and recreational facilities.
- Maintaining agricultural lands and minimizing conflicts between agriculture and non-agricultural uses.
- Enhancing ESHA protection.
- Improving standards that prevent polluted runoff from point and non-point sources.
- Ensuring that scenic public views are protected on the hillsides surrounding Cayucos and Los Osos.
- Strengthening standards related to bluff setbacks, potential seawall development, and



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redevelopment of existing developments on blufftop lots.

- Maximizing public access opportunities to and along the shoreline.

With the suggested modifications the proposed Land Use Plan amendment is consistent with, and adequate to carry out the provisions of the Coastal Act.

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## I. Staff Recommendation – Motions & Resolutions

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

### A. Denial of Land Use Plan Amendment as Submitted

*Motion (1 of 2).* I move that the Commission certify Land Use Plan Amendment SLO-MAJ-2-04 (Part 2) as submitted by the County of San Luis Obispo.

**Staff Recommendation to Deny.** Staff recommends a **NO** vote. Failure of this motion will result in denial of the amendment as submitted and adoption of the following resolution and findings. The motion to certify passes only by an affirmative vote of a majority of the appointed Commissioners.

**Resolution to Deny.** The Commission hereby **denies** certification of the Land Use Plan Amendment SLO-MAJ-2-04 (Part 2) as submitted by the County of San Luis Obispo and adopts the findings set forth below on the grounds that the amendment does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use 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 impact which the Land Use Plan Amendment may have on the environment.

### B. Approval of Land Use Plan Amendment if Modified

*Motion (2 of 2).* I move that the Commission certify Land Use Plan Amendment SLO-MAJ-2-04 (Part 2) for the County of San Luis Obispo if it is modified as suggested in this staff report.

**Staff Recommendation to Certify with Suggested Modifications.** Staff recommends a **YES** vote. Passage of the motion will result in the certification of the land use plan amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

**Resolution to Certify with Suggested Modifications.** The Commission hereby certifies the Land Use Plan Amendment SLO-MAJ-2-04 (Part 2) for the County of San Luis Obispo if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use 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 Land Use Plan Amendment may have on the environment.



## II. Suggested Modifications

The Commission suggests the following modifications to the proposed LCP amendment, which are necessary to make the requisite Coastal Act consistency findings. If San Luis Obispo County accepts and agrees to each of the suggested modifications within six months of Commission action (i.e., by January 10, 2009), by formal action of the Board of Supervisors, the LCP amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished. Where applicable, text in ~~cross-out~~ format denotes text to be deleted and text in underline format denotes text to be added.

### A. SUGGESTED MODIFICATIONS TO LAND USE PLAN TEXT

#### CHAPTER 1 – INTRODUCTION AND GENERAL GOALS

1

pg. 1-1. Purpose of the Estero Area Plan. Modify:

“... In addition, where applicable, all public and private development in this planning area is to be consistent with this plan. I should be recognized, however, that this plan is ~~subject to higher legal~~ also subject to other authority; for example, federal and state statutes, case law, and regulations”

2

pg. 1-8 Vision and General Goals. Modify:

“The goals also function as ~~criteria~~ guidance to help determine consistency of development proposals with the LUE/LCP.

3

pg. 1-9. Residential and Commercial Land Uses. Add goal 10:

10. Protect and maintain maximum public access to and along the shoreline of Cayucos.

4

pg. 1-10. Planning Policies. Modify:

“The policies also function as ~~criteria~~ guidance to help determine consistency of development proposals with the LUE/LCP.

#### CHAPTER 2 – ECONOMY AND POPULATION

5

pg. 2-5. Cayucos. Modify Goal 9:

9. Provide additional parking, especially between B and E Streets, using a variety of means consistent with resource protection.



## CHAPTER 3 – PUBLIC FACILITIES, SERVICES, AND RESOURCES

6

pg. 3-18. Sewage Disposal. Modify 2:

### 2. Cayucos Sewage Disposal

**Capacity of plant/current flow.** Sewage from Cayucos homes and nonresidential uses is collected in a conventional underground community system of laterals and sewer mains for transport to the City of Morro Bay sewage treatment plant. Current plant capacity is 2.06 million gallons per day (mgd, average dry-weather flow). ~~Through a joint powers agreement between the city and the Cayucos Sanitary District, Cayucos is entitled to use 0.944 mgd, and 1.416 mgd is reserved for Morro Bay. For the year ending June 30, 2001, Cayucos used about 27 percent of its entitlement. Total combined flow for Cayucos and Morro Bay was about 98 percent of plant capacity. In 2006, average dry weather flows were about 1.209 mgd from Morro Bay and about .283 mgd from Cayucos, which means that the treatment plant was operating at roughly 70 percent of capacity.~~

**Projected flow at buildout.** If it is assumed that the amount of wastewater flow has a fairly constant relationship to water demand, future flow can be estimated using estimates of water demand. Using this methodology, Cayucos' average dry-weather wastewater flow at buildout would range from about 0.318 mgd (assuming 61.5% occupancy for existing development and 95% occupancy for new development) to about 0.401 mgd (assuming 80% and 95% occupancy for existing and new development, respectively). ~~These flow estimates are well within the community's current entitlement to capacity of the Morro Bay treatment plant, so that no additions to the plant would be necessary to serve Cayucos' buildout population. However, expansion of the plant will be necessary to handle the increasing flow from the city of Morro Bay. Morro Bay's projected flows at buildout are approximately 1.42 mgd. Therefore, the treatment plant's 2.06 mgd capacity is sufficient to handle the combined projected flows from Cayucos and Morro Bay at buildout. However, at buildout, Morro Bay could be close to its entitlement to the treatment capacity that is provided for in a Joint Powers Agreement with the Cayucos Sanitary District (Cayucos would be well within its entitlement to the treatment plant capacity). An upgrade to the treatment plant is planned to be completed by 2015.~~

7

pg. 3-40. Schools. Modify:

1. Elementary School Site – Cayucos. Cayucos Elementary School District and the county, Coastal Commission, and other responsible agencies should cooperate in evaluating and selecting an appropriate site for a new elementary school located within or as close as possible to the existing urban reserve line. As required by the Coastal Plan Policies, an LCP amendment will be required to expand the USL to any alternative not currently within the USL, so that services may be extended.



## CHAPTER 4 – LAND USE POLICIES AND PROGRAMS

8

**pg. 4-2. Development Within Resource Capacities.** Modify B1:

1. Adequate public or private resource capacities shall be available to serve proposed development. Within urban areas, adequate water supply and sewage disposal capacities shall be available to serve both existing and potential development within the community before approval of new land divisions using those services. Land divisions requiring urban service extensions beyond the USL/URL shall be prohibited.

9

**pg. 4-5. Agriculture.** Modify agriculture polices B1 and B2:

1. Provide incentives for landowners to maintain land in productive agricultural use; require affirmative agricultural easements where appropriate.

2. Maintain existing Agriculture land use categories in order to protect agricultural resources; do not convert agricultural land to other land use categories or revise planning area standards so as to enable more intensive non-agricultural development; assure that residential development is necessary to or maintains Agricultural land uses to the maximum extent feasible.

10

**pg. 4-8. Estero Marine Terminal Property.** Delete portion of last paragraph:

~~“ ... However, in the event that an appropriate elementary school site is selected on this property in close proximity to the Cayucos urban reserve line, the urban reserve and services lines should be extended to include the school site, and the needed land use category change should be initiated.”~~

11

**pg. 4-12. Recreation.** Modify D1:

1. Promote development of recreational and visitor-serving uses, especially lower-cost opportunities, consistent with the protection of agriculture and sensitive resources.

12

**pg. 4-37. Seawalls.** Delete B2a:

~~a. **Beach Access.** The county should amend Chapter 23.05 of the Coastal Zone Land Use Ordinance to allow private beach access ways to be incorporated into seawalls where the access ways are as unobtrusive as possible and receive appropriate engineering and geologic review to ensure safety and prevent erosion. Standards should also require that private beach access ways be entirely on private property, be properly maintained by the property owner, and not impact sensitive habitat.~~

13

**pg. 4-38. Land Use, Cayucos and Vicinity.** Modify 5:



5. Specific Plan or Development Plan West of Cayucos Creek. The county should encourage owners of properties west of Cayucos Creek shown in Figure 4-5 to participate in preparation of a specific plan or Development Plan for that area. The specific plan or Development Plan should integrate land uses on the north side of North Ocean Avenue and provide for connections between those uses. It should ~~promote mixed-use development and multi-family housing~~, provide for recreation opportunities, and provide for convenient bicycle and pedestrian connections to the central business district, including improved access across Cayucos Creek.

14

**pg. 4-39. Downtown Enhancement.** Modify 6 Phase1d:

d. Creating angled parking spaces along North Ocean Avenue leading to B Street and along B Street to Ash Street consistent with wetland and other sensitive resource protection standards.

## CHAPTER 5 – CIRCULATION ELEMENT

15

**pg. 5-4. Cayucos and Rural Areas.** Add A 7:

7. Incorporate water quality design and treatment BMPs into roadway and other public right-of-way improvement projects.

16

**pg. 5-5. State Highway 1.** Amend Rural 1:

**1. State Highway 1.** There are limited opportunities for passing on the two-lane portion west of Cayucos. The portion of this highway within the planning area and outside of urban areas is required by statute to remain a two lane, scenic road. Recently, a left hand turn lane project at Harmony was approved to address Highway safety concerns on this stretch.

17

**pg. 5-6. Pedestrian and Bicycle Facilities.** Amend 7:

**7. Pedestrian and Bicycle Facilities.** Pedestrian and bicycle travel are discouraged by many factors, but the primary one is a lack of an adequate and convenient system of pedestrian and bicycle facilities that connect residential areas, schools and commercial areas. Class I bikeways should be developed, or Class II bikeways need to be located on streets with minimal traffic in order to encourage bicycle use by school-age children, commuters, shoppers, senior citizens, and others.

18

**pg. 5-8. State Highway One West of Cayucos.** Delete:

~~State Highway 1 West of Cayucos. One westbound and one eastbound passing lane should be installed. Each passing lane should be no greater than one mile in length, consistent with the statute that requires Highway 1 to remain a two lane, scenic road in rural areas.~~



19

pg. 5-9. South Bay Boulevard. Modify:

- Create a four lane road north of the urban reserve line. This will raise the level of service to an acceptable level. Consider road improvements that improve the level of service but avoid wetlands and other sensitive resources and do not otherwise induce growth inconsistent with the Area Plan.

20

pg. 5-16. Highway 1 Passing Lanes. Delete B1:

~~1. Highway 1 Passing Lanes. Caltrans should install one westbound and one eastbound passing lane on Highway 1 north and west of Cayucos. Each passing lane should be no greater than one mile in length, consistent with the intent of the Coastal Act that Highway 1 remain a scenic, two lane road in rural areas.~~

21

pg. 5-20. Improvement of Publicly-Owned Sites. Delete bullet and reference on Figure 5-2:

- ~~2886 Studio Drive. Do not develop access at this location.~~

22

pg. 5-21. Coastal Access. Add D8:

8. Public road abandonments that impact public access to the shoreline shall require a coastal development permit.

23

pg. 5-22. Table 5-1 Circulation Programs. Delete Program B1 (Highway 1 Passing Lanes) from Table 5-1.

## CHAPTER 6 – ENVIRONMENTAL AND CULTURAL RESOURCE POLICIES AND PROGRAMS

24

pg. 6-5. Bluff Erosion. Modify B2:

2. Bluff Erosion (GSA). Bluff erosion poses a concern for siting new development along portions of the coastline. Development should generally be located to withstand ~~75~~ 100 years of bluff erosion without the need for a shoreline protection structure that would substantially alter the landform, affect public access, or impact sand movement.

