

4. ENVIRONMENTALLY SENSITIVE HABITATS AND WETLANDS

Overview

Summary of Preliminary Periodic Review Findings (Exhibit A, pg. 101-184)

The Preliminary Report analyzed the effectiveness of the certified LCP, as implemented by the County, at protecting Environmentally Sensitive Habitat Areas (ESHA) consistent with Coastal Act policies. The Report evaluated the process by which an ESHA is identified during the development review, and whether this process successfully avoided, minimized and mitigated adverse impacts. The major implementation issues identified include:

- A reliance on outdated maps to delineate and protect ESHA;
- Lack of sufficient biological reviews, alternative analyses, and mitigation standards;
- Reluctance to stringently implement ESHA protection requirements as a result of takings concerns; and,
- The need for comprehensive regional and sub regional habitat protection plans.

With respect to the protection of streams and riparian vegetation, the Preliminary Report found that implementation of the LCP:

- May be resulting in excessive alterations of riparian habitats;
- Is not always effectively coordinated with the Department of Fish and Game or other involved wildlife agencies; and,
- Does not always provided adequate habitat buffers.

A review of the way in which the County has carried out LCP wetland protection observed the following:

- Wetland habitats are not always identified;
- Wetland setbacks requirements have not been adequately enforced;
- New programs and standards are needed to effectively coordinate wetland monitoring and restoration activities, as well as to regulate the breaching of coastal lagoons; and,
- Mosquito abatement practices should be reviewed and permitted in accordance with LCP requirements

The Preliminary Report found that the County's implementation of the Terrestrial Habitat protection provisions could be improved through the following actions:

- Developing comprehensive habitat protection plans to effectively protect the Monterey Pine Forest in Cambria and the coastal dunes in Los Osos;
- Incorporating additional standards to avoid the removal of Monterey Pine, guide tree replacement, and respond to the threats of pitch canker;
- Reducing buildout potential in sensitive forest areas, among other means by updating the Cambria TDC program, providing greater incentives for participation, prohibiting subdivisions, better clustering development, and developing additional methods for the retirement of lots.
- Establishing a sand stabilization program for the Oceano area;
- Updating land use designations on South County dune habitat areas;
- Identifying Western snowy plover and Elephant seal habitats, and updating the LCP to better designate and protection these areas as ESHA in cooperation with other agencies and organizations.

San Luis Obispo County Response

Preliminary Recommendations that the County response indicates general agreement with include:

- Preliminary Recommendation 4.1, recommending that the LCP definition of ESHA be revised to conform to the Coastal Act, among other means by recognizing that ESHA is not limited to areas mapped as Combining Designations.
- Preliminary Recommendation 4.2, calling for continuous updates to LCP ESHA maps.
- Preliminary Recommendation 4.3, suggesting the expansion of biological investigation and report requirements, provided that the recommended interagency review of the biological reports is completed in a timely fashion.
- Preliminary Recommendation 4.6; encouraging the development of comprehensive habitat protection programs for Cambria and Los Osos.
- Preliminary Recommendation 4.13, recommending the use of easements to protect ESHA and providing such easements for Executive Director review and approval.
- Preliminary Recommendation 4.16, calling for the establishment of specific standards for mitigation monitoring and evaluation.
- Preliminary Recommendations 4.17 - 4.21 regarding streambed alterations.
- Preliminary Recommendations 4.22, 4.24, 4.25, 4.27, and 4.28 regarding the protection of riparian habitats and their setbacks;
- Preliminary Recommendations 4.30, 4.31, 4.33, 4.34, and 4.36 regarding the protection of wetland habitats.
- Preliminary Recommendations 4.37 – 4.43, and 4.45 – 4.49, 4.53, 4.54, and 4.56 regarding the protection of Terrestrial habitats.

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Components of the Preliminary Report that the County and other commenters identified disagreement with, or proposed alternatives to, are discussed below.

A. Identifying ESHA

1. Summary of Preliminary Periodic Review Findings (Exhibit A, pages 106 – 114)

As noted above, the Preliminary Report identified problems with the LCP's reliance on outdated maps to identify and protect ESHA. To ensure that ESHA is effectively identified during development review the Preliminary Report recommended:

- Revising the LCP's definition of ESHA to conform with the Coastal Act definition;
- Updating LCP habitat (Combining Designation) maps;
- Supplementing the use of LCP maps with field observations, and additional information including the National Diversity Database and U.S. Fish and Wildlife Service Critical Habitat Designations; and
- Obtaining site specific biological information.

The Preliminary Report recognized that a blanket requirement for all development to provide site specific biological evaluations and reports could place unnecessary burdens on the permit application and review process. As a result, it recommended that site specific biological information be obtained in various ways:

- Through environmental reviews conducted pursuant to the California Environmental Quality Act (CEQA).
- Where projects are exempt from CEQA, by requiring a site specific flora and fauna inventory that could be used to determine the need for a full biological report. (Urban areas where no biological resource concerns exist could be exempted from this requirement.)
- By addressing the type and extent of habitat within a region through a comprehensive conservation planning effort.

Finally, to ensure that the full extent of sensitive habitat found present on a development site is accurately delineated, the Preliminary Report recommended that in addition to the current location of sensitive plants and animals, areas of potential and restorable habitat also be considered.

2. Comments Raised

San Luis Obispo County Response (Exhibit C)

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With respect to Preliminary Recommendation 4.1, the County has requested citation of the Department of Fish and Game's definition of streams recommended to be incorporated into the LCP.

The County response acknowledges that substantial revisions to the processing of discretionary and ministerial permits are needed to effectively protect ESHA, and underscores the importance of identifying ESHA issues early in the review process. However, the County has also recognized the significant implications this can have on applicants. County staff has therefore outlined a procedural approach that is slightly different than the approach recommended by the Preliminary Report, which would replace the requirement for biological investigations (2nd bullet of Preliminary Recommendation 4.3) with a site inspection by a Field Review Team.

The alternative process recommended by County staff begins with an evaluation of whether a project may be in or adjacent to ESHA using updated LCP ESHA maps. If it is unclear if a project is located in or near ESHA based on the initial map review, a Site Specific Constraints Analysis (SSCA) would be completed by the County and/or qualified professionals in the field. A Field Review Team (FT), consisting of County staff and the project biologist(s), would conduct a site specific review for all ground disturbing development to determine if a full biological report is required. All information and habitat delineations developed by these efforts would be used to update LCP habitat maps on a regular basis.

Public Comments (Exhibit D)

In terms of the approach to identifying ESHA recommended by the Preliminary Report, most commenters agreed that updates to LCP ESHA maps were needed. However, there are differing opinions about who should be responsible for completing such updates, and how the updated maps should be used.

Members of the public have expressed concern over Preliminary Recommendation 4.1's proposal to use U.S. Fish and Wildlife Critical Habitat Designations to determine the presence of ESHA. This concern appears in large part to be based on the large extent of area designated by the U.S. Fish and Wildlife Service as Critical Habitat for the red-legged frog. Other commenters, such as the Environmental Defense Center have expressed support for this proposition, noting that designated critical habitat, by definition, must be considered as ESHA.

Comments from the Los Osos Community Advisory Council asserts that the update of habitat maps and protection plans should happen under the direction of the regulatory and planning agencies. Other commenters argue that habitat delineations and biological reviews should occur on a site specific basis.

Comments from the San Luis Obispo County Farm Bureau and agriculturists identify concern with the idea that if agricultural operations, if viewed as development, would need to complete site specific biological inventories.

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Various comment letters submitted by the Rogoway Planning Group question the appropriateness of designating particular sites within the Los Osos areas as ESHA.

Comments from the California Native Plant Society (CNPS) express support of the Combining Designation program, provided that the overlays are updated to reflect current scientific knowledge and protective status for species; for example, by expanding the maps to include habitat for plants identified on CNPS List 1B. While CNPS notes that it may be viable to supplement the use of Combining Designation maps with information developed during CEQA reviews, they would prefer ESHA to be accurately mapped by the LCP to avoid “technical calls” by staff in the field. The CNPS comments also express concern that requiring all development to provide site specific biological information may be costly and inefficient, and notes that the specific criteria for such biological reviews is not identified by the Preliminary Report.

In terms of using the HCP process for habitat delineation, CNPS expressed concern regarding the adequacy of that process species that are not listed by the U.S. Fish and Wildlife Service, and indicated preference for the Department of Fish and Game’s Natural Community Conservation Program (NCCP).

Both the County and the CNPS comments identify the potential funding limitations for periodically updating of the Combining Designation Maps, and agree that the environmental information generated through project specific reviews could be used to update the maps on a more continuous basis.

While the necessary updates to ESHA maps and LCP procedures are being developed, the Environmental Defense Center recommends treating the entire coastal zone as ESHA.

3. Analysis

In response to concerns expressed regarding the use of Critical Habitat Designation to determine the presence of ESHA, it is important to note that this is only one of many tools that will be used as part of project specific evaluations and the update of LCP ESHA Maps. Pursuant to Preliminary Recommendation 4.1, a Critical Habitat Designation would not, in and of itself, qualify a particular area as ESHA. Rather, the designation would inform applicants, planners, and decision makers of the need to consider the potential for red-legged frog habitat to be present on the site. Final conclusions regarding the presence and extent of ESHA on a site would be based on actual site conditions. These site specific assessment could then be used to update LCP ESHA maps on a routine basis, a process endorsed by the County response and other commenters including the Port San Luis Harbor District. Changes to Preliminary Recommendation 4.2 shown below support the use of site specific assessments to update LCP ESHA maps.

The methodology used to determine the presence of ESHA in the field is an issue that has been raised by numerous commenters. While many support the use of updated Combining Designation to make such determinations (Preliminary Recommendation 4.2), there is differing

opinion on what to do when the updated Combining Designation Maps do not effectively resolve this issue.

The Field Review Team and Site Constraints Analysis approach recommended by the County will help ensure accurate identification of ESHA, consistent with the Recommendations of the Preliminary Report. This process will also reduce the need for applicants to provide biological inventories as part of development applications, which as noted by various commenters, could add significant time and cost to the development review process. Finally, the County proposed process will provide an effective format to resolve whether or not particular sites, such as the ones identified in the comment letters submitted by the Rogoway Planning Group, meet the Coastal Act and LCP definition of ESHA.

