

5. AGRICULTURAL RESOURCES

Agriculture is a vital resource in San Luis Obispo County. Coastal Act Sections 30240 through 30242 recognize the importance of agricultural lands and require that the maximum amount of land be maintained in agricultural production. Land use planning can play a significant role in protecting agricultural lands, or in encouraging the conversion of lands to other, non-agricultural uses. The *Preliminary Report* focused on four aspects of land use planning: direct conversion of agricultural lands; effects from subdivisions, lot-line adjustments, and development on non-conforming lots; effects of non-agricultural uses on agricultural lands; and addressing impacts from agricultural development. The preliminary findings discussed LCP implementation and the protections of the long-term viability of agriculture.

Since publication of the *Preliminary Report*, Commission staff has met with County staff and the agricultural community to discuss the preliminary recommendations for agriculture. These comments and responses are discussed below.

A. Direct Conversion of Agricultural Lands

1. Summary of Preliminary Periodic Review Findings (Exhibit A, pg. 192-200)

The LCP policies generally require that the maximum amount of agricultural land be maintained. LCP policies establish limited criteria for when land can be converted to other uses, including, in part, when there are severe conflicts with urban uses which limit agricultural use and when agricultural use of the land is no longer feasible. The conversion must not adversely affect surrounding agricultural uses.

Since certification of the LCP, the County has proposed redesignation of approximately 1,430 acres of land from other uses to agricultural zoning; much of this land has not yet been rezoned. In addition, since Commission certification of the LUP in 1983, the County submitted three amendments, proposing the redesignation of approximately 305 acres of agricultural lands to other uses. The Commission concurred with the redesignation of approximately 50 acres. As discussed in the *Preliminary Report*, Commission review of the County's proposals generally found an inadequate assessment of whether continued agricultural uses were feasible.

As a tool to assess the feasibility of agricultural use of land, Recommendation 5-1 proposed requiring viability reports for proposed rezoning of agricultural lands, and for non-agricultural uses on agriculturally-zoned lands. Recommendation 5-3 also provided an example of the information to be included in a viability report, based on more Commission experience with the issue.

2. Comments Raised

San Luis Obispo County Response (Exhibit C):

The County comments focus on when a viability report should be required and the scope of information necessary in such a report. Although the County generally supports requiring an agricultural viability report for proposed rezoning of agricultural lands, the County states that the criteria proposed is too extensive and suggests that not all the information proposed is relevant for all projects, and is too burdensome for many types of projects. The County suggests that Recommendation 5-3 be revised to reflect different requirements for projects involving the redesignation of agricultural lands to other zoning and for site specific projects (supplemental uses). In addition, the County opposes requiring a viability report for some supplemental uses. (Supplemental uses are discussed later in this section.). Finally, the County proposes some modifications to the definition of an agriculture viability report (PR 5-2).

Public Comments (Exhibit D):

Public comments echo the County concern that requirements for agricultural viability reports as proposed are too burdensome for agriculturists.

3. Analysis

The *Preliminary Report* identifies a need to evaluate the long-term viability of agricultural lands in several contexts: in proposed amendments to the LCP to rezone agriculturally designated lands, in assuring long-term viability for agriculture through lotline adjustments and subdivisions, and in allowing non-agricultural uses on agricultural lands only when those supplemental uses are necessary to help support agriculture. The Commission agrees that a different level of information and detail is appropriate to evaluate the long-term viability of agriculture for different situations. The Commission finds that the criteria detailed in Recommendation 5-2 is appropriate for LCP amendments proposing to rezone land to non-agricultural designations. For these proposals, the Commission believes that the criteria outlined in Recommendation 5-3 is appropriate, although the Commission supports adding language “where relevant” for each issue topic.

Ordinance 23.04.024 of the LCP currently requires an agricultural viability report for land divisions on agriculturally zoned lands; the existing criteria for these viability reports differ significantly from that proposed under Recommendation 5-3. Through its action on Recommendations 5-1 through 5-3, the Commission does not change any of the current requirements under Ordinance 23.04.024 for land divisions. Additional recommendations to protect the long-term viability of agricultural lands through lot line adjustments are discussed in Section B of this Chapter. Proposed criteria to evaluate non-agricultural, supplemental uses on agricultural lands are discussed in Section C of this Chapter.

Therefore, the Commission modifies Recommendation 5-1 to clarify that viability reports, as detailed through Recommendations 5-2 and 5-3, should be required for proposals to rezone

agriculturally designated lands, but are not necessarily needed for analyzing proposed non-agricultural uses on agricultural lands. The Commission modifies Recommendations 5-1 and 5-3, as follows:

Recommendation 5-1: Amend Agriculture Policy 1 by adding the following language: For any proposed rezoning of agricultural lands to another designation, ~~or for any other proposed development that would commit agricultural lands to other non-agricultural use~~, an agricultural viability report shall be prepared, ~~as specified under Ordinance 23.04.024(a)~~.

Recommendation 5-3: Modify the CZLUO to expand and specify the contents of the Agriculture Viability Reports for proposed rezoning of agriculturally designated lands.

Expand and specify the contents of the Agriculture Viability Report. For example, CZLUO 23.04.024(a)(1), Existing land uses and (3) Site characteristics...including topography, soils, climate, water availability and adjacent land uses, could be expanded to include more specific information, where appropriate, such as:

1. Soils
 - b. The identification of all soil types that are found in the area (As stated in the most recent Soil Survey published by the United States Department of Agriculture).
 - e. Storie index and Capability Classification ratings of all identified soil types (As stated in the most recent Soil Survey published by the United States Department of Agriculture).
 - f. The expected animal unit month (AUM) yield for each identified soil type (As stated in the most recent Soil Survey published by the United States Department of Agriculture).
 - g. The expected net dollar return per acre for crops that are currently cultivated on each soil type.
 - h. An identification of crop types that could be potentially grown on each identified soil type, and also the expected net dollar return for such crops.
 - i. An identification of soil types used exclusively for grazing.
 - j. An identification of agricultural uses in the area that are not dependent upon the soil (e.g., greenhouses), and where identified, a description of their location and nature of operation(s).
2. Geographic
 - a. The description of factors such as slope, temperature, adequate sunlight, length of growing season, precipitation, soil quality (depth, drainage, capability classification rating, storie index rating, texture, development, unique qualities) affecting agricultural operations in the area.
 - b. The description of management techniques that are currently used, or could be used, in order to improve soil quality for agricultural operations.
 - c. An identification of agricultural operations that use more than one parcel for production in the area, and where identified, a description of their current practice and average acreage for each individual operation.
 - e. A description of the relationship or proximity of agricultural and urban land uses.
3. Water
 - a. The availability of water in the area (condition of basin e.g.).
 - b. An identification of the water source (riparian, appropriative, etc.).
 - c. An identification of any water quality problems affecting agricultural operations in the area.
 - d. The current cost of water.
4. Access
 - a. Description of whether adequate access to agricultural support facilities (cold storage, equipment repair/sales, markets) in the area currently exist.
 - b. Where access is problematic, an identification of the nature of the conflict; and how the conflict impacts agricultural operation(s).

CZLUO 23.04.024(a)(2) Present annual income derived from agricultural operations....and (4) the potential of the site to support future food-producing agricultural uses...could be expanded to include consideration of such factors as, where appropriate:

1. *History*
 - a. *An identification of the types of agricultural operations that have taken place in the area in the past and where have they occurred.*
 - b. *An identification of how long agricultural operations have been conducted in the area.*
 - c. *An identification of those parcels that have been used for agricultural operations in the area consistently in past, and where applicable an identification of such time periods.*
 - g. *An identification of significant past management practices that have been used in the area in order to increase agricultural yields.*
2. *Risk Factors*
 - a. *A discussion of the effect of drought years on agricultural operations in the area and, if so, what the cost of water is during these periods.*
 - b. *An analysis of whether the costs of production and labor are predictable for agricultural operations in the area.*
 - c. *A discussion of whether commodity prices are consistent or inconsistent from year to year for crops grown in the area.*
 - d. *A discussion of whether saltwater intrusion into well water supply is an issue, and if so, how it affects agricultural operations in the area.*
 - e. *An identification of whether there is a problem with crop quality in the area.*
 - f. *An identification of whether the agricultural market is volatile for crops grown in the area.*
3. *Economics*
 - a. *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 the application for coastal development; and,*
 - b. *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 the application for coastal development.*
 - c. *Cost shall be determined by, and consist of, the following variables:*
 1. *Fixed Costs for any given crop are assumed to be constant, regardless of the annual yield. Fixed costs shall include only current costs and shall not speculate on potential future circumstances.*
 - a. *Land cost (i.e. rent, lease, property tax, etc.) shall NOT be included into the cost analysis (See Coastal Act Section 30241.5)*
 - b. *Capital costs including: 1) land improvements (i.e., fences, roads, clearing, leveling, wells and pumps, etc.); 2) equipment (i.e., trucks, tractors, buildings, special equipment (e.g. irrigation), etc.); 3) herd expenses (i.e., payment for bulls and heifers); and 4) miscellaneous expenses. Cost determination must also include depreciation and interest expenses.*
 - c. *Cultivating cost including operating costs for: 1) labor (i.e., the amount of hours necessary for planting and the rate of pay per hour including benefits); 2) materials (i.e., water, seed, feed supplements, salt, fertilizer, and pesticides); 3) machinery; 4) fuel and repair; and 5) outside consultants (i.e., veterinary and management).*
 2. *Variable Costs are the harvest costs and are based on the amount of yield only. Depending on the crop yield, variable costs fluctuate for any given year. In most cases, this is expressed as the cost per unit of yield (tons, 100 weight, or pounds).*
 - d. *Gross Revenue shall be determined by and consists of the following variables:*
 1. *Gross returns for each crop type.*
 2. *Past return figures should factor in the appropriate Producer Price Index (PPI) figure in order to account to inflation over time.*
 - e. *Evaluative methods to incorporate the above cost and revenue figures shall include, where*

relevant:

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

The report shall include maps and photos (aerial and site photos) of the area being evaluated that, at a minimum, identify the following on all such figures: parcel lines, parcel numbers, farm boundaries, owners and/or lessees of each parcel and/or farm, wells and/or any other water supply lines, storic ratings, capability classifications, slopes, and roads.