25

pg. 6-8. SRA's. Add SRA designation to c and d:



c. **Baywood Peninsula (SRA).** This area is a narrow fringe of dune sands with planted Monterey cypress and pines trees rising above the bay and providing an exceptional close-hand view of the bay.

d. **Fairbanks Point Property (SRA).** Since 1948, an important nesting and resting site for herons has been located on this site near the marina adjacent to Morro Bay State Park.

26

**pg. 6-15. Areawide Water Quality.** Modify A4:

7. Minimize erosion, siltation and water pollution by promoting sound land management practices and minimizing the amount of impervious surfaces on public and private lands. ~~Use voluntary measures on private lands.~~

27

**pg. 6-15. Morro Bay Estuary and its Watershed.** Modify A2:

2. ~~Where feasible, implement~~ provisions of Total Maximum Daily Loads (TMDLs) as they are developed for Chorro Creek, Los Osos Creek and the Morro Bay estuary consistent with Regional Board requirements.

28

**pg. 6-15. Morro Bay Estuary and its Watershed.** Modify A4:

4. ~~Promote and emphasize measures to protect Morro Bay and its watershed that use primarily a voluntary, cooperative, educational, and incentive-based approach~~ to protect Morro Bay and its watershed rather than a regulatory one.

## CHAPTER 7 – PLANNING AREA STANDARDS

29

**pg. 7-1. Introduction.** Modify:

“Planning Area standards are mandatory requirements for development, and are intended to respond to concerns in particular areas or communities.”

“... Where planning area standards conflict with the CZLUO these standards control ~~take precedence.~~ Any density bonus shall meet the standards of the CZLUO and the Coastal Plan policies of the LCP.”

30

**pg. 7-2. Introduction.** Modify:

... Dedications and exactions will be pursued consistent with Section 30001.5 of the California Coastal Act considering the need to:

...

- (3) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.



(4) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

31

**pg. 7-4. Development Location.** Modify A.1.b.:

b. Development Location. Development in land divisions, lot-line adjustments, and other development projects shall be located away from identified sensitive features on or adjacent to the site, and in areas most suitable for development. Development on all proposed building sites shall result in no adverse impacts to environmentally and other sensitive areas, including avoidance of the required setbacks, buffers and fuel modification zones, as verified by the required biological report.

32

**pg. 7-5. Environmentally Sensitive Areas – Clustered Development and Habitat Protection Required.** Modify 2.a.:

a. Cluster or concentrate development on the least sensitive portions of the site in order to protect and sustain environmentally sensitive areas and the following sensitive features:

1. Sensitive Resource Areas and Environmentally Sensitive Habitats as ~~shown~~ defined in the Land Use Element and Local Coastal Plan.

33

**pg. 7-6. Environmentally Sensitive Areas – Clustered Development and Habitat Protection Required.** Modify A.2.d.:

~~d. Where possible, design~~ Development on all proposed building sites shall result in no adverse impacts to environmentally and other sensitive areas, including avoidance of the required setbacks, buffers and fuel modification zones, as verified by the required biological report. Land divisions, lot-line adjustments, and development shall be designed so that fuelbreaks and vegetation or fuel modification areas that are needed to reduce fire hazards do not disrupt or cause adverse impacts to the sensitive features listed in preceding paragraph a. Fuelbreaks and vegetation or fuel modification areas shall be located on the development side of required setbacks from sensitive features, and shall be in addition to the required setbacks, as shown in Figure 7-1.

34

**pg. 7-6. Land Division and Development Design.** Modify B.1.a and b.:

- a. Development on all proposed building sites results in no adverse impacts to environmentally and other sensitive areas (including as defined in the preceding standard A2) and the required setbacks therefrom, including avoidance of the required setbacks, buffers and fuel modification zones, as verified by the required biological report.

35

**pg. 7-7. Development Location.** Delete 2.a:



~~a. **Multiple Sensitive Features.** Sites may contain several types of sensitive features that should be protected, such as sensitive habitat, prime agricultural soils, natural hazards, cultural resources, and scenic qualities. Where there is conflict between the objectives of protecting various identified sensitive features, locate and design development in a manner which on balance is the most protective of significant coastal resources~~

36

**pg. 7-7. Environmentally Sensitive Habitat: Site Disturbance.** Modify 2.b.1

(1) ...consistent with applicable legal requirements to allow a reasonable use of the site to avoid a takings of property.

37

**pg.7-8. Public Access.** Modify E1:

1. New development shall be required to provide Public access and improvements to and along the coast, and shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization ~~recognize and protect consistent with existing prescriptive rights.~~

38

**pg. 7-10. Light and Glare.** Modify H:

**H. Light and Glare.**

At the time of application for any land division, land use permit or coastal development permit, ~~except in the Agriculture land use category,~~ the applicant shall provide details on any proposed exterior lighting, if applicable. Except as necessary to support agricultural operations, ~~a~~All lighting fixtures shall be shielded so that neither the lamp nor the related reflector interior surface is visible from adjacent properties. Light hoods shall be dark-colored

39

**pg. 7-10. Shoreline Development.** Add Areawide Standard I regarding shoreline development:

I. Shoreline Development. New development or expansion of existing uses proposed to be located on or adjacent to a beach or coastal bluff are subject to the following standards:

A. **Application Content:** In addition to the application requirements of the Coastal Zone Land Use Ordinance and other Estero Urban Area Plan Standards, applications for new development or expansion of existing uses proposed to be located on or adjacent to a beach or coastal bluff shall include the following:

1. An analysis of beach erosion, wave run-up, inundation and flood hazards prepared by a licensed civil engineer with expertise in coastal engineering and a slope stability analysis, prepared by a licensed Certified Engineering Geologist and/or Geotechnical Engineer or Registered Civil Engineer with expertise in soils, in accordance with the procedures



detailed by Appendix A1 of this Plan. The report shall include an alternatives analysis to avoid or minimize impacts to public access.

On lots with a legally established shoreline protective device, the analysis shall describe the condition of the existing seawall; identify any impacts it may be having on public access and recreation, scenic views, sand supplies; and other coastal resources; and evaluate opportunities to modify or replace the existing armoring device in a manner that would eliminate or reduce these impacts. The analysis shall also evaluate whether the development, as proposed or modified, could be safely established on the property for a one hundred year period without a shoreline protective device.

2. Measurements for the form, mass, scale, and roofing and yard features (such as fencing). To the maximum extent feasible, new development shall be compatible with the character of the surrounding neighborhood.
3. Surveyed location of all property lines and the mean high tide line by a licensed surveyor along with written evidence of full consent of any underlying land owner, including, but not limited to the County, State Parks, and State Lands. If application materials indicate that development may impact or encroach on tidelands or public trust lands, the County shall consult with Coastal Commission staff regarding the potential need for a Coastal Development Permit from the Coastal Commission.
4. A preliminary drainage, erosion, and sedimentation plan which demonstrates that no stockpiling of dirt or construction materials will occur on the beach; erosion, runoff, and sedimentation measures to be implemented at the end of each day's work; all construction debris will be removed from the beach daily and at the completion of development; and no machinery will be allowed in the intertidal zone. If there is no feasible way to keep machinery out of the intertidal zone, authorization from the Coastal Commission is required.

**B. Bluff Setbacks.** The bluff setback is to be determined by the engineering geology analysis required in A.1. above adequate to withstand bluff erosion and wave action for a period of 100 years. In no case shall bluff setbacks be less than 25 feet. Alteration or additions to existing development that is non-conforming with respect to bluff setbacks that equals or exceeds 50 percent of the size of the existing structure, on a cumulative basis beginning July 10, 2008, shall not be authorized unless the entire structure is brought into conformance with this setback requirement and all other policies and standards of the LCP. On parcels with legally established shoreline protective devices, the setback distance may account for the additional stability provided by the permitted seawall, based on its existing design, condition, and routine repair and maintenance that maintain the seawall's approved design life. Expansion and/or other alteration to the seawall shall not be factored into setback calculations.



- C. Seawall Prohibition.** Shoreline and bluff protection structures shall not be permitted to protect new development. All permits for development on blufftop or shoreline lots that do not have a legally established shoreline protection structure shall be conditioned to require that prior to issuance of any grading or construction permits, the property owner record a deed restriction against the property that ensures that no shoreline protection structure shall be proposed or constructed to protect the development, and which expressly waives any future right to construct such devices that may exist pursuant to Public Resources Code Section 30235 and the San Luis Obispo County certified LCP.
- D. Liability.** As a condition of approval of development on a beach or shoreline which is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, the property owner shall be required to execute and record a deed restriction which acknowledges and assumes these risks and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.

40

- pg. 7-10. Los Osos Groundwater Basin. Add new Areawide Standard J regarding water supply offsets:**

J. New development using water from the Los Osos Groundwater Basin shall be required to offset water use within the Los Osos Groundwater Basin and shall not result in a net increase in water use.

41

- Add new figure of the Los Osos Groundwater Basin to accompany new Areawide Standard J.**

42

- pg. 7-15. Areawide Systems.** Modify A1:

**A1. Areawide Systems** - New development in land divisions, Minor Use Permits and Developments Plans shall be integrated into areawide circulation and utility easements, providing for future extensions into adjacent undeveloped properties wherever feasible or where known areawide rights-of-way are planned, unless such physical extensions would induce growth potentially inconsistent with the LCP.

43

- Pg. 7-16. Highway 1 –Cayucos Critical Viewshed.** Modify C:

C. The Highway 1 – Cayucos Critical Viewshed (see Figure 7-8) is established to protect views of this scenic coastal area as seen from Highway 1, public beaches and the ocean. All applicable standards in the Coastal Zone Land Use Ordinance apply within this area (e.g., those in Chapter 23.04). Development not exempt pursuant to CZLUO 23.04.210(a) shall be considered a conditional use.



44

Pg. 7-18. **Figure 7-8 Highway 1–Cayucos Critical Viewshed.** Add the following text to Figure 7-8:  
This map is for reference purposes only and doesn't depict all potentially visible areas.

45

Pg. 7-16. Highway 1 and Los Osos Valley Road Scenic Corridor. Modify D:

**D. Highway 1 and Los Osos Valley Road Scenic Corridor**

Highway 1 and Los Osos Valley Road as shown on Figure 7-7 in the rural portions of the Planning Area is a Scenic Corridor. All applicable standards in the Coastal Zone Land Use Ordinance apply (e.g., those in Chapter 23.04).

46

Pg. 7-22 and 7-23. Delete 3(a)(1) in its entirety and modify 3(b):

3(a)

~~(1) Landscape Requirements. All new development within the Los Osos urban reserve line that requires a land use permit or coastal development permit and that results in a site disturbance of 500 square feet or more shall comply with the following when landscaping. When a landscaping plan is required by the Coastal Zone Land Use Ordinance, the following requirements shall be incorporated into the plan.~~

~~(i) An area that is landscaped with native vegetation shall be provided.~~

~~(ii) Non-sandy soils or soil amendments that would be detrimental to coastal scrub vegetation shall not be used.~~

~~(iii) Native plants (Los Osos Species) shall be used, though not exclusively.~~

~~(iv) Non-native plants that change the soil in a manner detrimental to the Morro shoulderband snail (e.g. eucalyptus) are prohibited. Invasive plants (e.g. certain grasses) shall be avoided.~~

~~(v) The use of molluscicides is prohibited~~

3(b) . . .

**Los Osos Dune Sands Development Standards.** The following standards apply to new development within the areas designated "Los Osos Dune Sands SRA-TH" except where 1) ~~the total amount of site disturbance is less than 500 square feet, or 2)~~ . . .