An additional benefit of the Field Review approach proposed by the County and incorporated into Recommendations 4.2 and 4.3 is that it can be implemented through changes in administrative procedures and is therefore not dependent upon an LCP amendment. Immediate implementation of this approach is preferable to treating the entire coastal zone as ESHA until the LCP maps are updated (as recommended by the Environmental Defense Center) because it will facilitate accurate delineation of ESHA, and application of LCP habitat protection standards to all ESHA, without adding unnecessary regulatory requirements for development that will not impact ESHA.

However, as noted by the CNPS comments and the Preliminary Report, there is a risk that technical calls made by the Field Review Team may not effectively resolve whether a more detailed analysis of habitat areas is warranted. This risk could be reduced by including representatives from involved wildlife agencies and organizations as part of the Field Review Team.

Submitting subsequent biological reports for the review and comment of the California Department of Fish and Game, the US Fish and Wildlife Service, The California Coastal Commission, and, where applicable, the National Marine Fisheries Service, will also help ensure that ESHA is accurately identified during development review (Preliminary Recommendation 4.3). The County response has appropriately observed that if such reviews are to be used as an application filing requirement, these reviews must be completed in a timely fashion.

In light of the comments received and analyzed above, Preliminary Recommendations 4.1 – 4.3 have been revised as follows:

4.1: Revise the LCP's Definition of ESHA

- Revise definitions of SRA and ESHA contained in Section 23.11.030 so that they conform to the Coastal Act definition. Clarify that ESHA, and the application of ESHA protection standards, is not limited to the areas mapped as Combining Designations. As proposed on page 7-10 of the Estero Update, use the definition of "habitat for rare and endangered species" provided by the CEQA guidelines as an additional tool to define ESHA.
- Determine the presence of ESHA based on the best available information, including current field observation, biological reports, the National Diversity Database, and US Fish and Wildlife

Critical Habitat Designations and Recovery Programs. Where the available information indicates that an area may contain ESHA, but that area is not mapped as ESHA by the LCP, a Field Review Team comprised of County staff, project biologist(s), and representatives from involved wildlife agencies and organizations, shall conduct a Site Specific Constraints Analysis.

- As proposed by both the North Coast and Estero Updates, recognize all riparian habitats as ESHA regardless of whether they are mapped by USGS quadrangles.
- Replace the LCP's definition of streams, currently limited to streams shown by USGS maps, with an alternative definition, such as ~~that~~ the following definition used by the Department of Fish and Game:

A stream is a body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes watercourses having a surface or subsurface flow that supports or has supported riparian vegetation.

4.2: Revise and Update ESHA Combining Designations

- Recognize maps as a tool for identifying potential locations of ESHA, but that the actual presence and extent of ESHA must be determined in the field. Establish Field Review Teams, comprised of County staff, the project biologist(s) and representatives from involved wildlife agencies and organizations, to evaluate sites where the Combining Designation Maps do not effectively address the potential presence of ESHA.
- Incorporate other rare and valuable habitat types into the ESHA Combining Designation Programs. These should include, but not be limited to, the additional sensitive habitats identified by the North Coast and Estero Updates.
- ~~Periodically update the Combining Designation Maps to identify habitats of rare and endangered species that have become listed since LCP certification, to correct mistakes contained in existing maps, and to incorporate other habitat types determined to be ESHA by the County. Consider implementing annual updates to the Combining Designation Maps as part of the LCP's Resource Management System.~~
- Maintain the Combining Designation maps as a dynamic geographic database that can be routinely updated as new information becomes available. To facilitate such efforts, the County should ~~consider~~ establishing standard formatting requirements for field surveys and biological reports that could be directly incorporated into such a system ~~facilitate such updates.~~ Coordination with other resource management entities involved with mapping sensitive habitats (e.g., the Morro Bay National Estuary Project) should also be pursued along with other grant programs and cooperative mapping efforts.

4.3: Update Requirements for Biological Investigations and Reports

- Revise CZLUO Section 23.07.170 so that biological reports are prepared for all development within or adjacent to ESHA, not just those sites that have been mapped as ESHA. Use the Field Review process recommended above to determine the need for biological reports when development is located on a site that has the potential to support ESHA, but is not mapped as ESHA by LCP Combining Designations. Where the Site

Specific Constraints Analysis identifies the presence, or potential presence, of any sensitive habitat type, natural community, and/or particular plant or animal species that meets the revised definition of ESHA, a biological report should be required.

- ~~To determine when a biological report may be required for a development site that has not been previously mapped as, or determined to be ESHA, require a habitat and biological inventory prepared by a qualified biologist as part of development permit applications. Where it is clearly evident that a development site has the potential to support sensitive habitats based on the initial inspection of County planning staff, a biological report may be required without a biological inventory.~~
- Evaluate particular areas, particularly urban areas, where it may be appropriate to exclude new development from Site Specific Constraints Analyses ~~the need to provide a biological inventory as part of the application process.~~ Incorporate such exclusions into the LCP based on scientific evidence demonstrating the absence of ESHA in such areas.
- Develop comprehensive habitat conservation and management programs for areas with particular habitat protection needs (e.g., Los Osos dune scrub and maritime chaparral habitats, Cambria Pine Forest, coastal watersheds that support Steelhead trout, and Cayucos Creeks; please see recommendation ~~2e 4.6~~). Upon incorporation of such programs into the LCP, development within particular habitat areas may be excluded from the need to provide site-specific biological investigations and reports. Instead, the biological information required at the application stage would be related to implementation of the area wide habitat protection program (e.g., contribution to area wide program that retires development potential in ESHA).
- ~~Where the required biological inventory identifies the presence or potential presence of any sensitive habitat type, natural community, and/or particular plant or animal species that meets the revised definition of ESHA, a biological report should be required. Minimum requirements for biological inventories and reports should be coordinated with state and federal resource management agencies and specified in CZLUO Section 23.07.170 a.~~
- Update the minimum requirements for biological reports specified by CZLUO Section 23.07.170 in coordination with state and federal resource management agencies.
- The location and extent of ESHA on and adjacent to a development site should be described and mapped by the Biology Report, in a format that allows it to be incorporated into a GIS based Combining Designation map system (see Preliminary Recommendation 4.2 above). The delineation should not be limited to the particular locations where rare plants or animals are observed at one point in time. Rather, it should consider the full range of the sites physical characteristics (e.g., soil type, vegetation, topographical features) represent potential habitat for such rare plant and animal species. In addition, where previously disturbed but restorable habitat for rare and sensitive plant and animal species exist on a site that is surrounded by other valuable habitat areas, these areas should be delineated and protected as ESHA as well. Implementation of this recommendation will also require the incorporation of additional standards for Biological Reports within CZLUO Section 23.07.170.
- Biological reports and their accompanying ESHA delineations should be submitted for the review and comment of the California Department of Fish and Game, the US Fish and Wildlife Service, and to the National Marine Fisheries Service (as applicable), ~~and~~ as well as to the California Coastal Commission, before applications for development in or adjacent to ESHA are filed as

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complete. The incorporation of such a requirement into the LCP (e.g., within Section 23.07.170 of the CZLUO) eshould be accompanied by a specific time frame for such reviews (e.g., 14 days) to ensure that they would not result in undue delays in the development review process.

CNPS preference for the NCCP process, and concern about the HCP process are addressed in a subsequent section of this chapter, as is the Los Osos Community Advisory Council's request for a "top down" approach.

4. Conclusion

Recommendations 4.1 – 4.3 call for updates to LCP ESHA definitions and maps, and propose supplementing the use of LCP maps with site specific evaluations to determine the presence of ESHA, in order to ensure that the LCP is implemented consistent with Coastal Act Sections 30107.5, 30230, 30231, and 30240. They incorporate the revised methodology proposed by the County to improve administration of these recommendations, which also responds to concerns regarding the previously recommended requirement for biological inventories.

B. Avoiding and Minimizing Impacts to ESHA

Limiting Development in ESHA to Resource Dependent Uses

1. Summary of Preliminary Periodic Review Findings (Exhibit A, pages 125 – 128)

The Preliminary Report identified the need to improve implementation of the resource dependent criteria for development in ESHA established by the Coastal Act and LCP. The report therefore proposed changes to Table O that would make all uses other than resource dependent as conditional, and stressed the importance of better implementing existing standards that prohibit additional subdivisions in ESHA.

2. Comments Received

San Luis Obispo County Response (Exhibit C)

To limit non-resource dependent development in ESHA, the County response proposes to add a preamble to Table O stating that anything other than a "P" use in ESHA as conditional. With respect to subdivisions in ESHA, the County response proposes to revise the current LCP prohibition "to include concepts of ESHA protection".

3. Analysis

The proposed preamble to Table O would not appear to be any different than the current provisions of Table O; as detailed in Chapter 12, anything that is not identified as a P use is

already considered to be conditional. More importantly, it would not resolve the fact that the wide range of principally permitted uses established by Table O, irrespective of habitat considerations, is inconsistent with Coastal Act Section 30240(a) and conflicts with LCP ESHA policies and ordinances limiting development in ESHA to resource dependent uses. However, the suggestion that the clarification to Table O proposed by Preliminary Recommendation 4.4 take the form as a preamble to this Table, appears to be an effective way of implementing the recommended changes and has been incorporated into the final recommendation. (See below)

An apparent source of the County's and other commenters' concerns about Preliminary Recommendation 4.4 is the additional processing requirements associated with a conditional use. Indeed, the additional review required for development in and around urban areas determined to be ESHA since the LCP certification would place significant additional demands on applicants and the County planning division.

As detailed in the Preliminary Report, the incorporation of area specific Habitat Conservation Plans into the LCP provides an excellent way to resolve this problem. Where such plans are certified as being consistent with the Coastal Act, it may be appropriate to process the non-resource dependent development sanctioned by the plan as the principally permitted use. Such an approach could be found to be consistent with Coastal Act Section 30240(a) if effective protection of the resource is dependent upon implementation of the plan. The 3rd bullet of Preliminary Recommendation 4.4 therefore included a provision that would allow a non-resource dependent use to be the principally permitted use in ESHA where designated as such by an HCP. However, until such plans are incorporated into the LCP, the processing of non-resource dependent development in ESHA as a conditional use is the precautionary approach necessary to carry out Coastal Act Section 30240. As a result, Preliminary Recommendation 4.4 has been carried over into the final report without change.