For purposes of this determination, "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 County's certified local coastal program.

Recommendation 5-2 suggests a definition of an agriculture viability report. The County proposes to modify the definition by deleting the proposed reference to grazing units, by limiting the analysis to the individual site, rather than including the "surrounding" area, and by deleting specific phrases such as "In terms of scope" and "establish a baseline". In addition, the County proposes to add economic factors to the proposed definition as one variable in assessing viability. Finally, the County disagrees with assessing the productivity of a site for a specific timeframe, and proposes to analyze viability related to weather and the production/growing patterns of a crop.

The Commission finds that specifically including grazing units in the definition is important, as much of the agricultural land in the County's coastal zone is grazing land. While the Commission recognizes that agricultural viability depends on the specifics of a given site, knowing the agricultural production and history of an adjacent parcel can provide important insight into the viability of the subject parcel. The Coastal Act requires that a viability analysis include an analysis of revenue from agricultural products "grown *in the area* for the *five years* immediately preceding the date of the filing of a proposed ... amendment to any local coastal program and an analysis of operations expenses associated with agricultural production "*in the area* for the *five years* immediately preceding the date of the filing of a proposed ... amendment ..." (Section 30241.5, emphasis added). Section 30241.5 of the Coastal Act defines "area", for the purpose of viability reports, to be "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". Therefore, the Commission retains the reference to "in the area" in Recommendation 5-3.

However, the Commission agrees that this level of information is not necessary for supplemental uses on a particular parcel; while supplemental uses raise concerns about the protection of agricultural lands, they do not necessarily remove an entire parcel from agricultural production. In addition, the LCP has existing standards and criteria to minimize impacts on agricultural resources from supplemental uses. Recommendations to strengthen these standards are discussed through Recommendations 5-8 and 5-9. As modified, Recommendation 5-1 through 5-3 pertain only to proposed rezoning of land.

Further, to adequately assess agricultural viability, the Commission finds that an assessment should not be limited to growing or production patterns of a specific crop, as proposed by the County. While an assessment may indicate one crop is not viable on a specific parcel, other crops may be well suited to the site. The Commission agrees, however, that assessing viability based, *in part*, on cycles of weather, is appropriate. Therefore, the Commission proposes to retain the definition as proposed in the *Preliminary Report*, with the minor non-substantive changes to the text proposed by the County, as follows:

Recommendation 5-2: Modify ~~Ordinance 23-04.024(a)~~ the CZLUO to expand the factors that should be considered as part of the required viability studies for proposed rezoning of agriculturally designated lands to include the following:

Incorporate an Agricultural Viability Report **definition**, for example:

A report that assesses the viability of parcels as agricultural or grazing units, given existing conditions and proposed development. Viability is considered in terms of many factors, including product marketability, soils, parcel size, economic factors, and any other factors relevant to the particular parcel. The report shall ~~establish a baseline of information to be used to~~ describe the role that each factor plays as a variable influencing the site and surrounding area's viability for agricultural production. ~~In terms of scope, the feasibility analysis should analyze both the site and the larger area's current and past productivity as an agricultural unit for at least the preceding five years,~~ but including sufficient time to include cycles of weather.

4. Conclusion

The *Preliminary Report* presented evidence and analysis showing that the San Luis Obispo County LCP has not always been effectively implemented to adequately protect agricultural lands, in conformance with Coastal Act Sections 30241 and 30242 (see Exhibit A, findings incorporated by reference). After further evaluation and consideration of public comments, pursuant to Coastal Act Section 30519.5, the Commission adopts Recommendations 5-1 – 5-3 as appropriate corrective actions for submission to the County.

B. Incremental Impacts to Agricultural Lands through Land Divisions, Lot-line Adjustments, and Development on Nonconforming Parcels

1) Summary of Preliminary Findings (Exhibit A, page 204-222)

The County has approved a number of subdivision and lot-line adjustment requests on agriculturally zoned land, and has granted numerous certificates of compliance under the LCP. As discussed in the preliminary findings, subdivisions, lot-line adjustments, and legalization of lots through certificates of compliance can also affect the long-term viability of agriculture. While these actions do not rezone land, they can significantly affect the ongoing preservation and viability of agricultural uses by affecting parcel sizes and configurations, and thereby allowing for incremental changes of the primary land use from agriculture to other uses.

Although the LCP requires that land divisions in agricultural areas “shall not limit existing or potential agricultural capability” (Agriculture Policy 2), the County generally has not addressed the long-term viability of agriculture as a result of approved subdivisions, lot-line adjustments, or certificates of compliance. (Under Title 21, incorporated into the LCP by reference, subdivision development is defined as including lot-line adjustments (Ordinance 21.08.020).) As discussed in the *Preliminary Report*, the approved changes in lot configuration in several cases supported residential development, rather than the protection of agricultural lands. The size and configuration of parcels in agriculture areas can affect the continued viability of agriculture. If parcels do not meet minimum parcel size they can more easily be developed with other uses because they are not large enough to support a viable agriculture use. How parcels are configured also matters to long term viability. Parcels can be configured such that resulting parcels will not conform to minimum size or will result in the location of development that will impact resources. Lot-line adjustments are one mechanism that alters the size and configuration of legal parcels. In implementing the LCP the county has not adequately addressed the impact of lot-line adjustments on agriculture viability.

In implementing the LCP the County has also not addressed the impacts of the issuance of certificates of compliance on the size and configuration of parcels and therefore the long-term protection of agricultural resources. The issuance of certificates of compliance records the existence of a legal lot that may or may not be of a size and configuration that supports the long-term viability of continued agricultural use. Because the number and location of future C of Cs

is not known, there may be cumulative effects from the development of these parcels that contribute to undermining long-term agriculture viability.

The *Preliminary Report* concluded that the County's implementation of the LCP did not comply with Agriculture Policies 1 and 2 in protecting agriculturally designated lands. The report recommended improvements to address the impacts from lot-line adjustments and maximize the amount of agricultural land protected (PR 5-4). It recommended adding standards to govern existing non-conforming lots, and to address problems associated with issuance of certificates of compliance, including exploring a merger ordinance (PR 5-5 – 5-7). Recommendation 5-4 would also clarify that lot-line adjustments must meet the same standards as subdivisions.

2) Comments Raised

San Luis Obispo County Response (Exhibit C):

The County has raised a number of concerns regarding Recommendations 5-4 – 5-7. While the County has indicated general agreement with the objectives of recommendations to improve standards to address lotline adjustments, they oppose defining limits for building envelopes and single family residences (PR 5-4, 5-5; also 5-8). In addition, the County proposes limiting the criteria identified under Recommendation 5-4 to “major” lotline adjustments, and has also indicated a disagreement over the language in Recommendation 5-4 to “clarify[] that land division requirements apply to lotline adjustments”. The County has identified “minor” lotline adjustments as those involving minor adjustments between property lines to correct past survey errors, or to align properties with fence lines, drainage areas, and access roads, and believe that many of the additional requirements proposed under Recommendation 5-4 are not necessary for these minor adjustments. The County also disagrees with the language in Recommendation 5-4 prohibiting lotline adjustments from “increasing the number of developable parcels”.

The County is also concerned that recommendations for a lot merger ordinance and proposals to identify all existing non-conforming lots (PR 5-6 and PR 5-5) may lead to unintended, negative consequences for long-term agricultural protection.

Finally, the County disagrees with the direction of recommendations regarding certificates of compliance (Recommendation 5-7). Due to constraints on staff resources, the County does not support the recommendation to undertake written staff reports for certificates of compliance and does not support providing notice to the Commission when certificates of compliance are requested. Overall, the County comments indicate that they believe the discussion of lotline adjustments and certificates of compliance is biased and implies that the County has made errors or acted illegally. The County has stated that the proposed recommendations extend beyond what the County can legally do, and many of the Commission concerns are more appropriately addressed through revisions to the Subdivision Map Act.

Public Comments (Exhibit D):

Public comments also strongly oppose restrictions on sizes for building envelopes and single family residences. However, comments indicate that it is critical to address the issues raised with lotline adjustments and protecting viable parcel sizes. Comments indicated that issues over certificates of compliance were governed by other state laws, and are beyond the jurisdiction of the Coastal Commission.