47

Pg. 7-25,26. Modify (b)(6):

(6) Site Disturbance. This standard is intended to provide maximum preservation of Los Osos Dune Sands and its associated habitat of rare and endangered species. ~~The maximum amount of site disturbance specified in subsection b(6)(i) of this standard shall be reduced by the review authority to the extent necessary to~~ New development causing site disturbance shall ensure protection of habitat for Morro manzanita, Indian Knob mountainbalm, or any other rare or endangered species determined to be



present on the site. However, limitations on the amount of site disturbance shall be consistent with applicable legal requirements to allow reasonable use of the site.

Site disturbance includes disturbance of the following areas ~~in connection with non-agricultural activities~~: areas disturbed by structures, roads, utility trenching, and pavement; areas on which grading or removal of native vegetation occurs. Site disturbance does not include activities that are consistent with the restoration and maintenance of native plant habitats as guaranteed by project approval.

~~(i) Limitation on Site Disturbance. Where it is not feasible to locate a building site without causing adverse impacts to Los Osos Dune Sands, its associated habitat of rare and endangered species, and the required setbacks therefrom, as verified by the required biological report, the maximum total, aggregate amount of site disturbance as necessary to avoid a takings of private property, shall be up to as follows:~~

- ~~(a) Sites Less Than or Equal to One Acre in Area: 10,000 square feet.~~
- ~~(b) Sites Greater Than One Acre in Area: 20,000 square feet.~~

~~(ii) Adjustment of Limitation on Site Disturbance. The limitation on site disturbance in preceding Section b(6)(i) may be adjusted through Minor Use Permit provided that the following findings can be made:~~

- ~~(a) An adjustment is necessary to allow reasonable use of the site, or compliance with the limitations on site disturbance would cause more environmental damage on balance than an alternative that exceeds those limitations; and~~
- ~~(b) Alternative designs that comply with the limitations on site disturbance are infeasible or more environmentally damaging; and~~
- ~~(c) Adverse environmental impacts are mitigated to the maximum extent feasible; and~~
- ~~(d) The adjustment is the minimum amount necessary to allow reasonable use of the site.~~

48

**pg. 7-27. Agriculture.** Allowable Uses in Agriculture

Allowable uses are limited to: agricultural accessory structures; animal raising and keeping; crop production and grazing; nursery specialties soil dependent; coastal accessways; farm support quarters; home occupations; mobilehomes; residential accessory uses; single family dwellings consistent with the protection of agriculture; temporary dwelling; water wells and impoundments; pipelines and transmission lines; public utility facilities.

49

**pg. 7-34. Development Standards.** Modify C.2.a.:

**a. Geologic bluff setback.** As determined by a site stability evaluation prepared by a certified engineering geologist based upon an on-site evaluation, development shall be set back from the top edge of the bluff sufficiently to withstand bluff erosion and wave action for a period of ~~75~~ 100 years without the need for construction of shoreline protective structures ~~that would in the opinion of the Planning~~



~~Director.~~ In any case, the minimum setback shall be 25 feet.

50

**pg. 7-34. Residential Suburban.** Modify:

**Minimum Parcel Size--Lots Adjoining Agricultural Area North of Tapidero Avenue**

Minimum parcel size for lots adjoining the Agriculture land use category north of Tapidero Avenue shall be 5 acres. New development shall assure protection of existing Agricultural areas, through means such as the use of agricultural buffers, right-to-farm restrictions, and agricultural easements as necessary.

51

**pg. 7-35. Condominium Hotels.** Delete Cayucos Urban Area Communitywide Standard C in its entirety.

~~Hotels and motels that are condominiums or planned development projects may be permitted in accordance with Chapter 23.08 of the Coastal Zone Land Use Ordinance wherever hotels and motels are allowable uses.~~

52

**pg. 7-42. Table 7-1 bluff setbacks.** Modify bluff setback in Table 7-1 from 75 years to 100 years.

53

**pg. 7-45. Seawalls.** Modify A2:

a. ~~Redevelopment. New seawalls that require substantial alteration to the natural landforms along bluffs and cliffs are not permitted in connection with alteration of existing development that equals or exceeds 75 percent of the replacement cost (as determined by the County Fee Ordinance) of the existing structure. Instead, the development shall be set back in accordance with the required blufftop setbacks in Chapter 23.04 of the Coastal Zone Land Use Ordinance.~~

b. Design and Appearance. New seawalls and seawall replacements shall be constructed using materials that minimize required maintenance and blend with the surrounding ~~built~~ and natural environment.

c. Location. New seawalls and seawall replacements shall be located entirely on private property, shall minimize beach area footprint, and shall not cause adverse impacts to sensitive habitat.

54

**pg. 7-46. Riparian setbacks.** Retain setback measurement text and modify footnote 1:

Riparian setbacks shall be measured from the upland edge of riparian vegetation or the top of stream bank where no riparian vegetation exists.

Footnote 1: ~~Required setbacks are measured from the top of stream bank, and may be adjusted per Chapter 7, Coastal Zone land Use Ordinance, except adjacent to Willow Creek, west of Highway 1 in Tract 1076.~~



55

pg. 7-53. North of Veterans Building. Modify and move to (REC) standard A.3 on pg. 7-59:

D. North of the Veteran's Building. (This is a visitor-serving priority area)

5. Site Design Criteria - Public Access. Site design (for the Recreation zoned property located north of the Veteran's Building along Cayucos Creek) shall incorporate public access to and along the bluff top for a scenic vista. In addition, lateral beach access from the toe of the bluff to the mean high tide line, consistent with public safety and sensitive habitat concerns, shall be provided.

56

pg. 7-58 Limitations on Use. Delete "Residential Uses" as an allowable use in the REC category for 1.8 acre site; Delete Residential Density standard A.2.a and A.2.b. on pg. 7-59.

## B. SUGGESTED MODIFICATIONS TO LAND USE CATEGORY AND COMBINING DESIGNATION MAPS

57

### Map M1

- 1) AG to RL – Add new development standard that limits residential density on this parcel to one unit
- 4) AG to RL – Add new development standard that prohibits new residential development on the portion of the property within the Coastal Zone.

58

### Map M9

- 4) REC to RMF - Maintain in REC
- 5) REC to RMF - Maintain in REC
- 6) REC to RMF & PF - Maintain in REC
- 7) REC to CR, RMF & OP – Maintain in REC
- 8) REC to CR – Maintain in REC

59

### Map 12A

- 10) REC to RSF – Maintain vacant parcel (of the two subject parcels) in REC

60

### Map M13

- 6) Maintain "V" combining designation west of pier.



### C. OTHER SUGGESTED MODIFICATIONS

61

Appendix A1 – Slope Stability Analysis. Add new Appendix Section A1 and attach to Plan:

#### Appendix A1: Slope Stability and Bluff Erosion Rate Determination Requirements.

Quantitative slope stability analyses and erosion rate estimates shall be undertaken as follows:

1. The analyses shall demonstrate a factor of safety greater than or equal to 1.5 for the static condition and greater than or equal to 1.1 for the seismic condition. Seismic analyses may be performed by the pseudostatic method, but in any case shall demonstrate a permanent displacement of less than 50 mm.
2. Slope stability analyses shall be undertaken through cross-sections modeling worst case geologic and slope gradient conditions. Analyses shall include postulated failure surfaces such that both the overall stability of the slope and the stability of the surficial units are examined.
3. The effects of earthquakes on slope stability (seismic stability) may be addressed through pseudostatic slope analyses assuming a horizontal seismic coefficient of 0.20g, and should be evaluated in conformance with the guidelines published by the American Society of Civil Engineers, (ASCE/SCEC), “Recommended Practices for Implementation of DMS Special Publication 117, Conditions for Analyzing and Mitigating Landslide Hazards in California.”
4. All slope analyses shall be performed using shear strength parameters (friction angle and cohesion), and unit weights determined from relatively undisturbed samples collected at the site. The choice of shear strength parameters shall be supported by direct shear tests, triaxial shear test, or literature references.
5. All slope stability analyses shall be undertaken with water table or potentiometric surfaces for the highest potential ground water conditions.
6. If anisotropic conditions are assumed for any geologic unit, strike and dip of weakness planes shall be provided, and shear strength parameters for each orientation shall be supported by reference to pertinent direct shear tests, triaxial shear test, or literature.
7. When planes of weakness are oriented normal to the slope or dip into the slope, or when the strength of materials is considered homogenous, circular failure surfaces shall be sought through a search routine to analyze the factor of safety along postulated critical failure surfaces. In general, methods that satisfy both force and moment equilibrium (e.g., Spencer, Morgenstern-Price, and General Limit Equilibrium) are preferred. Methods based on moment equilibrium alone (e.g., Bishop’s Method) also are acceptable. In general, methods that solve only for force equilibrium (e.g., Janbu’s method) are discouraged due to their sensitivity to the ratio of normal to shear forces between slices.



8. If anisotropic conditions are assumed for units containing critical failure surfaces determined above, and when planes of weakness are inclined at angles ranging from nearly parallel to the slope to dipping out of slope, factors of safety for translational failure surfaces shall also be calculated. The use of a block failure model shall be supported by geologic evidence for anisotropy in rock or soil strength. Shear strength parameters for such weak surfaces shall be supported through direct shear tests, triaxial shear test, or literature references.

9. The selection of shear strength values is a critical component to the evaluation of slope stability. Reference should be made to the ASCE/SCEC guidelines (see Section 9.4.D.3) when selecting shear strength parameters and the selection should be based on these guidelines. Generally, one of two conditions will exist:

- a. If the bluff exhibits a factor of safety of less than 1.5 for either gross or surficial landsliding, then the location on the bluff top at which a 1.5 factor of safety exists shall be determined. Development shall be set back a minimum distance equal to the distance from the bluff edge to the 1.5 factor-of-safety-line, plus the distance that the bluff might reasonably be expected to erode over 100 years. These determinations, to be made by a state-licensed Certified Engineer Geologist, Registered Civil Engineer, or Geotechnical Engineer, shall be based on a site-specific evaluation of the long-term bluff retreat rate at this site and shall include an allowance for possible acceleration of historic bluff retreat rates due to sea level rise.
- b. If the bluff exhibits both a gross and surficial factor of safety against landsliding of greater than 1.5, then development shall be set back a minimum distance equal to the distance that the bluff might reasonably be expected to erode over 100 years. The determination of the distance that the bluff might be expected to erode over 100 years is to be made by a state licensed Certified Engineer Geologist, Registered Civil Engineer or Geotechnical Engineer, and shall be based on a site-specific evaluation of the long-term bluff retreat rate at the site and shall include an allowance for possible acceleration of historic bluff retreat rates due to sea level rise.

For the purpose of this section, the long-term average bluff retreat rate shall be determined by the examination of historic records, surveys, aerial photographs, published or unpublished studies, or other evidence that unequivocally show the location of the bluff edge, as defined below, through time. The long-term bluff retreat rate is an historic average that accounts both for periods of exceptionally high bluff retreat, such as during extreme storm events, and for long periods of relatively little or no bluff retreat. Accordingly, the time span used to calculate a site-specific long-term bluff retreat rate shall be as long as possible, but in no case less than 50 years. Further, the time interval examined shall include the strong El Niño winters of 1982-1983, 1994-1995 and 1997-1998.

62

### Internal Figure Changes.



Modify Land Use designations on specific properties to reflect suggested modifications above. For example on Pg. 4-39 and 7-40., Figures 4-5 and 7-15. (e.g., 1.8 AC site next to Cayucos Creek RMF to REC; and 10 AC property RMF to AG)

### **III. Findings and Declarations**

The Commission finds and declares as follows:

#### **A. Overview of LUP Amendment**

##### **1. Estero Area Plan Update**

The purpose of the Estero Area Plan update is to establish a vision for the future of the Estero Planning Area that will guide development over the next 20 years. The San Luis Obispo County submittal is a comprehensive update of the goals, policies, programs, land use maps, combining designations, and development standards for the Cayucos urban area and the surrounding rural areas. The Plan leaves in place the existing Area Plan language applicable to the Los Osos urban area. Updated narrative descriptions and background data for the entire Estero Area is included to provide context.