Another source of the concerns expressed about the change to Table O proposed by Preliminary Recommendation 4.4 is that it has been interpreted as limiting development to resource dependent uses, and would therefore result in the taking of private property. This is not the case; Preliminary Recommendation 4.4 states that other uses permitted in the land use designation could be allowed in an ESHA as a conditional use where necessary to accommodate an economic use. This is further clarified by the change shown below. Issues and concerns regarding the procedures for determining the type and extent of the economic use that must be accommodated in ESHA to prevent a takings is addressed later in this chapter.

In light of the above analysis, this report includes the following modifications to Recommendation 4.4:

4.4: Identify, and implement where feasible, the Resource Dependent Criteria for Development in ESHA

- Revise "Table O", such as through the addition of a new preamble, to clarify that Resource Dependent Uses are the only allowed principally permitted use within an ESHA or their

required setbacks. All other uses that may be permitted to accommodate an economic use should be considered a conditionally permitted use.

- Where non-resource dependent uses are proposed in or adjacent to ESHA, and may be necessary to accommodate to avoid a “taking” (i.e., there are no feasible alternatives that avoid impacts to ESHA), ~~require applicants to submit specific information to establish that~~ analyze whether there is a reasonable economic backed expectation for the non-resource dependent use (see ~~Preliminary~~ Recommendation 4.10, below).
- Provide exceptions to the above standards in areas that are addressed by a comprehensive habitat conservation program that has been incorporated into the LCP (see ~~Preliminary~~ Recommendation 4.6, below).

With respect to subdivisions in ESHA, it appears that the modification to Preliminary Recommendation 4.5 contained in the County response would weaken the LCP’s current prohibition against subdivisions that would create building sites in ESHA. This would, in turn, conflict with Coastal Act Section 30240. Thus, only the following minor clarification to Recommendation 4.5 is proposed by the final report:

4.5: Prohibit Subdivisions that Create new Lots in ESHA

- Implement the provisions of 23.07.170c.
- Revise Cluster Division Ordinance to require much smaller ~~lots~~ building sites, that they be located entirely outside ESHA and its setback, and that all of the ESHA area be retained and protected as Open Space. Make clustered division mandatory, rather than optional, for all divisions on parcels containing ESHA.
- Clarify that the parcel sizes established by CZLUO Sections 23.04.020 – 033 do not apply to sites that support ESHA, within which land divisions are prohibited.

4. Conclusion

Recommendations 4.4 through 4.6 will enhance the ability of the County, through its implementation of the LCP, to avoid non-resource dependent development in ESHA as required by Coastal Act Section 30240(a).

C. Pursuing Alternatives That Avoid Impacts to ESHA

1. Summary of Preliminary Findings and Recommendations (Exhibit A, pages 128 – 132)

The Preliminary Report provided examples of various situations in which the County’s implementation of the LCP did not effectively avoid significant disruptions to ESHA. Many of these instances were related to the fact that the existing LCP does not effectively protect habitats

that have been identified as being rare or especially valuable since the LCP was originally certified.

To avoid adverse impacts to ESHA, the Preliminary Report encourages the County to update site development standards to better concentrate development outside of ESHA (Preliminary Recommendation 4.8). Continuation and expansion of current efforts to incorporate area wide habitat plans into the LCP is identified as a comprehensive method for achieving this objective (Preliminary Recommendation 4.6). Where such plans are not in place, the Preliminary Report recommends that development proposed in ESHA be accompanied by, among other things:

- biological reports that include an analysis of projects alternatives that first avoid, then minimize impacts to ESHA, including fire clearance impacts (Preliminary Recommendation 4.7); and
- an overall development plan for all properties that are geographically contiguous and in common ownership to ensure that the full range of alternatives available to avoid adverse impacts are considered (Preliminary Recommendation 4.8).

2. Comments Received

San Luis Obispo County Response (Exhibit C):

While the County response supports the incorporation of HCPs into the LCP, it identifies that the high cost of such efforts necessitates additional funding and interagency cooperation. Comments of the Los Osos Community Advisory Council stress the importance of such an interagency approach towards resolving habitat protection issues in the South Bay Urban Area.

In response to Preliminary Recommendation 4.7, the County suggests that rather than requiring biological reports to include alternative analyses, biological reports should be required to include constraints analyses. This approach is preferred because the determination of the environmentally preferable alternative requires analysis of a range of issues, including but not limited to biological concerns.

Similarly, the County response indicates that the impacts associated with vegetation clearance for fire protection is more appropriately conducted as part of the development review, rather than as part of the biological review. This is due to the fact that understanding vegetation clearance needs requires coordination with fire protection agencies and is beyond the scope of a biological report. So long as the Biology Report provides a complete assessment of the habitat constraints, the Planning Division believes it will be able to conduct an adequate analysis of the impacts of vegetation clearance on ESHA during development review. Other comments regarding Preliminary Recommendation 4.7 expressed concern that limits to fire hazard modification measures would put habitat protection before the health and welfare of people.

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Finally, the County response indicates disagreement with the portion of Preliminary Recommendation 4.8 that suggests where development is proposed in ESHA, an overall development plan for all properties that are geographically contiguous and in common ownership be required.

Public Comments (Exhibit D):

As previously noted, the comments from the California Native Plant Society raises concerns that the HCP process does not adequately protect the habitats of species that are not listed by the U.S. Fish and Wildlife Service, but qualify as ESHA under the LCP and Coastal Act. In addition, CNPS identifies that the No Surprises clause of the HCP and NCCP processes may prevent such plans from being updated to respond to new information.

Also in relation to Preliminary Recommendation 4.6, concerns expressed by the County and Cayucos Advisory Council regarding riparian habitat protection/stream setback recommendations suggest that a comprehensive planning effort may provide the most effective means of protecting and enhancing the coastal streams and lagoons in the Cayucos urban area. (Preliminary Recommendation 4.6 identified only Los Osos and Cambria as examples where area wide habitat protection and management programs are warranted.) Other comments suggest a Habitat Conservation Plan be prepared to protect the unique resources of the North Coast, such as the rare flora of Arroyo de la Cruz.

3. Analysis

HCP's and NCCP's

As observed by the CNPS comments, the US Fish and Wildlife Service, the Department of Fish and Game, and the California Coastal Commission have different mandates, standards, and processing procedures related to the protection of sensitive habitats. Thus, Habitat Conservation Plans and Natural Communities Conservation Plans that may satisfy the requirements of state and federal endangered species acts may not always completely satisfy LCP and Coastal Act requirements.

These differences underscore the importance of coordinating such habitat planning efforts with LCP updates. This will enhance the ability of habitat conservation plans to satisfy the requirements of all regulatory agencies, and in turn, streamline the permit process. Moreover, it will allow the efforts of the various agencies and organizations involved to compliment and support one another, in a way that will create the most informed and comprehensive plan for habitat protection possible. As noted by the comments received from the Los Osos Community Advisory Council, such an interagency coordinated approach is, in areas such as Los Osos, a logical way to resolve habitat protection issues.

The recommendations of this report are not intended to imply that Fish and Wildlife HCP's or Department of Fish and Game NCCP's should be used to satisfy Coastal Act and LCP habitat

protection standards in and of themselves. Integrating such plans with LCP updates are essential to ensure that the objectives of these recommendations are achieved. Such a process is expected to avoid the potential problems identified by the CNPS comments, and is prescribed in greater detail by the revisions to Preliminary recommendation 4.6, below.

In recognition of the significant staffing and financial resources required to develop and implement habitat conservation plans that can be incorporated into the LCP, Chapter 12 of this report encourages both the County and the Commission to seek additional funding, grants, and opportunities for collaborating with other agencies and organizations (see Exhibit E for a listing of some sample Grant opportunities). Notwithstanding the high cost of the initial investment, the long-term benefits will make such commitments cost-efficient for both the County and applicants.

Finally, as suggested by various commenters, Preliminary Recommendation 4.6 has been revised to maximize opportunities to coordinate the development of Habitat Conservation Plans and LCP Updates beyond the urban areas of Los Osos and Cambria.

4.6: Develop Comprehensive Habitat Conservation, Protection and Management Programs for Areas with Particular Habitat Protection Needs and Challenges

In urban areas that contain numerous existing lots within ESHA that has been fragmented or degraded by surrounding development, develop programs allowing for non-resource dependent uses that contribute to the protection of surrounding viable habitat areas threatened by development. The current effort to develop a Habitat Conservation Plan as part of the Los Osos Wastewater Treatment project and Estero Area Update should continue to be pursued, with ongoing coordination between the Los Osos CSD, involved regulatory agencies, and interested parties. As proposed by Preliminary Recommendation 4.36 later in this Chapter, a similar approach, involving a comprehensive forest management plan for Cambria would go a long way towards managing cumulative buildout in a manner that will protect the long-term health and survival of sensitive Monterey Pine Forest habitats.

The constraints and opportunities associated with the protection of the coastal creeks and lagoons within the Cayucos urban area also warrants the incorporation of comprehensive creek protection plans (i.e., within the Estero Area Plan). Such plans could be used to perfect setback standards, and prescribe specific mitigation measures, that enhance the riparian environment and clarify development requirements.

Comprehensive habitat protection plans may prove to be equally useful for the protection of sensitive habitats in rural areas. The North Coast creeks and arroyos are examples of sensitive rural habitat areas that could benefit from such plans. HCP Planning efforts being initiated by State Parks, Community Services Districts, and others, should be closely coordinated with the County and Commission staff to ensure that they will effectively carry our Coastal Act and LCP requirements.

Biology Reports

As noted by the County, the protection of ESHA is just one of many coastal resource issues that must be evaluated when determining which project alternative best conforms to LCP and Coastal Act requirements. Nevertheless, because the protection of ESHA is such a significant Coastal Act concern, it is essential for the full range of alternatives available to avoid and minimize the impacts on ESHA be developed and considered early in the review process. This not only necessitates an understanding of the biological constraints, but also requires consideration of all

options available to accommodate development within these constraints. An assessment of these alternatives by a professional biologist, as a component of the required Biology Report, will provide information that can be used by applicants, planners, and decision makers to design development in a manner that is most protective of ESHA.

The final recommendations therefore retain the suggestion that biological reports include an assessment of project revisions that would avoid and minimize the impacts of new development on ESHA. As suggested by the County, Preliminary Recommendations 4.7 and 4.9 have been revised to emphasize the identification of habitat constraints as the critical first step in evaluating these options, and to acknowledge that this is one of many issues that will be considered by the County in its evaluation of alternatives. (See below.)