3) Analysis

Lot-Line Adjustment Policies (Recommendation 5-4)

As discussed in the preliminary findings, the LCP currently establishes criteria for “land divisions” that occur on agriculturally zoned lands. Title 21 of the LCP includes “lot line adjustments” in the definition of subdivision development. The recommendation to include lotline adjustments under the criteria for land divisions was intended only to further clarify that the existing requirements under Agriculture Policy 2 and Ordinance 23.04.024 applied to lotline adjustments. Although County staff have indicated that they find that Ordinance 23.04.024 does not apply to lotline adjustments, the Commission disagrees with this interpretation and, under the terms of the certified LCP itself, lotline adjustments are development that must comply with the policies and ordinances of the LCP. The *Preliminary Report* also recommended strengthened standards for lotline adjustments in the Agriculture category, because Agriculture Policy 1 requires that agricultural lands be maintained in, or available for, agricultural production, with limited exceptions. To assure that this goal is achieved for lotline adjustments, Recommendation 5-4 in the *Preliminary Report* proposed a new LCP policy/ordinance to address lotline adjustments on agriculturally zoned lands.

Although the County agrees with the general concept of Recommendation 5-4, the County proposed alternative language, stating that the criteria are applicable only for “major” lotline adjustments, which significantly change parcel sizes and/or lot configurations. This proposed language was previously considered, but not adopted, for the Agriculture and Open Space Element of the General Plan:

- *cluster the adjusted lots to protect the long-term agricultural capability of the site;*
- *minimize locating development on the most productive soils wherever possible;*
- *designate building site that will provide adequate buffers between future residences and associated accessory uses so as to minimize conflicts with the adjacent agricultural operations;*
- *position the resulting parcels to minimize impact from access roads or driveways on the agricultural operations;*
- *define parcel size standards that will allow clustering of the adjusted parcels in areas of the site where there is less agricultural potential due to the soil types, topography or other site constraints, even if the resulting parcels are smaller than the minimum parcel size that would otherwise be allowed by the land use category;*
- *the parcels resulting from the adjustment that are intended to increase the long term agricultural viability should qualify for an agricultural preserve contract, as well as be covered by a conservation easement, where feasible.*

Ordinance 23.04.050 (a) and (b) already requires that single family residences and agricultural accessory buildings “shall, where feasible, be located on other than prime soils”, and requires that supplemental, non-agricultural uses be permitted on prime soils only if “it has been demonstrated that no alternative project site exists exempt on prime soils” and “the least amount of prime soils possible will be converted”. The Commission finds the revision as proposed by the County to “minimize locating development on them most productive soils” is not necessary, given the existing requirements in the CZLUO.

The Commission finds that to adequately protect the maximum amount of agricultural lands, as required under Coastal Act Section 30241, specific standards and criteria are necessary to guide the clustering of lots, and the placement of access roads, driveways, and residential development on agriculturally zoned lands, resulting from proposed lotline adjustments. These standards, as outlined in Recommendation 5-4, below, include the need to prevent new subdivision potential from lotline adjustments, requiring the maximum amount of agriculturally zoned land remain for agricultural production, and minimizing roadway lengths and site disturbance.

The Commission finds that an increase in non-agricultural uses, including residential development, can change land use patterns and increase development in a manner which negatively affects the long-term viability of agriculture. As discussed in the *Preliminary Report*, lotline adjustments can be used to increase the potential for non-agricultural development, particularly residential development, on agricultural lands. However, the LCP allows for a single primary residence on each legal lot (Ordinance 23.08.167 in the Agriculture land use category. (Additional dwellings for farm support are allowed under Ordinance 23.08.167). The CZLUO defines a legal lot or parcel as:

- a. A parcel of real property shown on a subdivision or plat map, required by the Subdivision Map Act (or local ordinance adopted pursuant thereto) to be recorded before sale of parcels shown on the map or plat, at the time the map was recorded;*
- b. A parcel of real property that has been issued a certificate of compliance ...*
- c. A parcel of real property not described in a or b above, provided the parcel resulted from a separate conveyance or from a decree of a court of competent jurisdiction which was recorded before the requirement of the filing of the subdivision map by the Subdivision Map Act or local ordinance adopted pursuant thereto (pg. 11-28 CZLUO).*

Recommendation 5-4 proposes modifications to the current LCP standards for lotline adjustments to encourage clustering of non-agricultural, including residential, development on agriculturally designated lands. The objective of this modification is to maximize agricultural land and minimize the potential of conversion of agricultural lands to non-agricultural uses.

However, the Commission finds that in evaluating lotline adjustments, it is necessary to determine whether existing lots are in fact appropriate for development. In a number of cases, lots may have been created for purposes other than residential (or commercial) development.

For example, lots may have been developed solely for purposes of a water well or for road or utility rights-of-ways. In these cases, where the original intent and expectation for the lot being created was not for future development, the lots should not be considered “developable” when evaluating the potential allowable residential development for the lot. In addition, as discussed in the *Preliminary Report*, the LCP should further circumscribe what is considered to be a developable lot, so that lot-line adjustments, particularly of non-conforming parcels, do not inappropriately increase the development potential that would undermine agricultural uses and operations. Criteria could include such things as whether a parcel has legal access to a public road or right-of-way; can support on-site septic, etc. (see Exhibit A, pp. 223-224 for discussion of Sonoma County ordinance). Therefore, the Commission finds that when evaluating lotline adjustment proposals on agricultural lands, the County should evaluate the original purpose for each lot, and the potential for residential development on each lot. The County should assure that lotline adjustments do not increase the potential for development that would conflict with the protection of agricultural resources.

Recommendation 5-4 also proposed limits on building envelopes. Through modifications to Recommendation 5-4, the Commission has deleted this aspect of the recommendation and addresses this issue through Recommendation 5-8.

The Commission also finds that many of the criteria proposed under Recommendation 5-4, and in the County’s proposed language, are appropriate for all lotline adjustments. The modifications under Recommendation 5-4 detail the requirements for lotline adjustments.

The Commission proposes to delete preliminary recommendation 5-4, and replace it with the following modified recommendation:

Recommendation 5-4: Modify CZLUO to add the following criteria for lotline adjustments on agriculturally zoned lands:

- applications for lotline adjustments shall identify the purpose of the adjustment and the proposed uses for each adjusted parcel;
- lotline adjustments shall not create new subdivision potential and shall not increase the number of lots which can support non-agricultural development. To assess the total potential for non-agricultural development, including residential development, the County should consider the original intent of each lot, whether the lot was created to support future development, and whether the lot would otherwise be developable pursuant to identified criteria to protect the public welfare. Lotline adjustments should not allow future development for those lots which were not originally created to support development.
- lotline adjustments shall not create new parcels where the only building site would be on prime agricultural soils; within ESHA, critical viewsheds, or in a defined hazardous area; or would require significant landform alteration to accommodate future development;
- lotline adjustments shall not be approved unless the adjustment will maintain or enhance the agricultural viability of the site. To assure the protection of long-term viability, applications for lotline adjustments which support, in part, non-agricultural development must include an economic analysis of agricultural potential, consistent with that required under Ordinance 23.04.024 for land divisions.

- lotline adjustments or subdivisions which support, in part, non-agricultural development, the lotline adjustment or subdivision shall maximize the protection of agricultural lands by clustering and minimizing the area of lots intended for non-agricultural uses, including reducing the parcel size to be less than the 20 acre minimum parcel size required for agricultural lands. Lots for non-agricultural uses shall be clustered where there is less agricultural potential due to the soil types, topography or other site constraints and shall maximize the extent of *undivided* agricultural lands.
- lotline adjustments or subdivisions which support, in part, non-agricultural development, shall identify the location of all access roads and building envelopes, assuring adequate buffers between future residences and associated access uses so as to minimize conflicts with the adjacent agricultural operations, and minimize roadway lengths and site disturbance. Where possible, non-agricultural development shall be sited close to existing roads, while minimizing impacts from access roads or driveways on agricultural operations;
- lotline adjustments or subdivisions which support, in part, non-agricultural development, shall require an agricultural easement over the agricultural parcel(s) which prohibits future subdivision of the parcel(s). In addition, for parcels intended to support non-agricultural uses, a deed restriction should be required prohibiting future subdivision of the parcel(s);
- ensure that all geographically contiguous parcels in common ownership are addressed through a comprehensive evaluation.

Development and Building Size Limitations (Recommendations 5-4, 5-5)

The *Preliminary Report* concludes that many of the residences on agriculturally zoned lands may be used principally as rural ranchettes, some of which are larger, “statement” homes. Cumulatively, residences not in direct support of agriculture can contribute to changing the character of rural agricultural lands to more rural residential development, and contribute to the loss of long-term agriculture. To ensure protection of agricultural lands, Recommendations 5-4 and 5-5 recommend defining maximum building and landscaping envelopes for residences on agriculturally zoned lands. After discussions with the County staff and agricultural community, the Commission concurs that other alternatives, such as establishing performance standards for residential development on agricultural parcels, are more appropriate than a defined maximum building envelope. The use of performance standards will allow flexibility to address specific characteristics of a site while improving the protection of agricultural lands. The Commission therefore deletes references to house and building envelope sizes in Recommendations 5-4 and 5-5, and establishes performance standards for residential uses on agriculturally designated lands under Recommendation 5-8.