##### **2. Relationship to the San Luis Obispo County LCP**

###### **Operation of the LCP**

The Estero Area Plan operates in conjunction with other components of the San Luis Obispo County Local Coastal Program (LCP). The County's LCP is composed of multiple parts: 1) Land Use Plan (LUP), which includes the Framework for Planning; the Coastal Plan Policies, and four Area Plans (one of which is the subject Estero Area Plan); 2) Implementation Plan (IP), which includes the Coastal Zone Land Use Ordinance (CZLUO); Title 8 for Water Wells; Title 19 for Building and Construction; and Title 21 for Real Property Division; and, 3) Post Certification Appeals Maps and Categorical Exclusions.

To determine the requirements for development on a particular site, each of the components of the LCP must be consulted. Coastal LUP Policies are standards and/or can be implemented through a specific CZLUO section referenced at the end of a LUP Policy. In these cases, the ordinance is controlling if there is a conflict with the overarching policy. Other policies, though, state that they shall be implemented as a standard, that is, equivalent to an area plan standard. The Estero Area Plan Standards are the most specific of the LCP's regulations, governing land use in for communities and even specific parcels within the Estero Area Plan. Some standards apply areawide, while others are specific to individual sites or areas within a particular land use category designation. Because of this specificity, should an area plan standard conflict with a policy of a CZLUO section, the area plan standard controls.

In addition to the area plan development standards, an extremely important part of the Estero Area Plan is the combining designation map. The combining designations are areas where, for example, environmentally sensitive habitats (ESHA), visitor destinations, geological hazards, flood hazards, etc.,



have been identified and mapped. These designations indicate where special studies and/or development requirements apply, based on a particular combining designation. However, the combining designations often do not reflect on-the-ground resources, either because they were not mapped originally, or because the presence of a particular resource or hazard was not known at the time. Language has been added in this submittal through suggested modifications to further clarify this point and updates to the combining designation maps are suggested to bring them up to date with existing resources and knowledge.

### **3. Procedure/Standard of Review for LCP Amendments**

The relationship between the Coastal Act and the local government's Local coastal Program (LCP) can be described as a three-tiered hierarchy with the Coastal Act setting generally broad statewide policies. The Land Use Plan (LUP) portion of the LCP incorporates and refines Coastal Act policies for the local jurisdiction, giving local guidance as to the kinds, locations, and intensities of coastal development. The Implementation Plan (IP), or zoning portion of an LCP typically sets forth zone districts and site regulations which are the final refinement specifying how coastal development is to be implemented on a particular parcel. The IP must be consistent with, and adequate to carry out, the policies of the LUP. The LUP must be consistent with the Coastal Act. In this case, the proposed amendment affects the LUP component of the San Luis Obispo County certified LCP. Thus, the standard of review for the amendment is consistency with the Coastal Act.

## **B. Coastal Act Consistency**

This section evaluates the submitted LCP amendment in eight Coastal Act policy areas: 1) Development and Public Services; 2) Public Recreation and Visitor-serving Facilities; 3) Agriculture; 4) Environmentally Sensitive Habitat Areas (ESHA), including marine resources and water quality related issues; 5) Scenic Resources; 6) Hazards; 7) Archaeology; and, 8) Public Access. As discussed previously, the standard of review for evaluating Land Use Plan amendment submittals is consistency with Chapter Three of the Coastal Act.

## **1. Development and Public Services**

### **A. Coastal Act Policies**

The Coastal Act includes several policies that address the location, type, and intensity of new development to ensure the protection of coastal resources. To limit urban sprawl, the Coastal Act requires the establishment of stable urban-rural boundaries. New development must also be located within, contiguous to or in close proximity to existing developed areas with adequate public works facilities such as water supply, and wastewater treatment. Where such areas are not available, any approved development must be located where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. This includes the protection of groundwater basins and sensitive habitats that may be affected by water withdrawals, wastewater disposal, and polluted runoff.



The Coastal Act also provides that new or expanded public works facilities be sized to serve planned development and not induce additional, unplanned development. Where resources or services are limited, coastal dependent land uses, essential public services, basic industries, public and commercial recreation and visitor-serving land uses shall not be precluded by other development. The Coastal Act also encourages the protection of existing and the provision of new affordable housing opportunities in the coastal zone. Collectively, these requirements reflect a fundamental goal of the Coastal Act: protection of coastal resources by concentrating new development in existing developed areas able to accommodate it.

### **Development and Public Services Policies**

General development siting and public service issues are mainly the purview of Coastal Act Sections 30250, 30252 and 30254.

Coastal Act Section 30250 states:

*Section 30250(a). New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, 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.*

*Section 30250(b). Where feasible, new hazardous industrial development shall be located away from existing developed areas.*

*Section 30250(c). Visitor-serving facilities that cannot be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.*

Coastal Act Section 30252 states:

*Section 30252. The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.*



Coastal Act Section 30254 states:

*Section 30254. New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway Route 1 in rural areas of the coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.*

## **B. Overview of Development**

The Estero Planning Area occupies approximately 71.5 square miles of land extending from Point Estero to the north and Point Buchon to the south, and extends up to seven miles inland. Rural Estero includes all of the land not within the urban reserve lines of Cayucos, Los Osos or the City of Morro Bay. Approximately 75 percent of the land in the Estero planning area is zoned for agricultural uses.

Cayucos and Los Osos are the two urban areas subject to Estero planning area standards. As discussed previously, however, the urban area of Los Osos was bifurcated from this submittal and the urban area development standards for Los Osos are not proposed to be changed. Highway One is the primary north-south access route within the area plan. Within the urban boundary of Cayucos and Los Osos, approximately 86 and 71 percent of the acreage, respectively, are within residential land use category. These two communities also include all of the commercial land use categories in the planning area. Within the commercial and office land use categories, nearly 60 percent of the area consists of Commercial Retail, 17 percent Commercial Service, and 23 percent Office and Professional.

Cayucos is located in the northwest portion of the planning area. Cayucos covers 339 net acres, which is less than 1 percent of the Estero planning area. Under the proposed plan, the amount of agricultural land within the urban services/urban reserve line (USL/URL) would decrease by approximately 10 acres on a property proposed to be changed from Agriculture (AG) to Residential Multi-Family (RMF) (see Agriculture findings for more detail on this proposed land use designation change). Another significant land use change within the USL/URL is on approximately 1.8 acres of land on the west side and adjacent to Cayucos Creek, which is proposed to be changed from Commercial Retail (CR) to Recreation (REC) (see Public Recreation and Visitor-Serving Facilities findings for more detail). Surrounding land areas outside of the USL/URL are primarily devoted to grazing and other agriculture. Potential development constraints such as water supply, sewage capacity, school capacity, and Highway One road capacity have been identified in the plan.

## **C. Issues and Analysis**

### **1. Cayucos Water Supply**



Water supply in the Estero Planning Area consists of surface and subsurface flow from streams, the groundwater associated with those streams, and Whale Rock Reservoir. For Cayucos, total estimated water supplies available include about 600 afy from Whale Rock Reservoir. Supplemental water from the Lake Nacimiento project is expected to increase the total supplies by approximately 160 additional acre feet per year. According to the County, the Lake Nacimiento project is currently under construction and supplemental water will likely be secured for Cayucos in the near future. Over the last 10 years, total water production in the community has been fairly constant at 400 acre feet per year. Water conservation programs have kept Cayucos within its past water allocation and additional water conservation measures are contemplated which may help to further reduce water demand in Cayucos. With supplemental water from the Lake Nacimiento project, coupled with density reductions in the RMF zone and aggressive retrofitting, supplies appear to be sufficient to accommodate potential future planned development.

## **2. Cayucos Wastewater Treatment**

Sewage from Cayucos homes and nonresidential uses is collected in a conventional underground community system of laterals and sewer mains for transport to the City of Morro Bay sewage treatment plant. According to the County, current plant capacity is 2.06 million gallons per day (mgd, average dry-weather flow). In 2006, average dry weather flows were about 1.209 mgd from Morro Bay and about .283 mgd from Cayucos, which means that the treatment plant was operating at roughly 70 percent of capacity. According to the County, Cayucos' average dry-weather wastewater flow at buildout would range from about 0.318 mgd (assuming 61.5% occupancy for existing development and 95% occupancy for new development) to about 0.401 mgd (assuming 80% and 95% occupancy for existing and new development, respectively). Morro Bay's projected flows at buildout are approximately 1.42 mgd. Using these calculations, it appears that the treatment plant's 2.06 mgd capacity is sufficient to handle the combined projected flows from Cayucos and Morro Bay at buildout. However, at buildout, Morro Bay could be close to its entitlement to the treatment capacity that is provided for in a Joint Powers Agreement with the Cayucos Sanitary District (Cayucos would be well within its entitlement to the treatment plant capacity). According to the County, an upgrade to the treatment plant is planned to be completed by 2015.

As described above, wastewater capacity exists for new development in the Estero area. The only suggested modification regarding wastewater treatment involves a text clarification necessary to update the plan with current information regarding wastewater treatment (see Modification 6).

## **3. Roads and Circulation**

The County submittal includes numerous references to providing passing lanes on Highway One west of Cayucos. The Circulation chapter of the plan provides non-mandatory recommendations for improvements to Highway One and states, "one westbound and one eastbound passing lane should be installed." Coastal Act Section 30254 requires that Highway One be maintained as scenic two-way road in rural areas. The proposed amendment, however, clearly provides for the expansion of Highway one from a two lane road to a four lane road in certain areas. Most recently, a left hand turn lane was installed at Harmony, west of Cayucos, to alleviate operational safety concerns. In order to allow road improvements to Highway consistent with the Coastal Act, suggested modifications are added



recognizing that Highway One must be kept a two-lane, scenic road. Other modifications strike references to the installation of passing lanes west of Cayucos (Modifications 16, 18, 20, and 23).

The area plan also contemplates the widening of South Bay Boulevard to four lanes to improve the operating level of service. Concerns are raised that widening of South Bay boulevard will impact adjacent sensitive resources and take away from rural scenic character of this traveling corridor. In order to be consistent with the Coastal Act, considerations must be made to avoiding wetland and other sensitive resources, and to not otherwise induce growth inconsistent with the area plan (Modification 19).

Additional parking standards in downtown Cayucos, particularly on B Street, also raise issues regarding parking expansions consistent with resource protection. Wetlands have been identified in close proximity to the B Street right-of-way and any future improvements to this unimproved paper street must avoid sensitive resources (Modifications 5 and 14).

#### **4. Stable Urban Rural Boundary**

The LUP amendment includes a number of references to a potential future elementary school site to be located within or near the urban area of Cayucos. According to the plan, there is a need for a school site of 10 to 20 acres to support increasing enrollment, but finding a suitable site in such an area of Cayucos appears challenging. The Estero Marine Terminal property located between Cayucos and Morro Bay is highlighted in the plan as a potential site for the school. Most problematic is that the new policies contained in the area plan suggest the extension of urban services to the site as potential option.

The LUP includes language regarding the urban rural boundary in Coastal Plan Policies (8-11):

*The USL is the Urban-Rural boundary and reflects the capital improvement program (CIP) and community plans for scheduling extensions to public services and utilities needed for urban development. As improvements are scheduled and constructed, the USL may be expanded by amendment of the Land Use Plan. Areas of communities located between the urban service and urban reserve lines are sometimes designated on the LUE maps for urban uses, at Residential Single-Family densities or greater. In such areas the land use categories are "holding zones" where development of designated uses would be appropriate when urban services and facilities can be provided and the USL is amended to include these areas. The area plans contain standards identifying appropriate interim uses where particular uses could not be compatibly established in advance of full urban services. Expansion of the USL requires amendment of the Land Use Element. Service extension outside the USL must be accompanied by an LCP amendment to expand the USL.*

In order to be consistent with the Coastal Act, modifications are needed to ensure the concentration of urban development and resource protection in the future siting of the elementary school (Modifications 10). To ensure the new standard is internally consistent and can carry out the LCP without conflict, modifications are included that require an LCP amendment to expand the USL so that services may be extended (Modification 7). Suggested modifications are also included to ensure that new land divisions



do not create the need for service extensions beyond the USL/URL (Modification 8). Additionally, modifications are suggested to ensure that the physical extension of areawide systems, such as utility easements and right-of-ways, do not induce growth inconsistent with the Coastal Act and LCP (Modification 42).