With respect to assessing the biological impacts associated with vegetation clearance, the preferred approach, reflected by Preliminary Recommendation 4.7, is to identify fire clearance requirements prior to completing the biological analysis, thereby allowing these impacts to be fully analyzed by the Biology Report. Recognizing, however, that the full extent of necessary fire protection measures may not be known at the time the initial biology report is prepared, revisions to the second bullet of Preliminary Recommendation 4.7 allow the impact of such measures to be addressed through supplemental biological reviews. The intent of such review is not to put habitat before human safety. Rather, it is intended to ensure that the removal of habitat for fire protection be avoided where feasible. In instances where the removal of habitat is essential for public health and safety, it should be accompanied by measures to minimize and mitigate the impacts of such activities on ESHA.

4.7: Revise Biological Report Requirements

- In addition to the information that is currently required to be included in biology reports pursuant to CZLUO Section 23.07.170, the reports should identify ~~project alternatives~~ the biological constraints that need to be addressed in designing development that would first avoid, then minimize impacts to ESHA. Biological Reports should identify where revisions to the project are available to avoid and minimize impacts on ESHA, which should be considered by the County in the evaluation of project alternatives.
- ~~Require Biological Reports to~~ County analysis of development in or adjacent to ESHA should include an assessment of the impacts posed by fire safety requirements, such as vegetation clearance and roadway improvements. Where ~~such~~ fire safety measures required to accommodate new development may impact ESHA beyond what was anticipated by the project's Biological Report, a supplemental report may be required. In any instances where fire clearance requirements would impact ESHA, project alternatives that avoid these impacts should be identified and pursued. Where impacts to ESHA associated with fire safety precautions can not be avoided, these impacts should be minimized and mitigated in accordance with Recommendations 4.11 – 4.16.

4.9: Thoroughly Review and Aggressively Pursue Project Alternatives that Avoid Impacts to ESHA

- The full range of project alternatives that would avoid impacts to ESHA, from alternative sites to different designs (including reductions in project sizes) should be pursued and required. This should include a critical analysis of the ~~alternatives suggested~~ habitat constraints identified in the biological report and the options available to respond to these constraints (see ~~Preliminary~~ Recommendation 4.7).
- In accordance with Policy 1 for ESHA, the requirements of CZLUO Section 23.07.170 should apply to development that is further than 100 feet from the ESHA where such development poses adverse impacts to the habitat.

Comprehensive Site Assessments

In response to the County's objection to the second bullet of 4.8, implementation of this recommendation is essential to ensure that all alternatives available to avoid non-resource dependent development is ESHA. The following changes separate this component of the recommendation from the 1st and 3rd bullets, which the County has indicated agreement with, and clarifies that the intent of the recommendation is to avoid adverse impacts to ESHA:

4.8a: Expand Application of Rural Area SRA Standards regarding "Site Planning – Development Plan Projects" Contained in Area Plans

- As proposed in both the North Coast and Estero Area Plan Updates, require *all* development (not just those located in rural areas that trigger Development Plan review) to concentrate proposed uses in the least sensitive portions of properties and retain native vegetation as much as possible. Apply this standard throughout the coastal zone.
- ~~Require all applications for development within an SRA or its setback include an overall development plan for all properties that are geographically contiguous and in common ownership at the time of the application.~~
- Provide flexibility in non-habitat related setback requirements where necessary to avoid and minimize ESHA impacts.

4.8b: Evaluate all Available Alternative Locations that Avoid and Minimize Impacts to ESHA

Require all applications for development within an ~~SRA~~ ESHA or its setback to include an overall development plan for all properties that are geographically contiguous and in common ownership⁴⁶ at the time of the application.

4. Conclusion

ESHA Recommendations 4.6 - 4.9 are intended to ensure that all options available to maximize the protection of ESHA are duly considered through the County's implementation of the LCP. A thorough analysis of such alternatives is essential to carry out Coastal Act ESHA protection objectives (e.g., Sections 30230, 30231, 30240).

⁴⁶ Parcels that are owned in fee as well as parcels subject to existing purchase options, even if separated by roads, streets, utility easements or railroad rights of way.

D. Analyzing the Takings Issue

1. Summary of Preliminary Periodic Review Findings (Exhibit A, pages 131 – 132)

To achieve the appropriate balance between development and habitat protection where avoidance is not possible, the Preliminary Report recommends an analysis of 1) investment-backed expectations and 2) the economic effect of habitat-protective use restrictions, and restricting development accordingly. The development of LCP Habitat Conservation Plans in specific areas with particular habitat needs is identified by the Preliminary Report as a potentially viable alternative to case specific takings reviews.

2. Comments Received

San Luis Obispo County Response (Exhibit C)

The County response indicates disagreement with the detailed economic analysis required under Preliminary Recommendations 4.10 and 4.11, and suggests requiring a more detailed alternatives analysis that evaluates, among other things, a reduced footprint as alternative. County staff has indicated a preference for providing a wider range of procedures to balance the protection of ESHA with the constitutional rights of property owners rather than adopting the specific approach taken by the Commission.

While the County response supports the incorporation of Habitat Conservation Plans into the LCP as a means to avoid case specific takings reviews, they have indicated concern regarding the high costs associated with bringing such plans to fruition.

Public Comments (Exhibit D)

Various commenters expressed concern regarding the takings analysis proposed by the Preliminary Report based on the nature of the information that would be required to be provided, additional regulatory complexities, and perceived conflicts with the rights of private property owners.

3. Analysis

As implied by the County response, thorough consideration of alternatives is a crucial step in resolving takings issues. However, when alternative analyses do not yield a viable option for development that avoids ESHA, an established procedure is needed to implement ESHA protection requirements, in a way that does not infringe upon private property rights, on a reasoned and consistent basis.

The methodology used by the Commission to resolve such situations has evolved over many years of experience and legal review. It provides a model that local jurisdictions can employ to

customize their approach to resolving these complex issues. In no way should the recommendation to establish policies and procedures to resolve takings issues be construed as an attempt to violate property rights; it is intended to ensure that the LCP is implemented consistent with the Coastal Act's protection of both ESHA and property rights. Established procedures will enable fair and consistent treatment as well as informed decisions, and may help to resolve controversial issues in a more efficient manner.

In recognition that the procedures used by the Commission may not be the only way to effectively resolve takings issues, Preliminary Recommendations 4.10 and 4.11 have been revised to be more advisory in nature. Instead of requesting the County to implement the same exact approach, they encourage the County to develop their own tailored procedures.

While various methods of resolving this issue may be available, they all must lead to the same result to effectively implement the ESHA protection policies of the LCP and of the Coastal Act; ESHA must be protected to the maximum extent feasible consistent with the constitutional rights of private property owners. Thus, the recommended findings for approval contained in Preliminary Recommendation 4.10 have been carried over into the final report without change.

The same approach can be used to resolve situations where the stringent implementation of other coastal resource protection provisions (e.g., viewshed preservation) would preclude a reasonable economic use of land because alternatives that would comply with resource protection standards are not feasible. Preliminary Recommendation 4.10 and 4.11 have therefore been expanded to address the wider range of circumstances where an established methodology of balancing coastal resource protection with the constitutional rights of private property owners is anticipated to be needed.

In sum, the revisions to Recommendations 4.10 – 4.11 are as follows:

4.10: ~~Evaluate Economic Backed Expectations before Concluding that Avoidance is not Possible due to "Takings" Concerns~~ Incorporate New Standards and Review Procedures to Implement ESHA and Viewshed Protection Consistent with Coastal Act Section 30010.

To effectively resolve takings concerns where it is not feasible to avoid impacts to ESHA or development in scenic coastal areas (see Recommendations 8.1 and 8.6), incorporate additional standards and review procedures within the LCP that will protect coastal resources to the maximum extent possible consistent with Coastal Act Section 30010. For example, the County should consider developing of a process for evaluating the following when a non resource dependent use is proposed in or adjacent to ESHA, or when structural development is proposed in significant coastal viewsheds, and no alternatives to avoid such development is available:

- a) whether limiting uses within ESHA to those that are resource dependent consistent with Coastal Plan Policy 1 for ESHA would deprive the landowner of all economically beneficial use of the property; and,
- b) whether there is a reasonable investment-backed expectation of approval of such a non-resource dependent use.

Where a non-resource dependent use is proposed in or adjacent to ESHA, and no alternative to avoid ESHA impacts is available, require applicant to provide the following information for all parcels that are geographically contiguous and held by the applicant in common ownership at the time of the application:- Some of the information that should be evaluated as part of such an analysis includes:

1. Date the applicant purchased or otherwise acquired the property, and from whom.
 2. The purchase price paid by the applicant for the property.
 3. The fair market value of the property at the time the applicant acquired it, describing the basis upon which the fair market value is derived, including any appraisals done at the time.
 4. The general plan, zoning or similar land use designations applicable to the property at the time the applicant acquired it, as well as any changes to these designations that occurred after acquisition.
 5. Any development restrictions or other restrictions on use, other than government regulatory restrictions described in 4 above, that applied to the property at the time the applicant acquired it, or which may have been imposed after acquisition.
 6. Any changes to the size or use of the property since the time the applicant purchased it, including a discussion of the nature of the changes, the circumstances and the relevant dates.
 7. A discussion of whether the applicant has sold or leased a portion of, or interest in, the property since the time of purchase, indicating the relevant dates, sales prices, rents, and nature of the portion or interests in the property that were sold or leased.
 8. Any title reports, litigation guarantees or similar documents in connection with all or a portion of the property of which the applicant is aware.
 9. Any offers to buy all or a portion of the property which the applicant solicited or received since the time of purchase, including the approximate date of the offer and the offered price.
 10. The applicant's cost associated with ownership of the property, annualized for each of the last five calendar years, including property taxes, property assessments, debt services costs (such as mortgage and interest costs), and operation and management costs.
 11. Apart from any rent received from leasing all or a portion of the property, any income generated by the use of all or a portion of the property over the last five calendar years. If there is any such income to report it should be listed on an annualized basis along with a description of the uses that generate or has generated such income.
- In order to approve a non-resource dependent development within ESHA or its setbacks, or any development that conflicts with the scenic resource protection provisions proposed in Recommendations 8.1 and 8.6, the following findings should be made and accompanied by supporting evidence:

1. Based on the economic information provided by the applicant, as well as other relevant evidence, a resource dependent use would not provide an economically viable use of the applicant's property.
 2. Restricting development on the applicant's property to a resource dependent use would interfere with the applicant's reasonable investment-backed expectations.
 3. The amount of development represents the minimum necessary to provide the applicant with an economically viable use of his or her property.
- Provide exceptions to the above requirements for development on lots where ESHA issues are addressed by a comprehensive habitat conservation program that has been incorporated into the LCP (see ~~Preliminary Recommendation 2e 4.6~~, above).