Lot Mergers and Non-conforming Lots (Recommendation 5-5 and 5-6)

The *Preliminary Report* also recommended obtaining a count of non-conforming parcels in rural areas (Recommendation 5-5) and exploring a lot merger ordinance to improve the protection of long-term agricultural viability by increasing the parcel sizes (Recommendation 5-6). The County has expressed concerns that these recommendations would contribute to accelerating development. The Commission understands the concerns raised by the County and suggests modifications to the recommendations. A merger ordinance may not be the appropriate vehicle to pursue. In order to identify additional ways to further the protection of agriculture lands, a

cumulative assessment to understand the number and location of non-conforming lots, and the alternatives for locating development on those lots, could be useful to protect agricultural resources. With this information, the County could explore a variety of ways to minimize the cumulative effects from future lot line adjustments and certificates of compliance. The Commission consolidates Recommendation 5-5 and Recommendation 5-6 as follows (see also Recommendation 2.8):

Recommendation 5-5: ~~Consider standards to govern existing non-conforming lots in agriculture. Pursue policies and programs to provide for more comprehensive treatment of nonconforming agricultural parcels, including: obtaining a count of the number of non-conforming parcels in the rural area by Planning Area; revising the agricultural standards to require maximizing the agricultural potential of non-conforming parcels by clustering non-agricultural uses; defining maximum building/landscaping envelopes such as 5000 square feet; minimizing road construction; and so forth.~~

Recommendation 5-6: ~~Explore adopting a merger ordinance for non-conforming Agricultural parcels, as provided in the Subdivision Map Act.~~ Undertake a study to identify: 1) existing non-conforming lots on agriculturally zoned lands adjacent to conforming lots, and 2) non-conforming lots which meet the standards under the Subdivision Map Act for potential lot mergers.

Certificates of Compliance

Recommendation 5-7 sought to enhance coordination between the County and the Commission to assure that issuance of certificates of compliance adequately protect agricultural lands. Since publication of the *Preliminary Report*, County staff have provided additional information to the Commission staff, including a manual used to process certificates of compliance, with criteria for what constitutes legal lots. As mentioned, the County has also expressed general concern about the *Preliminary Report* discussion and Recommendation 5.7.

Under the certified LCP, certificates of compliance are not included in the CZLUO 21.08.020(a) definition of “subdivision development,” and thus are not treated as development that requires a coastal development permit. In addition, under CZLUO 21.02.020(c), notice to the Commission of the issuance of certificates of compliance by the County is not currently required; nor are they subject to any sort of administrative appeal. As stated in CZLUO 21.02.020(c)(2), “notice of hearing is not required to be given for certificates of compliance under Government Code 66499.35(a) because the issuance of such certificates of compliance is ministerial.” Conditional certificates of compliance, which are defined as subdivision development for purposes of the LCP, do require a coastal development permit and are subject to the Commission’s appeal jurisdiction.⁴⁸

⁴⁸ As with all subdivisions in San Luis Obispo County, conditional certificates of compliance are appealable to the Coastal Commission because they are not identified in the LCP as a principally permitted use in any land use category.

As discussed in the *Preliminary Report*, the issuance of certificates of compliance is often the first step in a process whereby nonconforming parcels are identified, adjusted, and developed with non-agricultural, often residential, land uses. Ultimately, this development process threatens the long-run viability and character of rural agricultural lands (as well other coastal resources such as scenic landscapes and sensitive habitats), as previously unfragmented ranches and other large agricultural holdings are chopped up into smaller holdings with cumulative development patterns that may conflict with or in fact lead to the cessation of existing agricultural land uses.

With conditional certificates of compliance, the LCP provides a mechanism for addressing these potential impacts to agricultural lands because coastal development permits must be duly noticed and issued through a public hearing process. By definition, a conditional certificate of compliance is issued when a parcel was not legally created and thus, the recognition of such a parcel constitutes a land division for purposes of review under the Coastal Act and the LCP.

With unconditional certificates of compliance, though, there is no notice or coastal development permit requirement because, in theory, certificates of compliance are merely recognizing and describing the existence of a parcel that has already been legally created. This is why the issuance of a certificate of compliance is often described as a ministerial action. Under the Subdivision Map Act, a certificate of compliance must be issued for a parcel if the circumstances of its creation were consistent with the relevant law for the creation of parcels in effect at the time of its creation. That is, if the facts of a parcel's creation analyzed against the relevant subdivision law show that the parcel was legally created, there is no discretion and a certificate of compliance must be issued.

As discussed in the *Preliminary Report*, though, the fact patterns of purported parcel creations are often complex, and may involve detailed analysis of historic parcel maps, deeds, and other legal documents. The application of the relevant subdivision law, which has evolved through many variations over a hundred years, and any relevant local ordinances, can be equally complex. Because of this complexity, it is conceivable that errors in processing could be made, either through incorrect factual analysis, or through incorrect application of the law. It is also possible that reasonable people will disagree about the correct interpretation of the facts and law of a given case, because of the complexity of such decisions.

The Schoenfield case, scheduled for hearing in August, provides a good example of the inherent complexity and potential impacts on coastal resources that are often associated with these proposals to legitimize parcels. The Commission and the County are currently involved in a dispute over the Board of Supervisor's action to approve two unconditional Certificates of Compliance for Mr. Schoenfield's property in Los Osos. The gently rolling 4.2-acre site is located on the seaward side of Pecho Valley Road between the first public road and the sea on the edge of the developed portion of Los Osos. It is outside the defined "Urban Services Area" and just within the "Urban Reserve" line. Most of the nearby lots are developed with single family homes and range in size from over four acres to less than one half an acre. The LCP designation for the site is suburban residential with a minimum parcel size of 2 and one half

acres. The site is identified as a “Sensitive Resource Area” for terrestrial habitat.

The current applicant purchased the site in 1987 and in 1989, the County approved a Coastal Development Permit for the construction of a 3500 square foot home on the westerly portion of the parcel. The Staff Report prepared for the project identified existing and potential habitat on the site (coastal scrub, Morro Bay Kangaroo Rat and Morro Manzanita). Various conditions were attached to the approval including requirements for an open space easement on a portion of the property and deed restrictions to protect habitat values and native vegetation. The project was not appealed to the Coastal Commission and has been constructed.

In 1995, Mr. Schoenfield applied for a land division to divide his parcel into two parcels of 1+ and 3+ acres configured exactly as the parcels recently authorized by the Board’s action on the Certificates of Compliance. The land division was denied by the County because the resulting lots did not meet the minimum parcel size for the area of two and one half acres. The Staff Report for this project included a letter from the United States Fish and Wildlife Service (USFWS) that stated there would be adverse impacts on habitat values if the land division was approved and an additional house built on the site. If the Board’s action to approve two unconditional certificates holds, the result will be an additional building site in an area containing environmentally sensitive habitat. In order to avoid a “takings” it can be anticipated that the site will be developed with an additional residential use that can be expected to displace habitat.

In 2000, Mr. Schoenfield applied for two unconditional Certificates of Compliance (C00-0166). In October of 2000, County staff prepared a report on the proposal and recommended that only one certificate for the entire site be approved because the applicant was not entitled to two unconditional Certificates of Compliance as the lots had been created illegally in 1949 and were thus not eligible to receive *unconditional* Certificates pursuant to Map Act and County requirements. On November 14, 2000, the Planning Director approved the issuance of **one**, unconditional Certificate of Compliance.

The Planning Director’s decision was challenged by the applicant and a hearing before the Board of Supervisors was set for March of 2001. A staff report recommending that the Planning Director’s decision be upheld was prepared. In February, a copy of this report was sent to Commission staff with a cover memo indicating that if the Director’s decision was overruled *“Staff fully expects that if the Board overturns the Director’s decision and approves two certificates then both would be conditional certificates of compliance.”* The memo also notes that the *“project is in a coastal appeal zone”*.

The Board continued the hearing on the item from the March 6 meeting to April 10. On April 10, the Board ruled that the Applicant’s parcels had not been created illegally in 1949 and were therefore entitled to two, unconditional Certificates of Compliance. Commission staff reviewed

the application and after tracing the chain of title and analyzing the relevant subdivision law⁴⁹, came to the same conclusion as County Staff, which was that the parcels had been created illegally in 1949 and thus should not be awarded unconditional Certificates of Compliance. The Executive Director of the Commission has thus taken the position that the County should have issued conditional certificates of compliance and thus appealable coastal developments permits for the parcels in question, and that the Board of Supervisors erred in applying the law to this case.

More to the point, the fact remains that there may be a significant amount of factual and legal judgment and thus discretion involved in the process of deciding whether a certificate of compliance should be conditional or not. Although the actual issuance of a certificate of compliance may be considered to be ministerial under the SMA, the process of deciding whether a requested parcel certificate qualifies as unconditional or not involves discretion, as recently illustrated by the differing opinions of the San Luis Obispo County Planning Director and the County Board of Supervisors in Schoenfield case. In a recent correspondence to the Commission, the County has also pointed out that certain filing requirements for certificates of compliance may be waived at the discretion of the Planning Director.