### **C. Development and Public Services Conclusion**

There are several modifications necessary for the Commission to be able to find the proposed LUP amendment consistent with the development and public service policies of the Coastal Act. Suggested modifications ensure that Highway One remains a two lane, scenic road, and a stable urban/rural boundary is maintained around Cayucos. Overall, the suggested modifications ensure protection of coastal resources by limiting new development to existing developed areas able to accommodate it. In conclusion, the Commission finds the LUP amendment, if modified as described above, is consistent with the development and public service provisions of the Coastal Act.

## **2. Public Recreation and Visitor-Serving Facilities**

### **A. Coastal Act Policies**

The Coastal Act sets clear priorities for public recreation and visitor-serving facilities. Section 30001.5(c) expresses the Legislature's fundamental goal to maximize "public recreational opportunities in the coastal zone." Section 30210, meanwhile, requires that recreational opportunities be provided for "all the people." Similarly, section 30213 gives preference for developments that provide public recreational opportunities, and states in relevant part:

*Section 30213. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

Sections 30221 and 30222 both identify public recreation as a priority land use in the coastal zone. Section 30221 also establishes a general priority for commercial recreational activities, over any private residential or general industrial and commercial development. In addition, section 30221 requires the protection of oceanfront land suitable for visitor-serving uses, but only if demand for such visitor-serving uses is not being met elsewhere. Sections 30221 and 30222 state:

*Section 30221. Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public commercial recreational activities that could be accommodate on the property is already adequately provided for in the area.*

*Section 30222. The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*



## **B. Issues and Analysis**

### **1. Lower cost visitor serving facilities**

Coastal Act Section 30213 requires that lower cost visitor serving and recreational facilities be protected, encouraged, and, where feasible provided. The amendment includes a new areawide recreation policy (4-12) aimed at promoting the development of such facilities in the Estero area. As currently stated in the submittal, there is no recognition that lower-cost facilities be encouraged and provided. It is possible that new developments could preclude visitors from enjoying the benefits of lower cost visitor-serving facilities. In order for the policy to be consistent with section 30213, a minor modification is included that recognizes the need for such facilities in the policy statement (Modification 11).

### **2. Condo-hotels**

The County proposes to allow condominium-hotels with the Estero Area Plan if such developments are consistent with the existing CZLUO standards for condo-hotels. These standards include length of stay limitations and a required finding that new condo-hotels will not reduce the availability of accommodations for overnight or transient occupancy by the general public, tourists, and visitors compared to a conventional hotel or motel. New condo-hotel development in the Estero Area may be appropriate in certain areas and conditions. However, in order to assure the protection of existing visitor-serving opportunities, additional clarification is needed to assure that existing stock of overnight accommodations available to the general public are not converted to quasi-residential uses. At this time, the allowance for condo-hotels in Estero is deleted (see Modification 51).

### **3. Miscellaneous Recreational land Use Changes**

This section briefly analyzes some miscellaneous recreational land use changes for conformance with the Coastal Act.

#### Land Use Category Changes along Little Cayucos Creek - Map M12

Five properties are proposed to be changed from Recreation (REC) to correspond to the existing, adjacent land use categories of the lots that abut the creek (RMF, CR, O/P, and PF). It is believed that these sites were originally zoned for recreation in anticipation of a possible access trail that could be developed adjacent to the creek and provide a corridor from inland residential areas to the beach. Given past development patterns in this area it appears that this idea is no longer likely. A review of aerial photos and a recent site visit to the area show that the creek has an established riparian corridor. Recent biological studies have confirmed the biological value of this riparian corridor. The proposed change is problematic in a land use planning sense in that the underlying physical characteristics of the property would not match the category prescribed. These lots are mostly vegetated with riparian vegetation, and some of them encompass the active creek channel and side banks. The most appropriate land use category for these properties is open space. It should be noted, however, that existing area plan standards require buffers to be placed over all or a large portion of these properties with new development projects. Therefore, irrespective of the underlying land use designation, the creek and riparian resource is afforded adequate protection under the existing LCP. To better match on the ground conditions at these sites, and



to retain the possibility of a future recreational uses along this riparian corridor, modifications are suggested to map M9 to retain the REC zoning (Modification 58).

1.8 acre site adjacent to Cayucos Creek (CR to REC) – Map M10 #10

Non-recreational land uses such as “residential uses” should be deleted as an allowable uses for this site. Given the resource constraints at this site, particularly bluff setbacks and flood hazards, the allowance of residential uses is not consistent with the Coastal Act. There is ample area available within the urban area of Cayucos to support additional residential uses, and suitable oceanfront land such as this should be protected for recreational use under the Coastal Act. While the change from CR to REC can be found consistent with the Coastal Act, modifications are needed to bring the allowable uses and applicable development standards into conformance. As such, modifications delete the allowance for residential uses, reapply the visitor serving (V) priority overlay on the site, and reinstate site design criteria that provide for public recreational opportunities on the bluff top and shoreline at this location (Modifications 55, 56, and 60).

Sites adjacent to State Park Parking Lot (REC to RSF) – Map M12A

These ocean fronting sites consists of two abutting parcels located adjacent to the State Park parking lot at the end of 23<sup>rd</sup> Street in Cayucos. One of the parcels is already developed with a single-family residence, and can be changed to reflect its current residential use. The second downcoast parcel is currently undeveloped and could possibly provide for recreational type uses. Changing the land use category of the undeveloped ocean fronting parcel is inconsistent with the Coastal Act. Suggested modifications maintain the REC land use category for the undeveloped parcel (Modification 59).

**D. Conclusion**

Several modifications are necessary for the Commission to be able to find the proposed LUP amendment consistent with the lower-cost visitor serving and recreational facilities policies of the Coastal Act. Suggested modifications encourage lower cost visitor serving opportunities with new recreation oriented projects, address condo-hotel development in Cayucos, and ensures that the 1.8 acre ocean front site adjacent to Cayucos Creek retains its visitor serving priority overly. Additional modifications reinstate design criteria for the sight and eliminate the allowance of residential uses in favor of visitor serving recreational facilities. With these modifications, the Commission finds the LUP amendment is consistent with the lower cost visitor serving and recreational facilities provisions of the Coastal Act.

**3. Agriculture**

**A. Coastal Act Policies**

The Coastal Act requires that that the maximum amount of agricultural land be maintained in agricultural production and that conflicts between urban and agricultural land uses be minimized. The long-term viability of soils must also be protected and conversions of agricultural land to other uses are strictly limited.



**Section 30241 Prime agricultural land; maintenance in agricultural production**

*The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas, agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:*

- (a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.*
- (b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.*
- (c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.*
- (d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.*
- (e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.*
- (f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.*

**Section 30241.5 Agricultural land; determination of viability of uses; economic feasibility evaluation**

*(a) If the viability of existing agricultural uses is an issue pursuant to subdivision (b) of Section 30241 as to any local coastal program or amendment to any certified local coastal program submitted for review and approval under this division, the determination of "viability" shall include, but not be limited to, consideration of an economic feasibility evaluation containing at least both of the following elements:*

- (1) An analysis of the gross revenue from the agricultural products grown in the area for the five years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program.*
- (2) 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 years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program.*

*For purposes of this subdivision, "area" means a geographic area of sufficient size to provide an accurate evaluation of the economic feasibility of agricultural uses for those lands included in the local coastal program or in the proposed amendment to a certified local coastal program.*



*(b) The economic feasibility evaluation required by subdivision (a) shall be submitted to the commission, by the local government, as part of its submittal of a local coastal program or an amendment to any local coastal program. If the local government determines that it does not have the staff with the necessary expertise to conduct the economic feasibility evaluation, the evaluation may be conducted under agreement with the local government by a consultant selected jointly by local government and the executive director of the commission.*

**Section 30242 Lands suitable for agricultural use; conversion**

*All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands*

**B. Overview of Agriculture**

Except for the urbanized areas of Cayucos and Los Osos, the Estero planning area is dominated by agricultural land uses. According to the EIR for the update, about 31,415 acres (74%) of lands in the planning area are designated for agriculture. Crops and agricultural practices vary in the coastal valleys, while livestock grazing is the dominant practice in the hills and mountains.

**C. Issues and Analysis**

**1. Agricultural Land Use Changes**

Under the proposed area plan, lands designated for agricultural uses would decrease from 31,729 acres to 31,415 acres, a reduction of about 314 acres. The following table summarizes the proposed changes:

Sub-Area	Change from Agriculture to Non-Agriculture	Changes from Non-Agriculture to Agriculture/Open Space	Net Change in Agriculture Acres
Rural	48 acres to RL  276 acres to OS (Estero Bluffs Property)	20 acres from Public Facilities to AG	(304)
Cayucos	10 acres to RMF	--	(10)
<b>TOTAL</b>	<b>(334)</b>	<b>20</b>	<b>(314)</b>

As shown in the table above, the most substantial loss in agricultural zoned property is a result of roughly 276 acres of land acquired by State Parks (Estero Bluffs Park) for open space/public recreational purposes. More problematic are the approximately 48 acres proposed for reclassification to Rural Lands in two locations in rural Estero (26 acres along Highway 41 near the planning area boundary, and 22 acres at the terminus of Clark Valley Road near the southern planning area boundary of Los Osos). Most



significant is a 10-acre property proposed for redesignation as RMF at the western end of Cayucos. Each of these land use changes is discussed in more detail below, including a discussion of their consistency with the Coastal Act section 30242.

26 acres along Highway 41 - Map M1 and M5

According to the applicant's representative, the purpose of this land use designation change is to set up a future subdivision for estate planning purposes. A detailed agricultural viability report has not been provided by the County. While not prime agricultural soils, the EIR describes this land as moderately suitable for grazing operations. Cumulative impacts are also a concern as this plan would establish a baseline for additional residential uses on a site with some history of agriculture. To address the concern of increased residential densities on agricultural land in this case, and to not prejudice future determinations, a new standard specific to this parcel is needed that prohibits residential development within the coastal zone (see Modification 57).

22 acres at Clark Valley Road – Map M1 and M2

The LUP proposes to change the land use designation of an undeveloped 22-acre site at the terminus of Clark Valley road. Topography is steep and hillsides are heavily vegetated. While the County makes a strong case that agricultural production potential on the site is poor, this alone does not allow for conversion to non-agricultural uses under the Coastal Act. Concerns are raised over the cumulative impacts of conversion of agricultural lands. Changing the land use category to Rural Lands will establish a potential for increased residential development potentially in conflict with adjacent agricultural uses. Agricultural lands can also help maintain a rural open space character of an area. Impacts of non-agricultural development on views and landform alteration may also be exacerbated by a zoning change that effectively doubles the residential density on the parcel. To address this concern in this case, and to not prejudice future determinations, a new standard specific to this parcel is needed that limits development to a single residential unit (see Modification 57).