4.11: Minimize the Intensity of Non-Resource Dependent Development to the Maximum Degree Feasible

- ~~Where an analysis of the information required under Preliminary Recommendation 4.10 yields a conclusion~~ In instances where the County concludes that, in order to avoid a taking of private property, a non-resource dependent use must be accommodated in ESHA, or that development must be accommodated within a scenic coastal area contrary to Recommendations 8.1 and 8.6, the County should require that such development be limited to the minimum required to avoid a taking. ~~In most cases, this will be one modestly sized residential dwelling per existing lot, even if the maximum intensity of development otherwise allowed by the underlying land use designation is greater.~~
- Prohibit access roads that disturb ESHA or encroach within scenic coastal areas unless the road is necessary to provide an economically viable use of the overall development plan area.

In light of the costs associated with developing and administering Habitat Conservation Plans as part of the LCP (another way to resolve takings concerns), Chapter 12 of this report recommends the commitment of additional funding, as well as the pursuit of grants and interagency collaboration towards developing these plans.

4. Conclusion

Development and implementation of standards that can be used to effectively balance the ESHA protection with private property rights, as proposed by Recommendations 4.10 and 4.11, is needed ensure that the LCP is carried out consistent with Coastal Act Section 30240 and 30010.

E. Minimizing Unavoidable Impacts

1. Summary of Preliminary Periodic Review Findings (Exhibit A, pages 125 – 138)

Where impacts to ESHA can not be avoided, the Report observed the need to restrict the amount of disturbance and effectively mitigate project impacts through more specific mitigation and

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July 12, 2001
As revised August 24, 2001 to incorporate changes from
the addendum and hearing of July 12, 2001*

monitoring requirements. The Preliminary Report recommended that the methods for minimizing and mitigating unavoidable impacts be developed and reviewed in coordination with other habitat protection agencies and organizations.

2. Comments Received

San Luis Obispo County Response (Exhibit C)

The County response suggests deleting Preliminary Recommendation 4.12, calling for new standards that establish maximum disturbance area limitations in ESHA. Instead, the County favors addressing disturbance limitations through a more detailed alternatives review procedure, and perhaps through the use of “Ag Rules of Procedure”.

With respect to interagency coordination (Preliminary Recommendation 4.14), the County response contends that this is already taking place pursuant to the California Environmental Quality Act. The County response also notes that such reviews must be completed in a timely manner to avoid conflicts with the Permit Streamlining Act

Regarding Preliminary Recommendation 4.15, the County response identifies that the specific mitigation requirements must be proportional to the impact of the development.

Summary of Public Comments (Exhibit D)

In response to Preliminary Recommendation 4.13, the Hearst Corporation objects to the requirement that a conservation easement or deed restriction be placed over all remaining ESHA when non-resource dependent development must be accommodated within ESHA or its setbacks to avoid a taking. This opposition is based on their opinion that such a requirement would force an exaction of private property without showing the required nexus between the dedication and the proposed development.

3. Analysis

The use of alternatives analyses to minimize impacts of development on ESHA is certainly an important tool recognized by this report. Such analyses do not, however, obviate the need for specific performance standards; without such standards decision makers lack a basis for determining which project alternative is most consistent with habitat protection requirements.

The establishment of maximum disturbance limitations is an extremely useful way in which unavoidable impacts to ESHA can be minimized in a fair and consistent manner; they provide objective standards that inform applicants and decision makers of the minimum requirements.

Perhaps part of the County’s disagreement with Preliminary Recommendation 4.12 is the example provided. Although just an example, it may have caused concern that the Commission’s expectations were too high in terms of what a reasonable disturbance limitation

would be. In fact, as recognized by the Preliminary Report, such standards should be customized to the particular circumstances of the area. Nevertheless, to eliminate any such concern, the example has been deleted from the recommendation as follows:

4.12: Establish Maximum Disturbance Limitations

Incorporate new standards into the Area Plans that establish maximum disturbance envelopes for unavoidable non-resource dependent development in ESHA. ~~For example, in rural areas, a maximum disturbance envelope of 0.25 acres or 1/4 the lot area, whichever is less, should be considered.~~ Such standards should be customized to the particular circumstances of the area, considering factors such as the size and configuration of lots, biological sensitivity and resource management principles, agricultural viability, and other coastal resources constraints (e.g., visual).

The potential application of the “Ag Rules on Procedures” to establish acceptable areas of disturbance, as suggested by the County’s comments, will be evaluated through further coordination between County and Commission staffs.

Regarding the Hearst Corporation’s opposition to Preliminary Recommendation 4.13, it is important that this Recommendation be read in conjunction with Recommendation 4.10 and 4.11. Pursuant to those recommendations, the approval of new development within an ESHA must be accompanied by an analysis that accommodates the constitutional rights of property owners in accordance with Coastal Act Section 30010, while at the same time maximizing the protection of ESHA consistent with Coastal Act Section 30240. Once an economic use has been accommodated in accordance with the constitution, the permanent protection of the remaining ESHA is warranted under Coastal Act Section 30240. Thus, no changes to Preliminary recommendation 4.13 have been included in this final report.

With respect to the County response suggesting that Preliminary Recommendation 4.14 be modified to recognize that interagency coordination is occurring through the CEQA process, and that timely reviews are essential, the following clarification is offered:

4.14: Coordinate Review of Projects that Pose Impacts on Listed Species with DFG, USFWS, and NMFS

- Information that should be provided to justify the Findings required by Section 23.07.170b (i.e., that significant adverse impacts to the habitat will be avoided), when not otherwise provided through the CEQA process, includes: concurrence of the Department of Fish and Game and/or U.S Fish and Wildlife Service if species listed under state or federal Endangered Species Act are involved; and, concurrence from the National Marine Fisheries Service if marine habitats are involved. The timing of this review should be coordinated between the County and wildlife agencies to ensure compliance with the Permit Streamlining Act.

As suggested by the County, Preliminary Recommendation 4.15 has been revised to reflect that mitigation required of new development must be proportion to the impacts attributable to the development:

4.15: Specify Mitigation Requirements⁴⁷

- Require on-site mitigation for development *adjacent* to ESHA. Where the impacts to ESHA posed by adjacent development have been avoided and minimized, but still pose adverse affects, mitigate by requiring implementation of an on-site habitat management, restoration, and enhancement program proportional to the potential impacts of the development.
- Require on-site and off-site mitigation for development *within* ESHA. Where development directly in an ESHA can not be avoided, and has been minimized to the greatest degree feasible, protect all ESHA outside the development envelope by implementing an on-site habitat management, restoration, and enhancement program that will reduce the adverse impacts of the development to the greatest extent feasible. In addition, require off-site mitigation to offset the reductions in habitat quantity and quality attributable to the development. In most cases, this should be in the form of acquiring and permanently protecting the same type of habitat, in an area otherwise threatened by development. The size and habitat quality of the off-site mitigation area should be of equal or greater proportional to the biological productivity as of the area of impact. Incorporation of in-lieu fee programs into the LCP to implement such off-site mitigation is an option.

4. Conclusion

Providing more explicit standards for minimizing and mitigating unavoidable impacts on ESHA, as called for by Recommendations 4.12 through 4.16, will enable LCP implementation to better achieve the objectives of Coastal Act Section 30231, 30236, and 30240.

F. Streams and Riparian Habitats

Streambed Alteration

1. Summary of Preliminary Periodic Review Findings (Exhibit A, pages 148 – 151)

The Preliminary Report identified various issues related to the County's implementation of LCP standards regulating the alteration of coastal streams. For example, the Preliminary Report identified that the types of locally approved projects involving stream alterations have not always been within the limitations established by Section 30236 of the Coastal Act and LCP ESHA Policy 23. To achieve conformance with the Coastal Act and the LCP's Coastal Plan Policies, the Preliminary Report recommended, among other things, updating Section 23.07.174 of the CZLUO (Preliminary Recommendation 4.17 and 4.18).

2. Comments Received

San Luis Obispo County Response (Exhibit C)

The County response to the Preliminary Report indicates general agreement with respect to the Preliminary Recommendations related to stream alterations (Preliminary Recommendation 4.17 – 4.21).

⁴⁷ E.g, CZLUO Sections 23.07.170a(1) and 23.07.174d(2)(ii)

Summary of Public Comments (Exhibit D)

Comments submitted by Clyde Warren of Rancho San Simeon raise issue with the discussion on page 148 of the Preliminary Report regarding the potential adverse impacts of stream alterations on habitat values. Mr. Warren asserts that there is no habitat values along eroded streambanks where streambank protection devices (e.g. rip rap) are needed. Mr. Warren also objects to the Preliminary Report's finding that the alteration of natural processes of erosion and deposition associated with streambank protection can adversely affect habitat values. Rather, Mr. Warren believes that maintenance activities that minimize natural erosion and sedimentation can enhance habitat values and should be encouraged, among other means, by limiting the review of such activities to one agency – the Department of Fish and Game. Mr. Warren also emphasizes the importance of preventing obstructions from being established within creekbeds to protect stream habitats.

Comments submitted by the Hearst Corporation oppose Preliminary Recommendation 4.18. The Hearst Corporation contends that this recommendation, which requires *all* stream diversion structures (i.e., including agricultural stock ponds of 10 acre feet or less) to be designed and located to avoid impacts to in-stream habitats, may harm agricultural operations and intrude upon the jurisdiction of the Department of Agriculture.