In light of the foregoing, the certified LCP is not adequate to carry out the resource protection policies of the Coastal Act. Specifically, CZLUO 21.02.020(c) delegates the authority to approve and issue a certificate of compliance to the Planning Director. Except for appeals, available only to the applicant, to the Board of Supervisors, there is no other mechanism, and in fact no required notice, that allows for review of the Planning Director's judgement to classify a

⁴⁹In 1949, the Subdivision Map Act provided in Business and Professions Code Section 11535 (a) "*Subdivision*" *refers to any land or portion thereof, shown on the last preceding tax roll as a unit or as contiguous units emphasis added), which is divided for the purposes of sale, whether immediate or future, by any subdivider into five or more parcels within any one year period.* In 1949, Martin owned two contiguous parcels, Parcel One and Parcel Two. Parcel One, approximately six acres in size was bounded by Costa Azul Road on the north, Parcel Two on the west with Pecho Road providing the easterly and southerly boundary. Parcel Two was approximately three acres in size and bounded by Costa Azul on the north, Parcel One on the east and Pecho Road on the south. Martin divided off a six acre parcel in the center of these parcels for conveyance to Wilcox by drawing new property lines through both Parcel One and Two from east to west. In order to be consistent with the Board of Supervisors Finding that Mr. Schoenfield was entitled to two lots from this conveyance, the effect of this conveyance must have also created two parcels north of the Wilcox site and two parcels south of the two parcels conveyed to Wilcox for a total of six parcels. The 1949 version of the Map Act required that, if the division of these two contiguous parcels, for immediate **or** future sale, resulted in five or more parcels, then compliance with the provisions of the Map Act, including a Final Map was required. It can be presumed that Martin created the parcels for sale because within the next few years, he in fact sold the parcels. He sold two to Wilcox shortly after he acquired the original two parcels from Vermazen, sold two more to Andersen six years later and the last two sometime after that. Note also, that the language of the 1949 Map Act does not count only the *additional* parcels created by the division, it simply provides that if, after the division is done, there are more than five parcels, then the provisions for Tract Maps must be complied with. There is no record that Mr. Martin complied with the requirements of the Subdivision Map Act in subdividing these parcels and no Final Map was ever approved or filed, the lots were thus created illegally in 1949.

certificate of compliance as conditional or unconditional. Indeed, certificates of compliance may be issued by the Planning Director and the Commission may never learn of such actions, until such time as development proposals are being considered on parcels long since certified as legally created.

This is significant because, notwithstanding the requirements of the SMA, for purposes of review under the state Coastal Act and the LCP, the decision about the status of a certificate of compliance (conditional or not) will determine whether a coastal development permit review is necessary at all. Although the Commission is generally confident in the professional review processes of San Luis Obispo County, differences in legal interpretation and judgment can occur (such as the Schoenfield case) which may place coastal resources at risk because of the lack of a publically-noticed coastal permit review. Of course, local governments, and the Commission for that matter, make judgements all the time about whether certain activities do not require a coastal development permit. Many of these decisions, such as the informal phone inquiry, are made without any type of notice or formal decisionmaking. It would be difficult if not impracticable to have a noticing process for all such decisions. However, unlike a potential decision by a local government to exempt some type of physical development from coastal development permit requirements, the Commission and the public have much less chance of being aware of the issuance of a certificate of compliance, without some type of notice. Thus, in the case where a physical development may be inappropriately exempted from permit requirements, whether through error or differing judgement about the permit requirements, it is much more difficult to conduct the development without it being brought to the attention of the Commission, which may then lead to more formal action to address what may be erroneously exempted development.⁵⁰

Fortunately, in recent correspondence concerning the pending certificate of compliance applications for the Hearst Ranch, the County of San Luis Obispo has agreed to provide courtesy notice to the Commission of certificate of compliance applications that it receives. This will go a long ways towards building support between the Commission and the County concerning coordinated review of certificates of compliance. Nonetheless, in light of the significant risks to

⁵⁰ In addition, whether the process of classifying certificates of compliance should be subject to more formal review on the basis of the California Environmental Quality Act should be further evaluated. For example, CEQA applies to “discretionary projects”. According to the CEQA guidelines (15357), a discretionary project is one that:

requires the exercise of judgment or deliberation when the public agency or body decides approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances or regulations.

Ministerial projects, on the other hand, “involve little or no personal judgment by the public official as to the wisdom or manner of carrying out the project.” In theory, the public official uses no special discretion in such cases, and the decision only involves the use of “fixed standard or objective measurements” (15369). In cases, like Schoenfield, clearly there is some judgment involved, which raises a question as to whether the issuance of certificates of compliance can be considered ministerial for purposes of CEQA.

coastal resources posed by the potential issuance of conditional certificates of compliance as unconditional certificates, and in light of the inherent discretion involved in the classification of a certificate of compliance for purposes of the state Coastal Act, the Commission finds that the LCP should be amended to provide a more formal process of notice and consultation concerning certificates of compliance. Ultimately, the provision and implementation of such a process is in the interest of good public policy, will avoid unnecessary judicial review and legal conflict, and is necessary for the San Luis Obispo County LCP to adequately implement the resource protection policies of the Coastal Act. Further, although the Subdivision Map Act establishes the mechanism for the issuance of certificates of compliance, it does not preclude the implementation of a formal noticing and consultation process to assure consistency with the Coastal Act.⁵¹ Providing such a process harmonizes the goals and policies of each respective state law. Accordingly, amended Recommendation 5-7 suggests establishing a pre-decision process for certificates of compliance, pursuant to the Commission's and County's obligations to decide whether an activity qualifies as development under Coastal Act, through which the Commission has an opportunity to consult with the County about applications for certificates of compliance. In the interest of not requiring unnecessary administrative process, and because the threat to coastal resources is greatest in rural areas, the required process would be limited to applications for certificates in rural areas.

Recommendation 5-7: Processing of Certificates of Compliance. In the interest of good public policy and avoidance of unnecessary judicial review, amend the LCP with standards such as the following:

- Amend CZLUO 21.02.020(a) to require that within three calendar days of receipt, the County provide to the Coastal Commission [notice/a copy] of all certificate of compliance applications submitted to the County for any property lying wholly or in part outside of an urban area (as defined by the USL for each area).
- Amend CZLUO 21.02.020(c) to
 - 1) require that upon request, the complete application content for a certificate of compliance be provided to the Coastal Commission. Such requests shall be made by the Commission within 7 calendar days of receipt of the [notice/application] submitted pursuant to CZLUO 21.02.020(a).
 - 2) provide an administrative consultation process, through which the Executive Director of the Coastal Commission may consult with the County Planning Director about individual applications for certificates of compliance for which the application content has been

⁵¹ 66499.35(a) of the Subdivision Map Act states:

Any person owning real property or a vendee of that person pursuant to a contract of sale of the real property may request, and a local agency shall determine, whether the real property complies with the provisions of this division and of local ordinances enacted pursuant thereto. Upon making the determination, the city or the county shall cause a certificate of compliance to be filed for record with the recorder of the county in which the real property is located. The certificate of compliance shall identify the real property and shall state that the division thereof complies with applicable provisions of this division and of local ordinances enacted pursuant thereto. The local agency may impose a reasonable fee to cover the cost of issuing and recording the certificate of compliance.

requested. The Executive Director shall request consultation within 7 calendar days of receiving a complete certificate of compliance application. No certificates of compliance shall be issued by the Planning Director until such time as a requested consultation has taken place. Any staff reports prepared pursuant to CZLUO 21.02.020(c)(1) shall be provided to the Executive Director.

- 3) provide an administrative conflict resolution process for cases in which the Executive Director and County Planning Director do not agree on the issuance of a certificate of compliance. For example, provide for review by the Board of Supervisors as currently provided for subdividers pursuant to CZLUO 21.04.020.

4) Conclusion

The *Preliminary Report* presented evidence and analysis showing that the San Luis Obispo County LCP has not been effectively implemented to adequately protect agricultural lands, in conformance with Coastal Act sections 30241 and 30242 (see Exhibit A, findings incorporated by reference). As stated in the *Preliminary Report*, the “cumulative effect of future subdivisions, lot-line adjustments, and certificates of compliance could significantly change land use patterns, decrease overall parcel sizes, and may decrease the overall long-term viability of agricultural lands, inconsistent with the Coastal Act” (pg. 222). As modified above, Recommendations 5-4 and 5-7 will assure that the LCP is implemented to reduce impacts from subdivisions, lotline adjustments, and certificates of compliance, to protect the long-term viability of agriculturally designated lands. After further evaluation and consideration of public comments, pursuant to Coastal Act Section 30519.5, the Commission adopts Recommendations 5-4 and 5-7 as appropriate corrective actions to be undertaken by the County.