10 acres at west end of Cayucos – Map M9 and M11

The County proposes to change the zoning on a 10 acre site on the western end of Cayucos from AG to MFR. This site has been in grazed in the past, as part of a larger ranch extending inland, and previously had a agricultural conservation agreement on it. Although the site is within the urban services line, the site is not currently served, and the effective urban development line has been immediately adjacent to the existing mobile home site. When the Commission certified the LCP, the site was left in Agricultural zoning, and the possibility of changing the zoning to a urban was held out to some future LCP amendment. The site is also largely steep slopes, and visually prominent. The amendment includes a series of new development standards applicable to the property, including but not limited to: limitations on height, densities, and location of future development; visual impact analysis requirements; and a requirement for at least 65% of the site to be permanently reserved as undeveloped open space. In this case, only with these development standards applied to the property can the change in zoning be found consistent with the Coastal Act.



## **2. Non-Agricultural Residential Development**

Non agricultural uses on agricultural lands can affect the long term viability of agriculture. Buildout of agricultural lands with non-agricultural uses, such as for purposes of residential uses described previously, can incrementally contribute to the loss of agricultural soils and increase the amount interface between ag and non-ag uses. Modifications are suggested to assure that residential development is necessary to or maintains agricultural land uses to the maximum extent feasible, avoids conflicts with adjacent agricultural operations, and requires the use of affirmative agricultural easements where appropriate (Modifications 9, 38, and 48). Specific to the Residential Suburban (RS) lots adjoining agricultural areas north of Tapidero Avenue in Los Osos, new development must assure protection of existing agricultural areas through means such as the use of buffers, right-to-farm-restrictions, and agricultural easements as necessary (Modification 50).

## **D. Agriculture Conclusion**

As modified, the Estero Area Plan amendment is consistent with the Agriculture policies of the Coastal Act.

## **4. Environmentally Sensitive Habitat Areas**

### **A. Coastal Act Policies**

One of the primary objectives of the Coastal Act is to preserve, protect, and enhance environmentally sensitive habitat areas (ESHA). Coastal Act Section 30240 prohibits any significant disruption of habitat values, and limits development within ESHA to uses that are dependent on the resource. It also requires that development adjacent to ESHA be sited and designed to prevent significant degradation, and be compatible with the continuance of the habitat.

Section 30230 applies to marine habitats, and call for the maintenance, enhancement and restoration where feasible of marine resources, with special emphasis on areas and species of special biological or economic significance. Pursuant to this section, all uses of the marine environment must sustain the biological productivity of coastal waters, and maintain healthy populations of all marine organisms.

Section 30231 provides that the biological productivity of coastal waters, streams, wetlands, estuaries, and lakes must be maintained and, where feasible, restored. This is to be achieved by, among other means: minimizing adverse effects of wastewater discharges and entrainment; controlling runoff; preventing depletion of groundwater supplies and substantial interference with surface water flow; encouraging wastewater reclamation; maintaining natural buffer areas that protect riparian habitats; and minimizing alteration of natural streams.

As described previously in the New Development and Public Services section of this report, Coastal Act Section 30250a directs new residential, commercial, or industrial development to existing developed areas. Where developed areas cannot accommodate new development, it is to be located in other areas where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.



Section 30107.5 of the Coastal Act defines environmentally sensitive areas as follows:

*30107.5: "Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Coastal Act Section 30240 states:

*Section 30240(a). Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

*Section 30240(b). Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Coastal Act Sections 30230 and 30231 provide:

*Section 30230. Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

*Section 30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

## **B. Overview of ESHA**

The Estero area contains a variety of environmentally sensitive habitats that host numerous rare and endangered native plants and animals. Several sensitive habitats and plant and animal species are known to occur in the Estero Planning Area. Sensitive habitats include the riparian woodland and riparian scrub, freshwater marsh and coastal salt marsh, dune scrub and coastal sage scrub, chaparral and oak woodland. Pages 6-2 through 6-11 of the proposed LUP amendment identify and describe in more detail the habitat types and areas designated as Sensitive Resource Areas (SRA's) in the Estero area.



## **C. Issues and Analysis**

### **1. Identifying ESHA**

Identifying the presence of ESHA within or adjacent to a proposed development is a critical step in the development review process. The LCP uses a map-based system to identify areas where new development needs to be reviewed for conformance with provisions protecting ESHA. The problem with this approach is that where the maps are outdated or inaccurate, ESHA on a development site may not be identified. As a result the, the development may be designed and approved in a way that does not protect the habitat consistent with the Coastal Act.

The LUP amendment proposal includes a number of map changes aimed at improving ESHA identification in Estero. Expanded habitat mapping occurs a number of times in the submittal. Largely by expanding the SRA & TH Combining Designations in rural areas. These changes are important additions to the LUP mapping. Beyond improving the early identification of ESHA, the County has made several efforts to improve the protection of sensitive resources in Estero. These efforts include a number of new programs and changes to development standards of the LUP.

Expanding the Combining Designation map boundaries will help improve ESHA identification, but getting current and accurate information regarding the type and extent of habitats that may exist on a site is equally as important. Utilizing the best available information early in the development review stage will help address the shortfalls of the current map based identification system. Suggested modifications build on proposed standards by adding additional language to improve habitat information gathering at the permit application stage and establishes some more definitive criteria to be used for identifying and delineating the extent of ESHA on a project site.

### **2. ESHA Protection**

Beyond improving the early identification of ESHA, the County has made several efforts to improve the protection of sensitive resources in Estero through clustering new development. These efforts include a number of new programs and changes to development standards of the LUP. Minor modifications are suggested to ensure that development is concentrated on the least sensitive portions of the site and that both mapped and unmapped ESHA is identified and protected through clustering new development (Modifications 32 and 33). Also significant is a new resource protection standard dealing with vegetation and fuel modification zones (pg. 7-6). This new standard is modified to clarify that all proposed building sites protect ESHA and other sensitive sites through improved site design, including avoidance of required setbacks, buffers and fuel modification zones (Modification 31 and 34). Landscaping standards included in the submittal that are intended to address urban development within the Los Osos Dune Sands SRA should be deleted because the urban area is not before the Commission. Similarly, prescribing definite square foot limitations on site disturbance within Los Osos Dune Sands ESHA under a takings scenario is not appropriate at this time and should be deleted (see Modification 46 and 47).

### **3. Marine Water Quality**

Discharges from many sources can harm the marine environment. A primary concern is the cumulative



effect of many smaller impacts to the marine environment. Many small impacts can add up to significant impacts over time. Such impacts would include both water quality impacts from ongoing inflows as well as direct impacts from human activities within the marine environment. Examples include polluted runoff and wastewater discharges to name a few.

The proposed LUP amendment contains new standards focused on protecting areawide water quality and the sensitivity of the marine habitat of the Morro Bay Estuary and its watershed. The proposed LUP amendment is inconsistent with the Coastal Act's marine resource protection policies due to potential impacts caused by projects with point-source discharges. The problem with the proposed standards are that they emphasize voluntary measures on private lands rather than regulatory ones. Suggested modifications are required to bring the water quality standards into conformance with the Coastal Act (see Modifications 26, 27, and 28).

#### **4. Other Issues**

##### Conflict Resolution

The County proposes a standard that appears to incorporate a conflict resolution provision similar to Coastal Act section 30001.5 into the Area Plan. However, the ability to balance resource objectives under the Coastal Act is limited to conflicts between the Chapter 3 policies of the Coastal Act and cannot be delegated to local governments through an LCP. Therefore this provision must be deleted (see Modification 30).

#### **D. ESHA Conclusion**

The proposed LUP amendment makes substantial improvements towards the identification and protection of ESHA. However, in order to achieve consistency with the Coastal Act, modifications are required. Known ESHA must be appropriately mapped in the LUP and mandatory site reviews must be required for projects that have the potential to impact ESHA. A provision that requires avoidance of resource impacts to be pursued in new development before mitigation measures are implemented. As an additional means of achieving compliance with the Coastal Act, the suggested modifications require that water quality standards be amended to protect marine water quality and the biological continuance of the resource. Only with these modifications, can the LUP amendment be found consistent with Coastal Act Sections 30230, 30231, and 30240.

### **5. Scenic Resources**

#### **A. Applicable Policies**

Coastal Act Section 30251 provides for the protection of the scenic and visual qualities of coastal areas. Permitted development shall be sited and designed to protect views of and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of the surrounding area, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas shall be subordinate to the character of the setting. In addition to the landform alteration reference in Section 30251, Coastal Act Section 30253 also



directs new development to avoid alteration of the natural landform.

The Coastal Act states:

*Section 30001(b). The Legislature hereby finds and declares that the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation.*

Coastal Act Section 30251 states:

*Section 30251. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

Coastal Act Section 30253 states, in applicable part:

*Section 30253(2). New development shall assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Coastal Act Section 30253(5) protects community character. Section 30253(5) states:

*Section 30253(5). New development shall where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.*

## **B. Overview of Scenic Resources**

The Estero area is a popular destination for residents and visitors alike, in part due to its scenic beauty. Different areas of the planning area contain varied scenery and vegetation reflecting the geography and climate of the region. Livestock dot the grass covered rolling hills around Cayucos, intermixed with orchards in the valleys and open space areas on the coastal terraces. The Morros and the Irish Hills in the southern portion of the planning area establish a scenic backdrop with volcanic hills and peaks visible from major roads, parks, beaches, and the ocean.

New Critical Viewshed and Scenic Corridor overlays are added through the LUP amendment that includes: the Highway 1- Cayucos Critical Viewshed; the Irish Hills Scenic Backdrop, and the Los Osos Valley Road Scenic Corridor. These new designations are not identified as SRA's under the LUP amendment



## **C. Issues and Analysis**

### **1. Protection of Scenic Viewsheds**

As described above, there are many significant scenic viewsheds and landscapes to be protected in and around the Estero Bay. The Coastal Act goal of siting and designing structures to minimize visual impacts can often conflict with an applicant's objective to maximize ocean views. It may also be difficult to site some structures out of the public viewshed, particularly on smaller, sometimes non-conforming parcels that may have little opportunity for screening behind existing natural landforms. Increased rural residential development has raised awareness about impacts to public views, particularly as recreation and public access have increased. Acquisitions of public land, such as the Estero Bluffs Park, have created new opportunities for public recreation and the need to protect views that have not always been available.

#### **Cayucos Viewshed**

The County has proposed new critical viewshed protection for the bluffs and scenic rural hillsides west of Cayucos. Both of these areas would be mapped and protected pursuant to new viewshed standards proposed for the CZLUO. Both of these designations are significant additions to the Estero Area Plan. The County also proposes to make the critical viewshed along the bluffs a sensitive resource area (SRA), but the viewshed inland of Highway One would not be an SRA. Designation as an SRA allows for development within the SRA to be subject to the Commission's appeal jurisdiction. The County has rightly proposed heightened protection for these significant viewsheds. In addition, in its Adopted Periodic Review for SLO County, the Commission has identified the protection of rural agricultural scenic viewsheds as a high priority for updating the LCP. This is particularly true given recent trends toward new non-agricultural residential development in rural agricultural areas, which has placed previously rural scenic areas at higher risk for viewshed degradation. At the same time, it is important to protect the Agricultural land uses and development within these areas. Therefore, rather than designating the entire critical viewshed inland of Highway One as an SRA, it would be more appropriate to limit the potential appealability of new development within this sensitive area to only those developments that are not exempt from the proposed scenic protection standards in the CZLUO, by designating such developments as a conditional use. That is, developments that are not accessory to agriculture or that cannot be sited out of the major public view corridors identified by the County in the ordinance would be potentially appealable to the Commission. This level of protection is appropriate given the significance of the scenic resources proposed for incorporation into the LCP (see Modification 43). Without this heightened protection, the proposed viewshed protection will not protect scenic resources consistent with Coastal Act 30251, which requires that new development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize landform alteration, and to be visually compatible with the character of surrounding areas." Suggested modification 45 recognizes the new overlay for portions of Los Osos Valley Road as a Scenic Corridor.