3. Analysis

As noted in the comments submitted by Mr. Warren, streambank areas experiencing erosion may have limited habitat value. However, this is only a temporary situation; riparian vegetation and habitat values will be quickly reestablished in such areas once natural processes of erosion and deposition have reached equilibrium. The installation of rip rap or other man made structures in these areas can be detrimental to long term habitat values because they preclude and/or reduce the extent to which natural riparian vegetation can re-establish itself along the streambank. Moreover, as discussed in the Preliminary Report, the establishment of hard edges precludes the natural migration of dynamic stream channels, which in turn can limit the width and biological productivity of the riparian habitat within the vicinity of the revetment. Thus, it is appropriate to update the LCP, and the County's method of implementation, to limit stream alterations in accordance with Coastal Act Section 30236 and LCP ESHA Policy 23. Preliminary Recommendation 4.17, intended to achieve this objective, has been clarified and expanded as follows:

4.17: Pursue changes to Section 23.07.174b of the CZLUO to achieve conformance with Coastal Act Section 30236, as well as with ESHA Policy 23.

- ~~The introduction of~~ This ordinance should specifically require that all permitted streambed alterations employ the best mitigation measures feasible, including but not limited to:

1. avoiding the construction of hard bottoms
2. using box culverts with natural beds rather than closed culverts

3. providing for wildlife movement

4. pursuing directional drilling for pipes and cables to avoid stream bed disturbance

A reference to the updated section of the LCP addressing mitigation requirements, as proposed by ~~Preliminary~~ Recommendations ~~21 and 22~~ 4.15 and 4.16, should also be provided.

- Part (1) should state that streambed alterations are limited to necessary water supply projects. The incorporation of specific criteria to define what constitutes a “necessary” water supply project should be considered. A preliminary suggestion is to define such projects as those essential to protecting and maintaining public drinking water supplies, or accommodating a principally permitted use where there are no feasible alternatives.
- Part (4), allowing streambed alterations for the maintenance of flood control channels, should be considered for deletion. Necessary maintenance activities can be accommodated under part (2) of this ordinance, which includes the Coastal Act criteria for such activities (part (4) does not include these important criteria).

Mr. Warren correctly notes that preventing obstructions within creek channels is an important way in which stream habitats can be protected. His experience in responding to the impacts created by the San Simeon Road culvert exemplifies the fact that stream alterations associated with roadway development can adversely affect riparian habitats and lead to ongoing maintenance problems. Modified Recommendation 4.27 (below) responds to this issue among other ways by requiring instream development to mimic natural habitat conditions wherever feasible. For example, bridges are recommended as an alternative to culverts in order to minimize disruption of natural drainage courses. Recommendation 4.21 also requires a full evaluation of alternative means of providing access to a development site in order to avoid obstruction of stream channels.

Mr. Warren is also correct in observing that streambank protection and stream management can benefit riparian habitats. To facilitate such environmentally beneficial projects, modified recommendation 4.27b (below) encourages coordination with volunteer, education, and assistance programs intended to protect and restore riparian habitats (including streambank protection). Certification of such programs through the coastal development permit and/or LCP amendment process could encourage beneficial projects by allowing those that are implemented pursuant to approved programs to proceed without individual coastal development permits.

In response to Mr. Warren’s suggestion that the Department of Fish and Game should be the only agency that regulates development within coastal streams, the County and the Commission have the distinct responsibility of ensuring that development within coastal streams complies with all applicable LCP and Coastal Act requirements. Although this responsibility can not be delegated to the Department of Fish and Game, the interrelationship of these regulatory programs should be coordinated to complement and support each other. This is the focus of Preliminary Recommendation 4.20, which has been carried over into the final report without change.

As described above, the Hearst Corporation’s opposition to Preliminary Recommendation 4.18 is based on a concern that requiring agricultural stock ponds to be designed and constructed to

protect aquatic habitats will harm agricultural operations. First, it should be acknowledged that this recommendation does not apply retroactively to existing stock ponds; existing stock ponds that support agricultural operations will not be affected by this recommendation. Thus, no impact to existing agricultural operations is expected to result from implementation of this recommendation. Second, this recommendation is needed to ensure that the development of new agricultural stock ponds that divert stream flow comply with Section 30231 of the Coastal Act. As detailed in the Preliminary Report, changed circumstances related to the listing of the Steelhead trout and other riparian species within the San Luis Obispo County coastal zone necessitate this and other updates to the LCP. Ensuring that stream diversions, including those related to agricultural development, conform to LCP and Coastal Act standards is the responsibility of the County and the Coastal Commission. The alleged but unspecified conflict between these requirements and the jurisdiction of the Department of Agriculture noted in comments submitted by the Hearst Corporation does not warrant revision to Preliminary Recommendation 4.18. Thus, it has been carried over into the final report without change.

4. Conclusion

Updates to LCP standards and County implementation procedures regarding the regulation of stream alterations, as proposed by Recommendation 4.17 – 4.21, are necessary to carry out Coastal Act Sections 30231, 30236, and 30240.

Riparian Setbacks

1. Summary of Preliminary Periodic Review Findings (Exhibit A, pages 151 – 155)

Setting new development back from riparian habitats to protect their biological productivity is an important LCP requirement, the implementation of which was noted by the Preliminary Report as lacking consistency and effectiveness. Considering a 100 foot setback from the edge of riparian in urban areas as well as rural areas (current requirements are 100 feet in rural areas, 50 feet or less in urban areas) was one of many recommendation intended to respond to this problem.

2. Comments Received

San Luis Obispo County Response (Exhibit C)

The County response suggests requiring “maximum reasonable setbacks based on site constraints” rather than specifying 100 feet.

Public Comments (Exhibit D)

Various commenters observed that increased setback distances would raise significant problems for the infill and redevelopment of private property along urban creeks, such as along the coastal streams that run through the town of Cayucos.

The Preliminary Report's analysis of riparian setback issues also garnered significant comments from agriculturists who were concerned that such setbacks, combined with new permit requirements, would significantly impact their ability to maintain a viable operation. Similar concerns were raised regarding setbacks from wetlands (e.g., County response to Preliminary Recommendation 4.31). Large portions of existing agricultural operations are within 100 feet of a coastal stream or wetland, and eliminating such areas from production could have drastic effects on the viability of such operations. Moreover, agriculturists expressed concern that limiting new or expanded production within setback areas would diminish their ability to survive in the highly competitive market. Finally, they questioned whether agricultural activities within 100 feet of a creek had adverse impacts, particularly when implemented with care and in coordination with local, state and national education and volunteer programs.

3. Analysis

Achieving 100 foot setbacks from the edge of riparian vegetation in many urban areas will be difficult to achieve. As recommended by Preliminary Recommendation 4.23, such setbacks would only be required where it was feasible and would achieve better protection of coastal resources. The alternative suggested by the County, requiring maximum feasible setbacks based on site constraints, has been incorporated into Recommendation 4.23 as follows:

Recommendation 4.23: Apply a Minimum Standard Setback of 100 feet in Urban Areas Where Feasible

Consider applying a 100' standard setback, rather than 50' or less, in urban area where a 100' setback is feasible and would achieve better protection of stream resources. In all cases, development should be setback the maximum feasible distance from riparian vegetation, as determined through a site specific constraints analysis.

As previously noted, the Preliminary Recommendations have also been revised to better respond to this issue as it relates to the town of Cayucos. Recommendation 4.6 encourages the use of watershed plans to perfect setback standards and prescribe specific mitigation measures that will both enhance the riparian environment and clarify development requirements.

With respect to the concerns expressed about the application of setback standards to agricultural activities, it should be noted that these standards do not apply retroactively to existing development, and is not intended to place new requirements on existing agricultural activities.

Preliminary Recommendation 4.27 has also been revised (below) to clarify that agricultural activities are not prohibited within ESHA setbacks, but are encouraged to incorporate provisions that will avoid disruption of sensitive habitats and protect coastal water quality. As detailed in Chapter 5, it is anticipated that most new agricultural activities will be exempt from permit requirements under the pending amendments to the grading ordinance. The use of existing education and assistance programs are recognized as the optimum way in which the LCP could integrate water quality, sensitive habitat, and agricultural resource protection. For example,

coastal development permits could be issued for programs that effectively carry out LCP and Coastal Act standards, and the individual project implemented pursuant to these programs would be exempt from permit review.

4. Conclusion

The Preliminary Report documented that, since LCP certification, San Luis Obispo County has occasionally approved development within and adjacent to riparian habitat inconsistent with LCP ESHA protection standards. In addition, the Report's review of existing LCP policies, ordinances and standards identified the need to update riparian habitat provisions to better respond to new information and changed circumstances. The LCP implementation improvements proposed by Recommendation 4.22 – 4.25 will enable better protection riparian habitats, consistent with Coastal Act Sections 30231, 30236, and 30240.

Protection of Creek Flows and Instream Habitat

1. Summary of Preliminary Periodic Review Findings (Exhibit A, pages 147 – 151)

Among the potential sources of adverse impacts to creek habitats, the Preliminary Report identifies water supply projects such as wells and stream diversions as ones that are not adequately addressed by the LCP. Preliminary Recommendation 4.26 therefore calls for new standards that would prohibit such projects where adverse impacts could not be avoided. Preliminary Recommendation 4.27 was proposed to ensure that LCP implementation effectively protects stream habitats that support the Steelhead trout.

2. Comments Received

San Luis Obispo County Response (Exhibit C)

The County response recommends deleting the portion of Preliminary Recommendation 4.26 encouraging water extracted from coastal streams to be treated after use and returned to the stream in similar quantity and quality. The County response suggests that the focus of Preliminary Recommendation 4.26 should be on evaluating impacts to fisheries, as opposed to prohibiting projects that may have an adverse impact. The County response also requests clarification to the 3rd bullet of this Preliminary Recommendation, which recommends that water diversions be limited to peak winter flows where necessary to protect stream resources.

With respect to Preliminary Recommendation 4.27, the County response suggests deleting the second bullet that calls for the development of standards for the breaching of beach berms that create coastal lagoons.

Requests by the County for clarification of how the recommended water quality protection standards should be implemented by the County, through the LCP, particularly with respect to agricultural development are also applicable to Preliminary Recommendation 4.27, intended to protect the instream habitat of Steelhead trout.

Summary of Public Comments (Exhibit D)

The advisory board to the Cambria Community Services District also noted concern with the portion of the fourth bullet in Preliminary Recommendation 4.26, which calls for stream flows to be supplemented with imported water where it is not feasible to otherwise recharge the stream with water used on-site.

Comments from the Hearst Corporation regarding Preliminary Recommendation 4.26 raises concern that the recommended standards for stream diversions and water wells may intrude upon the jurisdiction of the State Water Resources Control Board (SWRCB), and potentially harm users that are currently operating under existing SWRCB permits.