C. Effect of Non-Agricultural Uses on Agricultural Land

1. Summary of *Preliminary Periodic Review Findings* (Exhibit A, pg. 227-236)

Non-agricultural uses in agricultural areas are an increasing trend in the County; these uses can affect the long-term viability of agriculture by affecting land use patterns, increasing conflicts between agriculture and other uses, and potentially changing the primary land uses. Table O of the LCP and area plan standards define the land uses allowed on agricultural lands; these uses are defined either as principally permitted, allowed, or special uses. The LCP also establishes criteria that must be met for a supplemental use to be allowed on agriculturally zoned land, including economic studies of existing and potential agriculture which show that continued or renewed agricultural use is not feasible without the proposed supplemental use (Agriculture Policy 3 and Ordinance 23.05.050). However, Table O does not clearly identify which uses are considered supplemental uses for the purposes of applying Agriculture Policy 3 and Ordinance 23.04.050.

Other than residential development, the County's approval of non-agricultural uses on agricultural lands has been limited. However, in most cases, it is unclear whether the County has considered whether the proposed development complies with the specific requirements identified in Agriculture Policy 3 and Ordinance 23.04.050. The County findings generally do not discuss the need for the supplemental use, nor how that use will support the long-term agricultural use of the property. Without adequate analysis of whether, and how, the proposed project will affect the long-term viability of agriculture, the County is not implementing the LCP to adequately protect agricultural lands consistent with Coastal Act policies.

In the *Preliminary Report*, the Commission recommended developing standards for residential development on agricultural lands (Recommendation 5-8) and re-evaluating the supplemental uses allowed on agricultural lands (Recommendation 5-9). Recommendation 5-9 also recommended defining residential uses not in direct support of an agricultural operation to be a conditional use and recommended requiring easements on the parcels in conjunction with residential development. As discussed previously, Recommendation 5-1 also proposed requiring a viability report for all supplemental uses.

2. Comments Raised

San Luis Obispo County Response (Exhibit C):

In general, the County objects to the level of detail required for viability reports for supplemental uses as proposed through Recommendations 5-1 and 5-3, and opposes requiring viability reports for non-agricultural uses related to agricultural operations, including for residential development. The County also opposes requiring easements for residential uses, and questions how to determine a "bonafide" agricultural use. The County believes that the existing requirements for residential development are sufficient to protect agricultural lands.

Summary of Public Comments (Exhibit D):

While some comments indicate that existing review of projects through the Agricultural Commissioner is sufficient, other comments indicate that existing requirements for review of projects is insufficient and not enforceable. Comments oppose the level of information required under Recommendation 5-3. In addition, concern was raised that because most agriculturists supplement their income with outside work, viability reports would indicate that agricultural operations were *not* viable, and lead to additional inappropriate development.

Specific Clarifications/Errata

Table 5-5 in the *Preliminary Report* was intended only to illustrate what the current LCP allows on agricultural lands. The Commission's concerns with implementation of Table O are reflected in Recommendation 5-9, below. Based on the County's request, Table 5-5 on page 228 of the *Preliminary Report* (page 229-230 in *Preliminary Report as Revised*) will be modified to reflect the County's views as to which special uses are also considered principal permitted uses.

3. Analysis

Viability Reports

As modified, Recommendation 5-1 proposes to require viability reports only for proposed rezonings, and to exclude supplemental uses; therefore, the criteria identified in Recommendation 5-3 will not apply to supplemental uses from that requirement. Criteria for assessing the need for supplemental uses is discussed in *Defining Supplemental and Other Uses* and in Recommendation 5-9c, below.

Residential Development

As discussed on through Recommendations 5-4 and 5-5, the Commission finds that establishing performance standards for the siting and design of residential structures on agriculturally designated lands is more appropriate than establishing specific building size limits. Use of performance standards will allow flexibility in the siting and design of structures while establishing criteria to minimize impacts to agricultural lands and other coastal resources. Therefore, Recommendation 5-8 is modified to reflect the following performance standards:

Recommendation 5-8: Developing LCP standards for residential developments on Agricultural Land. ~~For example, consider limiting the size of single family homes in agricultural districts to a maximum of 3,500 sq. ft. total; and limiting development envelopes to 5,000 square feet.~~ Update the CZLUO to establish performance standards for residential development on agriculturally zoned lands which protect the maximum amount of agricultural lands. Such standards could include the following:

- non-agricultural uses on agricultural lands should be subordinate and accessory to agricultural operations;
- single family residences and associated accessory development should minimize site disturbance;
- roads and driveways shall be the minimum width and length necessary , and shall be designed to avoid unnecessary cut and fill, particularly by conforming to natural landforms;
- residential structures and residential accessory structures shall be sited to retain the maximum amount of agriculturally designated lands available for agricultural production, consistent with all other LCP policies;
- residential structures and residential accessory structures shall be sited and designed to protect ESHA, avoid impacts to critical viewsheds to the maximum extent feasible, and maintain the rural character of the area.

Defining Supplemental and Other Uses

LCP Agriculture Policy 3 establishes criteria for “non-agricultural uses” on agriculturally zoned land. Ordinance 23.04.050 establishes similar criteria for “supplemental, non-agricultural” uses on agriculturally zoned land. Ordinance 23.04.050 defines supplemental uses as uses “that are not directly related to the principal agricultural use on the site”. For a supplemental use to be authorized on agriculturally zoned lands, Agriculture Policy 3 requires, in part, a determination that continued or renewed agricultural use is not feasible without the proposed supplemental use.

Other requirements include siting non-agricultural development on non-prime soils, with limited exceptions, and assuring that non-agricultural uses do not conflict with ongoing agricultural uses of the land. Supplemental uses must still meet all other requirements of the LCP, including policies regarding ESHA protection and visual resource protection.

Table O defines land uses as “allowed” (identified by “A”), “special”⁵² (identified by “S”), and principally permitted (identified by “P”). Table O also identifies uses as “S-P”. However, these categories do not clearly define which land uses potentially allowable on agriculturally-zoned lands are considered *supplemental* uses. The County agrees that re-evaluating Table O is appropriate to clarify this issue, and suggests that the following land uses be considered a supplemental use for the purposes of applying Agriculture Policy 3 and Ordinance 23.04.050:

Bed and Breakfast facilities;
Eating and Drinking places⁵³;
Electric Generating plants;
Mining;
Outdoor Retail sales⁵⁴;
Paving Materials;
Petroleum Extraction;
Rural Recreation and Camping;
Stone and Cut Stone Products;
Warehousing⁵⁵;
Waste Disposal sites⁵⁶; and
Wholesaling and Distribution⁵⁷.

While the Commission agrees that these many of these activities should be defined as supplemental uses, some of the uses proposed may not be consistent with the protection of agricultural uses. The Commission finds that electric generating plants and mining should not be allowable uses on agricultural lands, and are more appropriate to industrial designations. The Commission also finds that some temporary events, such as events which are for-profit and non agriculturally related, should also be considered supplemental uses. Recommendation 5-9a, below, is modified to reflect those land uses under Table O that the Commission finds should be

⁵² Chapter 8 of the CZLUO identifies specific criteria for each of the special uses identified in Table O, including, for example, permit requirements, siting requirements, limitations on size of structures, and restrictions on use.

⁵³ On agricultural lands, CZLUO Section 23.08.208 limits restaurants to accessory uses, where there is an existing conforming visitor serving use, and where the restaurant is secondary and incidental to the visitor serving use. Drinking places must also be accessory to a restaurant.

⁵⁴ Table O and the CZLUO define outdoor retail sales as “temporary retail trade establishments”, including farmer’s markets, sidewalk sales, seasonal sales, and semiannual sales of items in connection with community festivals or art shows. Table O excludes flea markets and swap meets from outdoor retail sales. CZLUO Section 23.08.142 defines time limits for many of the activities under outdoor retail sales.

⁵⁵ CZLUO Section 23.08.402 limits warehousing in the Agricultural land use category to “storage facilities that support approved agricultural production or processing operations conducted on the same site”.

⁵⁶ Defined under Table O as County-approved or operated refuse dumps, sanitary landfills or other solid waste disposal facilities. Excludes disposal sites for hazardous materials.

⁵⁷ CZLUO Section 23.08.408 limits warehousing in the Agricultural land use category to “facilities that support approved agricultural production or processing operations conducted on the same site”.

classified as supplemental uses. Recommendation 5-9e modifies Table O to remove electric generating plants and mining as land uses allowable on agriculturally zoned lands.

As required under Agriculture Policy 3, to authorize a supplemental use, the County must find that agriculture is not economically viable without the supplemental use and must evaluate the use for consistency with all other LCP resource protection policies. To assure that the LCP will be implemented to adequately assess this need, the Commission proposes to modify Ordinance 23.04.050 (5) to require additional information as part of a permit application for a supplemental use. The level of information proposed through Recommendation 5-9b below, is significantly less than the information recommended for proposed rezoning of agricultural lands, but includes identification of existing land uses on the site, annual income derived from agricultural operations, site characteristics affecting agricultural use, the potential of the site to support future agricultural uses, and the potential effects of the proposed development on agricultural uses.

The Commission finds that due to the nature of temporary events, the agricultural easement required for supplemental uses is not a necessary requirement for approval of temporary events. Recommendation 5-9c modifies Ordinance 23.04.050 (7) and Agriculture Policy 3 to exclude temporary events from the requirement.