## **D. Scenic Resources Conclusion**

Scenic resources are not adequately protected under the submitted Plan. As proposed, the scenic and visual qualities west of Cayucos are not protected and new development has the potential to be sited and



designed to impact major public views. With modifications the LUP is consistent with Coastal Act Section 30251 and 30253 protecting scenic coastal resources.

## 6. Coastal Hazards

### A. Coastal Act Policies

The Coastal Act requires that new development be sited and designed to minimize risk to life and property specifically in areas of high geologic, flood and fire hazard. Under the Coastal Act, development is required to be sited and designed to assure stability and structural integrity and neither create nor contribute significantly to erosion or require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs (Section 30253). Section 30235 of the Coastal Act allows the construction of shoreline protective devices where existing development is threatened from erosion and where designed to eliminate or mitigate impacts on shoreline sand supply. Further the Coastal Act provides that development damaged or destroyed by natural disasters can be rebuilt in the same area, exempt from coastal permits, provided that they are not expanded by more than 10% and conform to existing zoning requirements. Certain emergency actions are also exempt from permit review.

Coastal Act Section 30253 addresses the need to ensure long-term stability and structural integrity, minimize risk, and avoid landform-altering devices. Section 30253 provides, in applicable part:

*Section 30253. New development shall:*

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Coastal Act Section 30235 addresses certain hazard response development (such as shoreline protective devices). Section 30235 states:

*Section 30235. Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

As for flooding hazards, the Coastal Act recognizes that coastal rivers and streams may be subject to various engineering projects for flood control. Section 30236 allows “channelizations, dams, or other substantial alterations of rivers and streams,” but only if such development uses the best mitigation measures feasible. Such projects are also limited to necessary water supply projects; flood control where



there is no other feasible method to protect existing structures or provide for public safety; or developments where the primary function of the development is fish and wildlife habitat improvement.

Coastal Act Section 30236 states:

*Section 30236. Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*

## **B Issues and Analysis**

### **1. Bluff Erosion and Setback Distances and Shoreline Protective Devices**

In Cayucos, a large percentage of blufftop residential parcels have some form of bluff protection, typically a seawall or rock revetment. In addition, rock revetments are currently in place to protect public parks and recreation areas along the beach. In contrast, the Estero bluffs and parts of west Cayucos are free of shoreline protection.

Establishing adequate setbacks is the principal mechanism in the LCP to attempt to avoid or minimize the need for future shoreline armoring. As the Commission found in the 2001 Periodic Review, current setback distances, which are based on a 75 year economic life of a structure and a 25 foot minimum, do not take into account the episodic nature of erosion and fall short of Coastal Act requirements to site development so as not to need a shoreline protective device for the life of the structure.

#### Conformance with Coastal Act Policies

The proposed hazard standards in the LUP amendment are not consistent with the Coastal Act. As proposed, setback distances relying primarily upon historic erosion information have not resulted in the siting of new development to avoid future shoreline armoring. Ongoing gradual erosion as well as greater erosion during high storm events would argue for setbacks greater than the 25 feet currently established in the LCP. In order to assure stability and structural integrity consistent with the Coastal Act Section 30253, the standards in the Estero Area Plan need to be modified. Consistent with previous findings made by the Commission, suggested modifications require that setbacks be based on a projected 100-year economic life of a structure rather than 75 years. The modification adds the requirement for a quantitative slope stability analysis using a safety factor of 1.5 either as a multiplier or as a set distance, whichever is greater. In no case is the setback to be less than 25 feet (Modification 24, 49 and 52).

The primary issue for Cayucos is the redevelopment of blufftop properties. As described, there are not vacant parcels on the blufftop here. The development trend in recent years has been to significantly expand or remodel older homes, even though some of these residences are currently non-conforming in terms of their blufftop setback. Many of the shoreline protection devices located on the bluffs were not



developed with the benefit of a coastal development permit and encroach onto public land.

To address the potential for seawall development with substantial redevelopment of existing structures on blufftop lots, suggested modifications require that new applications for projects located on the bluffs or shoreline meet detailed application requirements. Further modifications require that substantial remodels of 50 percent or greater in size must be brought entirely into conformance with the minimum bluff setback requirements. A requisite deed restriction against the property will ensure that no shoreline protection structure shall be proposed or constructed to protect the development approved and which expressly waives any future right to construct a such devices that may exist pursuant to Section 30235. The modifications also require a waiver of liability (Modifications 39).

### **C. Hazards Conclusion**

With the recommended modifications to address bluff setbacks, shoreline erosion, and shoreline the Commission finds that the LUP amendment is consistent with Coastal Act Sections 30253 and 30235.

## **7. Public Access and Recreation**

The Coastal Act requires that maximum public access opportunities be provided, consistent with public safety and the need to protect private property owners' rights and natural resource areas from overuse. The Coastal Act further requires that development not interfere with the public's right of access to the sea. The provision of public access, however, is to take into account whether or not adequate public access exists nearby, or if agriculture would be adversely affected. With regard to LCP requirements, the Coastal Act provides that each LCP shall contain a specific public access component.

### **A. Coastal Act Policies**

Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

*Section 30210. In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

*Section 30211. Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

*Section 30212(a). Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except 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. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

**Section 30212.5.** *Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*

**Section 30213.** *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...*

**Section 30214(a).** *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*

*(1) Topographic and geologic site characteristics.*

*(2) The capacity of the site to sustain use and at what level of intensity.*

*(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*

*(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*

**Section 30220.** *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

**Section 30221.** *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

**Section 30222.5.** *Ocean front land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority, except over other coastal dependent developments or uses.*



*Section 30223. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

## **B. Issues and Analysis**

### **Planning for Maximum Public Access**

The LUP amendment provides an entirely new Coastal Access Chapter (Chapter 8) specific to Estero. Chapter 8 includes a variety of public access goals, an overview of existing Coastal Act and LCP policies, programs, designations, and a background discussion on a variety of access issues. Figures are also included that show significant coastal accessways.

### Conformance with Coastal Act Policies

Coastal Act Sections 30210-30214 make clear that public agencies implementing the Coastal Act must make every possible effort to plan for and provide maximum public access to the shoreline, while balancing other public, private, and ecological concerns. Shoreline access in the Cayucos area is generally good. However, to maximize public access opportunities consistent with the Coastal Act, a few modifications are required. These include programs for bicycle and pedestrian facilities (Modification 17) and maximizing the public's right of access to the shoreline (Modification 37). Modifications are also made to require public road abandonments that impact public access to the shoreline shall require a coastal development permit (Modification 22). With these modifications, maximum access planning in the Estero Area will be accomplished consistent with the Coastal Act.

## **C. Public Access and Recreation Conclusion**

Overall, the LUP amendment describes substantial public access and recreation opportunities and is generally improved. Nevertheless, there a number of minor LUP modifications that are necessary for the Commission to be able to find the amendment consistent with the access and recreation policies cited above. If modified as suggested, then the LUP can be found consistent with the public access and recreation provisions of the Coastal Act.

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

The Coastal Commission's review process for Local Coastal Programs (and amendments thereto) 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 LCP amendments, although the Commission can and does use any environmental information that the local government has developed. CEQA requires that alternatives to the proposed action be reviewed and considered for their potential impact on the environment and that the least damaging feasible alternative be chosen as the alternative to undertake. In this case, the County approved an EIR for the new land uses and developments allowed by the LCP amendment. Staff has used this information in the analysis of the amendment submittal, and has identified additional measures that need to be incorporated into the amendment in order to avoid adverse environmental impacts. The measures



are embodied in the suggested modifications to the County's amendment submittal. With these changes, approval of the amendment complies with the California Environmental Quality Act because as modified, the amendment will not have significant environmental effects for which feasible mitigation measures have not been employed.





## **EXHIBIT B**

Adopted Coastal Commission Staff Report  
LCP Major Amendment No. 2-04, Part 3  
Coastal Zone Land Use Ordinance Amendments  
July 10, 2008

**CALIFORNIA COASTAL COMMISSION**

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## ADOPTED



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

**To:** Commissioners and Interested Persons

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

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

### SYNOPSIS

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

### SUMMARY OF STAFF RECOMMENDATION

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

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



**California Coastal Commission**

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consultation with appropriate Native American representatives.

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

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

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## I. Staff Recommendation – Motions & Resolutions

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

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

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

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

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



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

## **B. Approval of Implementation Plan Amendment if Modified**

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

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

**Resolution to Certify with Suggested Modifications.** The Commission hereby certifies the Implementation Plan Amendment SLO-MAJ-1-06 (Part 3) for the County of San Luis Obispo if modified as suggested and adopts the findings set forth below on the grounds that the Implementation Plan amendment with suggested modifications will conform with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Implementation Plan amendment may have on the environment.

## **II. Suggested Modifications**

The Commission suggests the following modifications to the proposed IP amendment, which are necessary to make the requisite LUP consistency findings. If San Luis Obispo County accepts and agrees to each of the suggested modifications within six months of Commission action (i.e., by January 10, 2009), by formal action of the Board of Supervisors, the IP amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished. Where applicable, text in ~~cross-out~~ format denotes text to be deleted and text in underline format denotes text to be added.

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

23.07.170 – Environmentally Sensitive Habitats: The provisions of this section apply to development proposed within or adjacent to (within 100 feet of the boundary of) an



Environmentally Sensitive Habitat as defined by Chapter 23.11 of this title, and as mapped by the Land Use Element combining designation maps.

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

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

...

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



and located in manner which avoids any significant disruption or degradation of habitat values. This standard requires that any project which has the potential to cause significant adverse impacts to an ESHA be redesigned or relocated so as to avoid the impact, or reduce the impact to a less than significant level where complete avoidance is not possible. (~~Mod-67~~)

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

- i. Resource dependent uses. New development within the habitat shall be limited to those uses that are dependent upon the resource.
- ~~i. Mitigation.~~ Restoration or management measure required to protect the resource. ~~Where feasible, damaged habitats shall be restored as a condition of development approval.~~
- ii. Coastal accessways. Public access easements and interpretive facilities such as nature trails which will improve public understanding of and support for protection of the resource.
- iii. Incidental pPublic services and utilities in Wetlands. Essential incidental public services and utilities pursuant to ESHA Policy 13 and CZLUO Section 23.07.172(e). ~~such as Highway One, which cannot be feasibly be relocated elsewhere and are designed to avoid any significant disruption of the ESHA.~~
- iv. ~~Resource dependent uses~~ Habitat Creation and Enhancement. Where the project results in an unavoidable loss (i.e., temporary or permanent conversion) of habitat area, replacement habitat and/or habitat enhancements shall be provided and maintained by the project applicant. Plans for the creation of new habitat, or the enhancement of existing habitat, shall consider the recommendations of the California Coastal Commission, the ~~in accordance with California Department of Fish and Game and/or U.S. Fish and Wildlife Service recommendations.~~ Generally, replacement habitat must be provided at recognized ratios to successfully reestablish the habitat at its previous size, or as is deemed appropriate in the particular biologic assessment(s) for the impacted site. Replacement and/or enhanced habitat, whenever feasible, shall be of the same type as is lost ("same-kind") and within the same biome ("same-system"), and shall be permanently protected by a deed restriction or conservation easement.
- ~~i v.~~ Mitigation Restoration of damaged habitats. Restoration or management measure required to protect the resource. Where feasible, Projects located within or adjacent to environmentally sensitive habitat areas that have been damaged habitats shall be conditioned to require the restoration, monitoring, and long term protection of such habitat areas through a restoration plan and accompanying deed restriction or conservation easement ~~be restored as a condition of development~~



approval. Where previously disturbed but restorable habitat for rare and sensitive plant and animal species exist on a site that is surrounded by other environmentally sensitive habitat areas, these areas shall be delineated and considered for restoration as recommended by a restoration plan.