3. Analysis

In response to concerns expressed regarding the portion of Preliminary Recommendation 4.26 that calls for the supplementing in-stream flows with imported water, this was intended to be used as mitigation for development that could not return water taken from the stream in like quantity and quality. Commenters correctly observe that the preferred approach is to prohibit development that can not provide a safe and environmentally sustainable on-site water system. Thus, in response to the concern that the option of importing water would lead to development that exceeds local water supplies, this language has been deleted from Preliminary Recommendation 4.26. However, the important principal that water diverted from coastal streams should be returned to the watershed of origin in like quantity and quality is retained in Recommendation 4.26:

4.26: Incorporate Additional Standards for Stream Diversions and Water Wells

- Prohibit diversion or extraction of surface and subsurface streamflows where adverse impacts to steelhead or other important riparian resources would result.
- Prohibit in-stream barriers to fish migration unless such structure comply with streambed alteration standards and provide effective fish ladders or by-pass systems.
- Where water supply projects have the potential to impact fish habitat or other stream resources, limit diversions to peak winter flows that exceed ~~to~~ the amount needed to sustain the resources, and require off-stream storage where year-round water supplies are needed.
- To the degree feasible, water diverted from coastal streams should be treated after use and returned to the watershed of origin in like quality and quantity. ~~Where this is not feasible, supplementation of stream flows with water imported from sources that do not impacts sensitive habitats should be pursued.~~

As noted by the County response, an appropriate place for the new standards proposed by Recommendation 4.26 may be Section 23.08.178. This and other options will be further evaluated as the specific amendment necessary to implement this recommendation is developed.

The County's suggestion that Preliminary Recommendation 4.26 focus on impacts to fisheries is already implied by the recommendation. By prohibiting stream diversion and water well projects that adversely affect fish habitats, these standards would necessitate a full evaluation of the potential impacts. It is essential that the LCP not just require environmental evaluations, but include specific performance standards that identify minimum requirements which ensure LCP and Coastal Act compliance. In this case, a prohibition of development that would adversely impact rare and sensitive riparian habitats is needed to achieve such consistency. As a result, no change to Preliminary Recommendation 4.26 has been made in this regard.

In response to the County's request for clarification of the 3rd bullet of Preliminary Recommendation 4.26, this recommendation is intended to ensure that water extractions and/or diversions do not reduce stream flows below the levels necessary to support fish and other riparian resources. Thus, the recommendation requires new development dependent upon such water to provide determination of the water flows necessary to sustain riparian resources, and to limit extractions and diversions to times when water flows exceed this amount (i.e., during the rainy season). In recognition of the fact that most development will require a year-round supply of water, the recommendation requires that seasonal limitations to water withdrawals be accompanied by off-stream storage facilities. Such storage facilities will obviate the need to withdraw water beyond the safe yield of the creek.

With final regard to Preliminary Recommendation 4.26, the County and the Coastal Commission's regulation of stream diversions and water wells to protect coastal resources is mandated by the Coastal Act (e.g., Sections 30231, 30236, and 30240). Thus, the Hearst Corporation's assertion that this recommendation should be deleted based on a perceived but unspecified contradiction with the SWRCB does not warrant any additional modifications to Preliminary Recommendation 4.26.

Contrary to the suggested deletion of the 2nd bullet of Preliminary Recommendation 4.27, the County response indicates agreement with Preliminary Recommendation 4.33, providing the details of what such standards should include. Because the development and implementation of such standards is critical to the protection of instream habitats, it has been maintained in modified Recommendation 4.27.

Finally, in complement to updates in the Water Quality and Agriculture Chapters, the changes to Preliminary Recommendation 4.27 shown below are intended to:

- Provide specific suggestions on how the LCP could be improved to better protect aquatic habitats, including but not limited to those that support the Steelhead trout;
- Clarify that agricultural cultivation and production activities within habitat setback areas are not all prohibited, but are encouraged to incorporate design and management measures that avoid adverse impacts; and
- Suggest implementation of agricultural management measures in conjunction with voluntary education and assistance programs.

4.27: Incorporate Additional Standards for Development In and Adjacent to Streams and other Aquatic Habitats ~~that Provide Habitat for Steelhead Trout~~

All permitted development in or adjacent to streams wetlands, and other aquatic habitats ~~that support steelhead~~ should be designed and conditioned to prevent loss or disruption of the habitat (e.g., smothering of Steelhead spawning gravel and rearing habitats) through, among other means, controlling erosion, avoiding alteration of natural drainage patterns, eliminating sources of pollution, and maintaining streamside vegetation and stream water temperatures; protect water quality; and maintain and enhance biological productivity. To achieve this objective, CZLUO Section 23.07.174 should be updated in conjunction with updates to Coastal Watersheds Policies and the grading ordinance. These updates should incorporate standards that:

- necessitate flood control and other necessary instream work be implemented in a manner that minimizes disturbance of natural drainage courses and vegetation (e.g., limit the number of access routes to and from the construction area, locate stockpile and staging areas away from drainage courses and sensitive vegetation);
- require that all allowable instream development be designed to mimic natural habitat conditions wherever feasible (e.g., consider bridges that minimize disruption of natural drainage courses as an alternative to culverts, incorporate natural materials such as root wads, gravel, and native vegetation); .
- prescribe methods to control drainage in a manner that prevents erosion, sedimentation, and the discharge of harmful substances into aquatic habitats during and after construction (e.g., identify and evaluate location and capacity of silt fences/hay bails, drainage inlets, detention basins; encourage vegetated drainage features, such vegetated drainage swales created wetland detention areas to facilitate filtration and habitat enhancement.
- Develop establish standards for the breaching of beach berms that create support coastal lagoons (see ~~Preliminary~~ Recommendation 4d 4.33)

4.27(b) Develop and Implement Water Quality and Habitat Protection Standards for New Agricultural Development and Habitat Enhancement Projects in Coordination with Voluntary Assistance and Education Programs.

Improve water quality and habitat protection standards applicable to habitat enhancement projects and new agricultural development within 100 feet of ESHA by updating CZLUO Section 23.07.174e(6) in accordance with the agriculture and water quality recommendations of this report. New water quality and habitat protection standards applicable to such development should be developed and implemented in coordination with voluntary assistance and education programs. To minimize the need for permit review and ensure that habitat restoration activities and agricultural development in and near ESHA complies with Coastal Act Sections 30230, 30231, 30236, and 30240, the new LCP Water Quality Component should encourage:

- The certification of volunteer, education, and assistance programs that ensure habitat enhancement projects and agricultural development within setback areas effectively protect sensitive habitats, water quality, and other coastal resources. Such certification could be accomplished through the issuance of a “master” coastal

development permit for program implementation; incorporating a categorical exclusion into the LCP for the implementation of such programs; or through Coastal Commission concurrence with a Federal Consistency Determination submitted by the federal agency responsible for program funding and/or implementation.

- Coastal development permit exemptions for individual projects that are implemented pursuant to certified programs.

4. Conclusions

Recommendations 4.26 – 4.27 calling for updates to and expansion of LCP requirements for development in and along streams and other aquatic habitats are needed to ensure that its implementation will effectively protect environmentally sensitive habitat areas and coastal water quality consistent with Coastal Act Sections 30231, 30236 and 30240.

Other Recommendations and Miscellaneous Policy Clarifications

No objections were received regarding Preliminary Recommendation 4.28, calling for completion of the permit review for the Cayucos Abalone facility required by the original County approval, or with respect to the first bullet of Preliminary Recommendation 4.29, clarifying the reference contained in CZLUO Section 23.07.174e(7).

The County response does, however, suggest deleting the second bullet of Preliminary Recommendation 23.07.174e(2), requesting that the intent of CZLUO Section 23.07.174e(2) be clarified. This section currently prohibits the cutting or alteration of natural vegetation except “where no feasible alternative exists”. Clarification was requested in recognition of the fact that only specific types of development could qualify for this exemption. Upon further review, it appears that the other sections of this ordinance provide adequate flexibility to accommodate essential development activities that may necessitate the alteration or removal of riparian vegetation. Thus, Preliminary Recommendation 4.29 has been revised as follows:

4.29: Miscellaneous Policy Clarifications

- Identify the correct reference for CZLUO Section 23.07.174e(7)
- ~~Clarify the intent of Delete~~ CZLUO Section 23.07.174e(2)

G. Wetlands

Among the various components of the Preliminary Report analyzing the County’s implementation of wetland protection standards and recommending improvements, two issues raised significant comments and concerns: the use of variances; and assessing the biological value of manmade wetlands. In addition, additional review of the findings and recommendations

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regarding wetland delineation, lagoon breaching, and wetland monitoring and restoration activities identified the need to revise Preliminary Recommendations 4.30, 4.33, and 4.34.

Manmade Wetlands

1. Summary of Preliminary Periodic Review Findings (Exhibit A, pages 165 – 166)

The Preliminary Report observed that it may be appropriate for the LCP to differentiate between different types of wetlands based on their habitat values, and establish protection standards accordingly. Currently, the LCP provides a single set of standards for all wetlands, without respect to their biological significance. Greater flexibility in applying wetland setback and protection standards to man-made wetlands that do not provide significant habitat value could allow a wider range of project alternatives to be considered when competing resource issues may be at stake.

2. Comments Received

San Luis Obispo County Response (Exhibit C)

The County response recommends that Preliminary Recommendation 4.31 be modified, but does not identify the way in which it should be changed.

Summary of Public Comments (Exhibit D)

The San Luis Obispo County Farm Bureau and the Hearst Corporation have interpreted Preliminary Recommendation 4.31 as giving the County and the Coastal Commission new regulatory authority over manmade wetlands. The Farm Bureau comments that this creates a disincentive for agriculturists to create and enhance habitat values. The Hearst Corporation states that this could have an adverse effect on cattle operations that are dependent upon stock ponds for ranching, and does not recognize existing conditions that have evolved from long term on-going agricultural practices.

3. Analysis

The LCP currently provides a single set of standards for the protection of wetlands, which apply regardless of how and for what purpose the wetland became established. As documented on pages 162 – 166 of the Preliminary Report, these standards have been applied by the County to natural wetlands as well as wetlands that were originally created to serve an agricultural purpose (e.g., stock ponds).