Table O also identifies other land uses as special uses. As discussed in the *Preliminary Report* it is unclear to what extent the County applies the criteria under Agricultural Policy 3 and Ordinance 23.04.050 to these uses. While many of these uses directly support agriculture, including agricultural processing, farm equipment supplies, agriculture accessory uses, and roadside stands, other land uses do not. These uses include recycling centers, pipelines, and temporary construction yards, and public safety facilities. While the Commission agrees that these land uses should not require an economic analysis to determine their need, the land uses can still potentially impact agricultural lands. However, the Commission finds that if the existing criteria in the LCP is complied with (e.g., locating uses on non-prime soils, assuring adequate buffers, and assuring that uses will not conflict with ongoing agricultural operations), and all other resource protection policies are complied with, that impacts to agricultural lands will be minimized. Further, the Commission finds that the land uses should not significantly affect the long-term viability of agricultural resources because they are either sufficiently limited in scale, and/or will be sufficiently limited in scope to prevent a trend towards non-agricultural development if the criteria in the LCP is met. The table below summarizes the requirements for supplemental and non-supplemental uses on agriculturally zoned lands, as proposed through Recommendation 5-9 below. As discussed above, and detailed through Recommendation 5-9, supplemental uses must meet more stringent criteria to assess the need for the use and to assure the long-term protection of agriculture.

	Supplemental Uses	Residential and Residential Accessory Uses	Other Special Uses (S or S-P designation in Table O)
Land Uses	Bed and Breakfast Facilities; Eating and Drinking Places; Outdoor Retail Sales; Paving Materials; Petroleum Extraction; Rural Recreation and Camping; Stone and Cut Stone Products; Warehousing; Waste Disposal Sites; Wholesaling and Distribution; Temporary events which are for profit and non-agriculturally related.	Caretaker Residence; Farm Support Quarters; Mobilehomes; Residential Accessory Uses; Single Family Dwellings; Temporary Dwelling	Ag Accessory Structures; Ag processing; Animal Raising and Keeping; Aquaculture; Farm Equipment and Supplies; Nursery Specialties (soil dependent and non-soil dependent); Specialized Animal Facilities; Communication Facilities; Food and Kindred Products; Recycling Collection Centers; Home Occupations; Water Wells and Impoundments; Roadside Stands; Temporary Construction Yards; Temporary Construction Trailer Park; Airfields and Landing Strips; Pipelines and Transmission Lines; Public Safety Facilities; Public Utility Facilities; Temporary events which are not classified as supplemental uses.
Requirements per Recommendation 5-9 and Modifications to LCP	<ul style="list-style-type: none"> • Must meet all requirements under Agriculture Policy 3 and Ordinance 23.04.050. • Modify Table O to clearly identify supplemental uses. • Modify Agriculture Policy 3 (b) to clarify economic analysis required only for supplemental uses. • Modify Ordinance 23.04.050 (6) to add information required for economic analysis. • Modify Ordinance 23.04.050 (7) and Agriculture Policy 3 (h) to exclude temporary events from requirement for agriculture and open space easement. 	<ul style="list-style-type: none"> • Does not require economic analysis. • Is not required to comply Ordinance 23.04.050 (6) (ii), requiring that supplemental, non-agricultural uses be limited to a maximum of 2% of the gross site area. However, single family residences and residential accessory structures must comply with standards established through Recommendation 5-8. • Does not require agricultural or open space easement. • Must comply with other existing criteria under Agriculture Policy 3 and Ordinance 23.04.050. 	<ul style="list-style-type: none"> • Does not require economic analysis. • Does not require agricultural or open space easement, unless is it determined that an easement is necessary to assure the protection of agricultural lands. • Must comply with other existing criteria under Agriculture Policy 3 and Ordinance 23.04.050, including Ordinance 23.04.050 (6) (ii), requiring that supplemental, non-agricultural uses be limited to a maximum of 2% of the gross site area.

To clarify the LCP policy and ordinance language regarding supplemental uses, the Commission modifies Recommendation 5-9 to require that: a) Table O clearly identify which land uses are supplemental to agricultural land uses, b) an economic analysis is required for all supplemental uses; and c) all uses identified as “special” uses under Table O comply with all other criteria of Agricultural Policy 3 and Ordinance 23.05.050. The Commission deletes preliminary recommendation 5-9, and replaces it with the following recommendations:

~~**Recommendation 5-9:** Evaluate Table O for revisions to address non-agricultural uses. Table O should be reevaluated to clarify conditional uses on agricultural land. For example, consider defining residences that are not developed in direct support of bonafide agricultural operation to be a conditional use. Require agricultural protection easements on the parcel in conjunction with residential development.~~

Recommendation 5-9a: Amend Table O to define the following land uses as supplemental uses for agriculturally zoned land:

Bed and Breakfast facilities;
Eating and Drinking places;
Outdoor Retail sales;
Paving Materials;
Petroleum Extraction;
Rural Recreation and Camping;
Stone and Cut Stone Products;
Warehousing;
Waste Disposal sites;
Wholesaling and Distribution;
Temporary Events which are for profit and non-agriculturally related.

Recommendation 5-9b: Modify Agriculture Policy 3 (b) to specify that an economic analysis is required for supplemental uses only. To implement Agriculture Policy 3 (b), modify Ordinance 23.04.050(5) to require the following information as a condition of filing for all supplemental uses:

- existing land uses on the site;
- present annual income derived from agricultural operations
- income generated from other, non-agricultural operations on the site;
- site characteristics affecting agricultural land use and production, including topography, soils, climate, water availability, and adjacent land uses;
- the potential of the site to support future food-producing agricultural uses and estimated annual income from such uses;
- estimated income from proposed supplemental development;
- potential effects of the proposed development on agricultural food production, both short-term and long-term;
- recommendations and conclusions of the development’s effects on agricultural production.

Recommendation 5-9c: Modify Ordinance 23.04.050 (7) and Agriculture Policy 3 (h) to require agriculture easements and, where appropriate, open space easements for all supplemental uses except temporary events, and for non-supplemental uses where it is determined that an easement is necessary to assure the protection of agricultural lands.

Recommendation 5-9d: Modify Agriculture Policy 3 and Ordinance 23.04.050(b) (3) through (6) to clarify that all uses identified as special uses under Table O (“S” or “S-P” uses) in agriculturally designated areas, whether also defined as supplemental uses or not, must comply with the existing criteria to: a) obtain permits for development, b) meet the required findings to locate development off prime soils and avoid conflicts with surrounding agricultural lands, c) provide the information currently specified for a permit application, d) comply with the siting and design standards for development, with the following exceptions:

- non-supplemental uses are exempt from economic analysis, as required under Recommendation 5-9b;
- residential and residential accessory structures are exempt from Ordinance 23.04.050 (6) (ii), requiring that non-agricultural uses be limited to a maximum of 2% of the gross site area.

Recommendation 5-9e: Modify Table O to exclude as electric generating plants and mining as allowable uses on agriculturally zoned lands.

4. Conclusion

As discussed above and further in the *Preliminary Report*, implementing the LCP to limit non-agricultural uses on agricultural lands is necessary to protect long-term agricultural viability, consistent with Coastal Act Section 30242. The *Preliminary Report* presented evidence and analysis showing that the San Luis Obispo County LCP has not been effectively implemented to adequately protect agricultural lands, in conformance with Coastal Act Sections 30241 and 30242 (see Exhibit A, findings incorporated by reference). After further evaluation and consideration of public comments, pursuant to Coastal Act Section 30519.5, the Commission adopts Recommendations 5-8 – 5-9 as appropriate corrective actions for submission to the County.

D. Addressing Impacts from Intensification of Agriculture

1. Summary of *Preliminary Periodic Review Findings* (Exhibit A, pg. 238-243)

As discussed in the *Preliminary Report*, a number of environmental concerns can result from intensive agricultural land uses, including the removal of native habitat and open space; erosion and water quality impacts from extensive grading activities (see also *Preliminary Report* Chapter 3, pg. 77-82); and impacts to stream and riparian ecosystems from an increase in water withdrawals. At the same time, protection of agriculture is a priority under the Coastal Act and LCP. Policies of the Coastal Act and LCP also require the protection of other coastal resources. As discussed in the *Preliminary Report*, most agricultural activities do not require a grading or land use permit, and are not reviewed under the County’s LCP.

In order to address the potential impacts from agricultural activities on coastal resources, the *Preliminary Report* proposed establishing criteria and performance standards to identify when agricultural development would require review under the LCP (PR 5-10, 5-11, 5-13). Criteria proposed for requiring permit review include when agricultural activities resulted in: a) substantial grading, removal of native vegetation, or significant landform alteration that impacts sensitive resources; b) development within 100 ft. of a coastal stream or other waters; c) an increase in water extractions; or d) alteration of sensitive habitat. Impact to scenic vistas was also included as a standard for reviewing development that converted grazing lands to crop production. Standards included a) limiting new or expanded crop production to slopes of less than 30%; b) incorporating erosion control measures; c) maintaining sensitive resources; d) minimizing nonpoint runoff of pesticides and fertilizers; and e) maintaining wildlife corridors.

In addition, PR 5-12 sought to address the concern over potential impacts from increases in water use, including the need to protect groundwater basins. The LCP currently requires that all water extractions, impoundments, and other water resource developments obtain all necessary permits and that information about these developments be incorporated into the County's Resource Management System (Watershed Policy 2). Watershed Policy 3 requires applicants for water extraction developments to install monitoring devices and participate in a water monitoring management program in basins where extractions are overdrafting groundwater basins.