(2) ~~Standards for nonconforming Development in ESHA's to avoid a takings. Where the County is obligated to allow~~ If development in an ESHA must be allowed to avoid on the basis that an unconstitutional taking would otherwise result, then all of the following standards shall apply with respect to such development:

- i. Avoidance of takings. The amount and type of development allowed shall be the least necessary to avoid a takings, ~~that would allow for a reasonable economic use~~
- ii. Impacts avoided/minimized. All development in and impacts to ESHA shall be avoided to the maximum extent feasible. Any unavoidable impacts shall be limited the maximum extent feasible.
- iii. Mitigation required. All ~~significant~~ adverse impacts to the ESHA shall be fully mitigated.

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

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

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

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

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



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



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

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

(6) The use of invasive plant species is prohibited.

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

(1) Diking, dredging, or filling of wetlands: Diking, dredging, or filling activities in wetland areas under county jurisdiction shall be allowed only to the extent that they are consistent with Environmentally Sensitive Habitats Policy ~~11-13~~ of the San Luis Obispo County Coastal Plan Policies, and shall not be conducted without the property owner first securing approval of all permits required by this title. Mineral extraction is not an allowed use in a wetland.

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

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

.....

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

.....



**23.05.026 - Grading Permit Exemptions**

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

**23.05.034 - Grading Standards:**

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

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

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

- a. Applicability of standards. The following standards apply to ~~public and private~~ new development that consists of ~~the following: proposed land divisions and residential and residential accessory structures (including water tanks), agricultural and agricultural accessory structures, commercial structures, pipelines and transmission lines, public utility facilities, communications facilities, and access roads that are~~ required by the Coastal Zone Land Use Ordinance to have a land use permit, except that the following are exempt from some or all of these standards ~~(a)-(d)~~:

(1) Agricultural accessory structures that are 600 square feet or less in area, or other minor agriculturally-related development (e.g. fencing, wells).

~~(1)~~ ~~(2)~~ Project not visible. An exemption from the standards in the following subsections c(1), (2), (4), and (5) may be granted if documentation is provided demonstrating that the ~~proposed structures and access roads~~ development will not be visible from the ocean, the shoreline, public beaches, the Morro Bay estuary, and any of the roads specified in the applicable area plan planning area standards for Critical Viewsheds, Scenic Corridors, or SRA's that are intended to protect visual resources. Such documentation shall be prepared by a qualified professional acceptable to the Planning Director and at a minimum shall provide scaled topographic and building elevations with preliminary grading, drainage, and building plans. An exemption from the standard in subsection c(6) may be granted if the preceding documentation is provided, and if it is determined by the Planning Director that open space preservation within the Critical Viewshed, or SRA is not otherwise needed to protect the scenic and visual resource, sensitive habitat or watershed, as identified in the area plans.

- b. Permit requirement. Minor Use Permit approval, unless Development Plan approval is otherwise required by this title or planning area standards of the area plans. The land use permit or land



division application shall include the following:

- (1) A landscaping plan, grading and drainage plan, lighting plan, fencing plan, and visual analysis, including the use of story-poles as required, that is prepared by a licensed architect, a licensed landscape architect or other qualified ~~person~~ professional acceptable to the Director of Planning and Building. The landscaping plans and visual analysis shall be used to determine compliance with the following standards.
- c. Standards for Critical Viewsheds, and SRAs for protection of visual resources. The following standards apply within areas identified as Critical Viewsheds, or SRAs in the area plans for protection of visual resources.
- (1) Location of development. Locate development, including but not limited to primary and secondary structures, accessory structures, fences, utilities, water tanks, and access roads, in the least visible portion of the site ~~as viewed from any of the applicable roads or highways described in the applicable planning area standards in the area plans,~~ consistent with protection of other resources. Emphasis shall be given to locations not visible from major public view corridors. Visible or partially visible development locations shall only be considered if no feasible non-visible development locations are identified, or if such locations would be more environmentally damaging. ~~Visible or partially visible development locations may be approved where visual effects are reduced to an insignificant level, as determined by the review authority.~~ New development shall be designed (e.g., height, bulk, style, materials, color) to be subordinate to, and blend with, the character of the area. Use naturally occurring topographic features and slope created "pockets" first and native vegetation and berming second, to screen development from public view and minimize visual intrusion.
  - (2) Building Structure visibility. Minimize building structural height and mass by using low-profile design where applicable feasible, including ~~partially~~ sinking structures below grade. Minimize the visibility of buildings, including water tanks, structures by using ~~colors~~ design techniques to harmonize with the surrounding environment.
  - (3) Ridgetop development. Locate structures so that they are not silhouetted against the skyline or ridgeline as viewed from ~~the ocean,~~ the shoreline, public beaches, the Morro Bay estuary, applicable roads or highways described in the applicable planning area standards in the area plans, unless compliance with this standard is infeasible or results in more environmental damage than an alternative.
  - (4) Landscaping for hillside and ridgetop development. Provide ~~at least 80 percent~~ screening of structures development at plant maturity using native vegetation of local stock, non-



invasive, or drought tolerant vegetation (~~no invasive species~~) ~~as seen from applicable roads or highways described in the applicable planning area standards in the area plans,~~ but without obstructing major public views (e.g., screening should occur at the building site rather than along a public road). Maximize The use of evergreen trees and large-growing shrubs that have shapes vegetation appropriate to the site shall be similar to existing native vegetation. Alternatives to such screening may be approved if visual effects impacts are ~~otherwise reduced to an insignificant level~~ avoided through use of natural topographic features ~~or~~ and the design of structures. Provisions shall be made to maintain visual screening for the life of the development. ~~the survival of required landscape screening for a period of at least five years.~~

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



more environmentally damaging, and New development allowed in visible areas shall provide a landscaping screen consistent with the requirements of c(4) above. of moderately fast growing, drought tolerant plant material to provide 80 percent view coverage at plant maturity at the building site (not along the public road). A landscaping plan in accordance with these requirements and the requirements of Chapter 23.04 shall be provided at the time of building permit application submittal.

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

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

#### 5. Section 23.05.050 – Drainage Standards:

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

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

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

e. Water Runoff.

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



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

- f. Parking lots and paved areas. Parking lots and other paved areas where automobiles are parked that are 1.0 acre or greater in size shall be equipped with sediment and grease traps facilities and/or measures to address post construction runoff and ongoing nonpoint source pollution (e.g., sediment and grease traps, oil/water separators, biofilters), and shall be subject to a periodic maintenance program which are funded and carried out by the property owner. (Mod 69)
- h. Impervious surfaces. New development shall be designed to minimize the amount of impervious surfaces in order to maximize the amount of on-site runoff infiltration.

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

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

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

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

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

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



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

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

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

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

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

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

....



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

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

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

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

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

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

## III. Findings and Declarations

### 1. Environmentally Sensitive Habitat Areas

#### A. Policy

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



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

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

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

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

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

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

## **B. Conformity of the IP Amendment**

### **1. ESHA Definition**

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



in San Luis Obispo County since certification of the LCP, including the Morro shoulderband snail in Los Osos and the California red-legged frog.

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

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

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

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

In short, the proposed ESHA definition is broad, but also provides some guidance as to the categories of biological resources that may be considered ESHA. The Commission finds that the proposed addition of "unmapped ESHA" to the LCP ESHA definition would strengthen the protection of ESHA in San Luis Obispo County.<sup>1</sup> However, minor modifications to the CZLUO are needed to assure internal consistency

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<sup>1</sup> The LCP currently designates mapped ESHAs as Sensitive Coastal Resource Areas (SCRAs) for purposes of applying heightened procedural protections, including the extension of the Commission's appeal jurisdiction over development proposed within an ESHA. However, the County proposes to amend CZLUO section 23.01.043c(3)(i) to clearly state that development in "unmapped ESHA"



with the County's proposal to protect all ESHAs, whether mapped or unmapped (see Modifications 1, 2, and 3). With such minor changes, the Commission finds that the proposed amendment to the LCP ESHA definition is in conformity with and adequate to carry out the LUP.

## 2. Protection of ESHA

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

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

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

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

Although the proposed approach must be modified, the Commission notes that to the extent a biological report or other evaluative document already exists that would allow for adequate assessment of on-the-ground resources in a specific case, this may meet the intent of the existing biological report requirement

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would not trigger the Commission's appeal jurisdiction (see Exhibit 1). Although the LUP does not provide any basis for distinguishing mapped and unmapped ESHA for such purposes, the decision to not include unmapped ESHA in the appeal jurisdiction is not inconsistent with the LUP.



to protect ESHA. In addition, in other cases, such as the on-going Habitat Conservation planning to protect the Morro shoulderband snail, may be appropriately addressed through an LCP amendment that addresses the specific concerns of existing legal entitlements with an ESHA where new development must be contemplated. As discussed below, the County's intent is also be partially addressed through the addition of a clear statement in the IP acknowledging the potential need to allow non-resource dependent in an ESHA in order to avoid a takings of private property.

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

### **3. Mineral Extraction in Wetlands**

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

## **2. Scenic Resources**

### **A. Policy**

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

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

*Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved protected, and in visually degraded areas restored where feasible. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*



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

*Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Wherever possible, site selection for new development is to emphasize locations not visible from major public view corridors. In particular, new development should utilize slope created "pockets" to shield development and minimize visual intrusion. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

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

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

***Policy 4: New Development in Rural Areas***

*New development shall be sited to minimize its visibility from public view corridors. Structures shall be designed (height, bulk, style) to be subordinate to, and blend with, the rural character of the area. New development which cannot be sited outside of public view corridors is to be screened utilizing native vegetation; however, such vegetation, when mature, must also be selected and sited in such a manner as to not obstruct major public views. New land divisions whose only building site would be on a highly visible slope or ridgetop shall be prohibited. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.04.021 OF THE CZLUO.]*

***Policy 5: Landform Alterations***

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

***Policy 6: Special Communities and Small-Scale Neighborhoods***

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



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

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

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

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

***Policy 9: Signs***

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

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

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

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

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

**B. Conformity of the IP Amendment**

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



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

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

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

### **3. Water Quality and Drainage**

#### **A. Policy**

*Policy 7: Siting of New Development. Grading for the purpose of creating a site for a structure*



*or other development shall be limited to slopes of less than 20 percent except:*

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

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

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

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

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

***Policy 9: Techniques for Minimizing Sedimentation.*** *Appropriate control measures (such as*



*sediment basins, terracing, hydro-mulching, etc.) shall be used to minimize erosion and sedimentation. Measures should be utilized from the start of site preparation. Selection of appropriate control measures shall be based on evaluation of the development's design, site conditions, predevelopment erosion rates, environmental sensitivity of the adjacent areas and also consider costs of on-going maintenance. A site specific erosion control plan shall be prepared by a qualified soil scientist or other qualified professional. To the extent feasible, non-structural erosion techniques, including the use of native species of plants, shall be preferred to control run-off and reduce increased sedimentation. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]*

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

## **B. Conformity of the IP amendment**

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

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

### **Drainage Standards**

The County is proposing to add a new ordinance section to the IP addressing polluted runoff from

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



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

One concern is that the proposed ordinance limits measures to sediment and grease traps. Prescribing only this technique limits the number of measures that can be implemented in new parking lot development and does not allow for new information and knowledge about effective best management practices for protecting water quality to be applied in the future. In some cases, for example, the use of vegetated filter strips can be most effective in managing pollutants from parking lots. In other cases, engineered oil/water separators are needed.

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

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

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

## **4. Cultural Resources**

### **A. Policy**

LUP cultural resource policies include the following:

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

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

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

*Development shall require a preliminary site survey by a qualified archaeologist knowledgeable*



*in Chumash culture prior to a determination of the potential environmental impacts of the project. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.106 OF THE CZLUO.]*

## **B. Conformity of the IP Amendment**

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

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

## **5. Miscellaneous Modifications.**

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

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

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