2. Comments Raised

San Luis Obispo County Response (Exhibit C):

The County disagrees with Recommendations 5-10, 5-11, and 5-13 in the Preliminary Report, and has requested additional information for Recommendation 5-12. The County suggests continuing educational and voluntary programs to assure that resource protection policies are met, and the use of an alternative review process for grading activities, which is incorporated into the County's proposed updated grading ordinance.⁵⁸

Public Comments (Exhibit D):

The agricultural community also disagrees with the need for any new regulatory review of agricultural development (Recommendations 5-10 through 5-13), stating that the proposed recommendations are excessive, would unduly burden agriculturists, and would threaten the ongoing viability of agriculture, in part by introducing a cumbersome and lengthy process that would hinder flexibility for agriculturists. The agricultural community also believes that many of the concerns raised in the report are addressed through other agencies and voluntary efforts. They are also concerned that the proposed standards would remove significant amounts of viable agricultural land from production (i.e., the proposed setbacks from streams and prohibition on steep slopes and restrictions on cultivation on steep slopes). Some agriculturists are concerned that the proposed regulations provided no means to undertake work in emergencies. Finally, the

⁵⁸ The County's proposed updated grading ordinance will be brought to the Commission for review as a separate LCP amendment in the near future.

agricultural community feels that the preliminary findings portrayed the agriculturists as “bad actors”.

Specific Clarifications/Errata:

The County and public raised a number of additional comments and questions regarding the text of the Preliminary Report. The following discussion addresses those comments and clarifies the text in the Preliminary Report.

1. Delete statement on page 237 of the *Preliminary Report* (page 238 in *Preliminary Report as Revised*) which discusses a loss of large mammals from grazing areas.
2. Comments state that the discussion on pgs. 189 and 236 (pages 189 and 238 in *Preliminary Report as Revised*) mischaracterizes the intensification of agriculture in the County’s coastal zone. The discussion notes an increase in the production of water-intensive crops and the growth in vineyards. The discussion will be corrected to clarify that the majority of the increase in these uses occurred outside of the coastal zone.
3. Comments indicated that data citing a loss of oak trees in Santa Barbara County (pg. 237 of the *Preliminary Report*; page 238-239 in *Preliminary Report as Revised*) was inaccurate. This information was originally obtained from Santa Barbara County staff and the draft EIR for the County’s proposed Oak Protection Program; the reference to this statement was inadvertently omitted from the *Preliminary Report*. Since publication of the report, Commission staff verified this data with staff at Santa Barbara County.⁵⁹ Although projections are not discussed in the *Preliminary Report*, the County staff has modified its assumption this rate of loss would continue in the future. The text will be changed to reflect that the data cited may not be representative of future oak tree losses.

3. Analysis

As discussed under the Water Quality section of this staff report, the Commission proposes to address environmental impacts emanating from agricultural development through revisions to the County’s grading ordinance. These revisions are based on the County’s proposed grading ordinance, which emphasizes the use of RCD/NRCS standards and an alternative review process by NRCS for some grading projects. In response to concerns raised regarding proposed requirements for permits for agricultural development in the *Preliminary Report*, the Commission acknowledges that certain agricultural grading should be exempt from permits. The Commission reiterates that the protection of agricultural resources is a priority under the Coastal Act. Based on discussions with the agricultural community, the Commission understands the need for flexibility to respond to market forces and changing conditions in order to ensure that agricultural operations remain viable. The proposed exemptions from grading permit requirements include such things as the maintenance of existing agricultural roads, grading further than 100 ft. from and ESHA, and grading on slopes if measures are incorporated to

⁵⁹ Merrick, Jennifer. Planning Staff at Santa Barbara County. Pers. comm. June 11, 2001.

address erosion and other environmental concerns. Tillage of existing agricultural fields does not constitute development, and would *not* require a grading permit. As modified through this staff report, Recommendations 3-2b – 3-2d propose a grading permit for new agricultural grading, but establish broad criteria to exempt certain agricultural grading.

The criteria proposed in the *Preliminary Report* have been modified so that agricultural grading that constitutes development is *not* necessarily prohibited on slopes over 30% or within 100 ft. of an ESHA, but are reviewed to ensure that impacts to coastal resources are avoided or mitigated. Other factors originally proposed through Recommendations 5-10, 5-11, and 5-13 (e.g., increase in water use, protection of wildlife corridors, and impacts to visual resources) are not included as criteria to require a permit. The Commission proposes to delete Recommendations 5-10, 5-11, and 5-13. To assure that implementation of the LCP will be consistent with resource protection policies, modified Recommendations 3-2b through 3-2d, detail the criteria proposed and the proposed modifications to the LCP.

Regarding Recommendation 5-12, the County and the agricultural community note that there is already a trend toward water conservation, and state that policies in the agriculture and open space element of the County's General Plan adequately address water use issues. Policy 10 encourages water conservation through best management practices, and encourages the U.C. Cooperative Extension to continue its public information program. The incorporation of a similar program is addressed through modified Recommendation 3-2a. However, to fully assure the protection of groundwater resources, the County should improve its monitoring of water withdrawals, as already required under the LCP.

Emergencies: Ordinance 23.03.045 addresses emergency permits, and defines emergencies as “a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential public services”. Under the ordinance, the Planning Director may issue an emergency permit for development, by telephone if necessary. This provision allows grading to occur if necessary to address an emergency situation without the time delays of obtaining a permit.

4. Conclusion

The Commission has modified the regulatory oversight of agricultural development proposed in the *Preliminary Report* primarily to focus on addressing impacts from grading that constitutes development under the Coastal Act. Recommendations 3-2a – 3-2d incorporate the criteria to review agricultural grading that constitutes development, consistent with Coastal Act Sections 30230 and 32021. Therefore, the Commission deletes Recommendations 5-10, 5-11, and 5-13.

In addition, Recommendation 3-2a advocates adding a program to the LCP, encouraging the County to continue supporting education efforts, in part to encourage irrigation techniques which conserve water and retain water on-site. Recommendation 3-2a, combined with more stringent monitoring of water withdrawals, addresses the intent of Recommendation 5-12, and will

improve the protection of groundwater resources, consistent with Coastal Act Section 30231. Therefore, the Commission deletes Recommendation 5-12.

Additional Comments and Clarifications to the Preliminary Report

1. Comments indicated a need to define many of the terms in the preliminary findings. Concerns were that without precise definitions, the LCP would not be interpreted consistently. Commission staff relies on definitions incorporated into the Coastal Act, California Coastal Regulations, and the LCP. Where necessary, additional definitions will be developed with County staff as part of LCP amendments.
2. The County has requested modification of the following sentence (pg. 189, preliminary findings) to include the italicized language: “The flexibility to change practices *and crops* to respond to changing economic situations is one element that is critical in maintaining agricultural uses.” Commission staff will incorporate the requested changes.
3. The County questioned the use of American Farmland Trust findings on page 190 of the *Preliminary Report*, stating the need to link the general findings to the specific issues applicable to the San Luis Obispo County coastal zone. Commission included the discussion of AFT findings to illustrate the numerous factors that can affect agricultural viability, and believe the discussion is appropriate.
4. The County requested that footnote 24 on page 192 be incorporated into the body of the text. Commission staff will incorporate the requested change.
5. The County has stated that references to “agricultural viability reports” reviewed by the County for development on agricultural lands should be called “agricultural capability reports”. Where findings reference County reports not required under Ordinance 23.04.024, which specifically requires an agricultural viability report for land divisions, Commission staff will incorporate the requested change.
6. In the discussion of acres of agricultural land (page 188), Commission staff will add a statement that part of the decline of land used for agriculture resulted from the federal Conservation Reserve Program, which removes lands with highly erodible soil from production.
7. Commission staff will clarify that under the FMMP classification, irrigated land may be classified not only as prime, but also as Unique Farmland or Farmland of Statewide Importance.
8. A public comment suggested the need to increase the minimum parcel size for some agriculturally zoned lands. Maintaining a viable minimum parcel size is a critical tool for the long-term protection of agricultural land. The Commission makes no specific

recommendation at this time to increase the minimum acreage for agriculturally designated lands. However, re-evaluating and adjusting the minimum parcel size for agriculturally designated lands should be considered through the Area Plan updates.

9. During its public hearing, the Commission requested that staff investigate impacts of genetically modified crops. The County Agricultural Commission staff does not have documentation on the extent of genetically engineered crops in the coastal zone. However, biotechnology is regulated under the Department of Agriculture, the U.S. EPA, and the Food and Drug Administration. The USDA's Animal and Plant Health inspection Service (APHIS) regulates the safe testing of biotechnology-derived, new plant varieties, and evaluates the possible environmental impacts before field tests are undertaken, including possible impacts on endangered or threatened species. Before a genetically engineered crop can be produced and sold commercially, APHIS must determine that the plant poses no significant risk to other plants in the environment and is as safe to use as more traditional varieties. The EPA also issues permits for large scale testing of herbicides and biotechnology-derived plants containing new pesticidal substances.