Implementation of Preliminary Recommendation 4.31 would not provide new regulatory oversight regarding man-made wetlands. Rather, it would provide an opportunity to perfect the way in which current LCP wetland protection provisions are administered. In particular, it is intended to provide greater flexibility in applying setback requirements to man made wetlands,

when exceptions to such standards would not impact significant biological resources and would achieve other coastal resource protection objectives (e.g., viewshed protection).

4. Conclusion

Preliminary Recommendation 4.31, which has been carried over into the final report without change, encourages the County to update LCP wetland standards to ensure that their implementation with respect to manmade wetlands that do not support significant biological resources does not result in impacts to other coastal resources, particularly scenic resources.

Use of Variances

1. Summary of Preliminary Periodic Review Findings (Exhibit A, page 165)

Partly in response to the County's approval of a variance that permitted residential development to take place within a wetland area, Preliminary Recommendation 4.32 proposed to prohibit the approval of exceptions to wetlands and other ESHA setbacks where impacts to these areas could be avoided.

2. Comments Received

San Luis Obispo County Response (Exhibit C)

The County response suggests modifying the title of Preliminary Recommendation 4.32 ("Prohibit Variances to Wetland and Other ESHA Protection Standards") to include the statement "where it could be avoided". The County response also identifies an alternative approach for addressing this issue: requiring that the approval of the variance be accompanied by a finding that there are no available alternatives to avoid development from encroaching into ESHA or its setback.

3. Analysis

As discussed in Chapter 12 of this report, the County is concerned that the proposed restrictions on the use of variances will result in conflicts with property rights protected under the constitution. As explained in that Chapter's analysis of this concern, the intent is not to preclude the County from granting variances where necessary to prevent a taking, but to avoid their misuse. The proposed limits on variances must be read in conjunction with Preliminary Recommendations 4.10 and 4.11, which provide specific suggestions for balancing the rights of private property owners with the need to protect ESHA.

Taken together, these recommendations call for a more detailed analysis of the particular facts necessary to balance the application of Coastal Act and LCP ESHA protection requirements with private property rights. To clarify this intent, Preliminary Recommendation 12.15 has been

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revised to state that where approval of a variance may impact ESHA, it should be accompanied by information and analyses needed to establish that the variance is warranted under Coastal Act Section 30010.

As suggested by the County response, another appropriate requirement for the approval of a variance that would impact wetlands or other ESHA is that no alternative is available to avoid such impacts.

Preliminary Recommendation 4.32 has been revised to address these concerns and suggestions as follows:

4.32: Prohibit Variances to Wetland and Other ESHA Protection Standards Where Variances Can be Avoided

Consider changes to the variance provisions that would prohibit ~~the approval of~~ exceptions to wetlands and other ESHA setback and protection standards where those impacts could otherwise be avoided, unless the variance is needed to achieve consistency with Coastal Act Section 30010.

4. Conclusion

Recommendations 4.30 - 4.36 will enhance LCP implementation to better protect wetlands and other sensitive habitats consistent with the requirements of Coastal Act Sections 30231 and 30240. Revisions to Preliminary Recommendation 4.32 ensure that these improvements will be carried out consistent with Coastal Act Section 30010.

Wetland Delineation

Other than the discussion of manmade wetlands presented above, none of the comments specifically discussed the discussion of wetland delineation contained on pages 163 and 164 of the Preliminary Report (Exhibit A), or the provisions of Preliminary Recommendation 4.30 regarding this issue. Nevertheless, subsequent review of this recommendation has resulted in the following revisions, intended to ensure that LCP implementation conforms to Coastal Act Sections 30231 and 30240:

Recommendation 4.30: Incorporate Standards for Wetland Delineations

In addition to pursuing an alternative to the LCP's current map based system for protecting wetlands and other environmentally sensitive habitats (~~see section C1 of this Chapter~~), new standards that facilitate a complete and accurate delineation of all wetlands during the local review process should be incorporated into the LCP. The provisions of Section 13577(b)(1) of the California Code of Regulations, Title 14, should be used as guidance in formulating these delineation standards. A potential location for these standards would be within the updated biological report requirements (see ~~Preliminary Recommendation 4.7~~ 4.7).

Lagoon Breaching

While no substantive comments were received in relation to the Preliminary Reports analysis of lagoon breaching issues (Exhibit A, pages 167 – 169), subsequent review of Preliminary Recommendation 4.33 identified the need to clarify that, in some instances, lagoon breaching can be used to maintain ecological functioning. Thus, Recommendation 4.33 has been revised to better carry out Coastal Act Sections 30231 and 30240 as follows:

4.33: Develop Standards for the Breaching of Coastal Lagoons

Require a CDP for lagoon breaching activities, and limit such development to situations where it represents the least environmentally damaging feasible alternative for relieving a flood hazard, public health hazard, or water pollution problem. Lagoon breaching should also be allowed and encouraged where man made alterations have interrupted the natural breaching cycle. The decision to breach should be based on a comprehensive assessment of environmental conditions and alternatives available to address the hazard or resource concern.

The LCP should incorporate standards to ensure that where allowed, lagoon breaching mimics natural breaching to the extent feasible, and is carried out in a manner that is the most protective of wetland resources and other environmental resources particular to each site. Such standards should include:

Coordination with all applicable regulatory agencies, including the California Coastal Commission, California Department of Fish and Game, the US Army Corps of Engineers, the Monterey Bay National Marine Sanctuary, and the Regional Water Quality Control Board.

Development of a breaching plan based on a scientific assessment of the lagoon environment that addresses the need for breaching and available alternatives; impacts on endangered species and habitats; public health and safety; and public access and recreation.

Requiring the breaching activity to be conducted in a controlled manner that reduces lagoon water levels the minimum necessary to abate the hazard.

Breaching plans and permits should also include short term and long term monitoring provisions that evaluate the health of the lagoon and the impacts of breaching.

Wetland Monitoring and Restoration

Similarly, although no substantive comments were received regarding the Preliminary Findings regarding wetland monitoring and restoration (Exhibit A, pages 166 – 169), the following changes to Preliminary Recommendation 4.34 have been developed to better carry out Coastal Act Sections 30231 and 30240:

4.34: Provide Standards for Wetland Monitoring and Restoration Activities

Incorporate specific requirements (e.g., within Sections 23.07.172 and 23.05.034 of the CZLUO) for the monitoring and restoration of wetland resources to enhance effectiveness and ensure that such activities are carried out in a manner that will not harm wetland resources.

For example, the LCP should be updated to require clear performance criteria that relate logically to restoration goals. Where there is sufficient information to provide a strong scientific rationale, the performance criteria shall be absolute (e.g., specified abundance of particular species). Where absolute performance criteria cannot reasonably be formulated, relative performance criteria should be specified. Relative criteria are those that require a comparison of the restoration site with reference sites. The rationale for the selection of reference sites, the comparison procedure, and the basis for judging differences to be significant should also be specified. If any comparison requires a statistical test, the test should be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program should relate logically to the performance criteria and chosen methods of comparison. The sampling program should be described in sufficient detail to enable an independent scientist to duplicate it. Frequency of monitoring and sampling shall be specified for each variable to be monitored. Sample sizes shall be specified and their rationale explained. The use of independent consultants to evaluate the success of restoration projects and report their findings to the County should also be considered.

H. Terrestrial Habitats

1. Summary of Preliminary Periodic Review Findings (Exhibit A, pages 170 – 184)

The preliminary Report addressed the County implementation of LCP terrestrial habitat protection standards, particularly with respect to the Monterey Pine Forest, Coastal Dunes, Coastal Scrub, and Maritime Chaparral Habitats.

With respect to the protection of pine forest habitat, the report noted opportunities to better avoid tree removal and better mitigate impacts associated with unavoidable tree removal, particularly through the development of a comprehensive Forest Habitat Management and Protection Program. The Preliminary Report also provided recommendations to better respond to the threats of pine pitch canker, and to preserve important forest habitats through updates to the TDC program, new methods of lot retirement, and reductions in buildout potential.

With regard to dunes, coastal scrub, and maritime chaparral habitats, the Preliminary Report included various recommendation intended to enhance protection of such habitats within Los Osos, Oceano, and South County. Specific recommendations were also provided for western plover and least tern habitat, as well as for beaches used by the Northern Elephant Seal.

2. Comments Received

San Luis Obispo County Response (Exhibit C)

The County response indicates agreement with all of the Preliminary Recommendations intended to protect the Monterey Pine Forest, but notes that additional information is needed regarding Preliminary Recommendations 4.41 and 4.43.

With respect to the Preliminary Recommendations regarding other terrestrial habitat, the County response indicates disagreement with Preliminary Recommendation 4.44; requests more

information regarding Preliminary Recommendations 4.50, 4.51, 4.52; and suggests modifications to 4.55.

Summary of Public Comments (Exhibit D)

The California Native Plant Society suggests expanding Preliminary Recommendation 4.40 to anticipate the arrival of Sudden Oak Death, another type of disease that has decimated various species of oak trees elsewhere in the state.

More generally, public testimony received at the Commission's February 2001 hearing on the Preliminary Report advocated for a more in-depth review of opportunities to maximize the protection of South County habitat areas.

3. Analysis

Monterey Pine Forest

To better link Preliminary Recommendation 4.37 with the Forest Management Plan currently being developed by the Cambria Forest Committee/Community Services District, it has been modified as follows:

4.37: Develop a Comprehensive Forest Habitat Management and Protection Program

As part of the North Coast Update, consider ~~the development and incorporation of a comprehensive forest habitat management and protection program that will better~~ incorporating the Cambria Monterey Pine Forest Management Plan currently being developed by the Cambria Forest Committee to guide and regulate buildout and forest management so that the long-term conservation of the Cambria pine forest ecosystem can be ensured and enhanced. ~~Elements of this program should~~ In coordination with this effort, the North Coast Area Plan should be updated to include standards regarding the location and extent of off-site and on-site mitigation (e.g., tree replacement, contributions towards the acquisition of significant forest habitats); identification of additional TDC sending sites and appropriate receiver sites; and, provisions for the on-going management and preservation of protected forest areas.

As suggested by CNPS, Preliminary Recommendation 4.40 has been expanded to identify Sudden Oak Death as a significant threat to terrestrial habitats, which necessitates the incorporation of new programs and standards in the LCP:

4.40: Incorporate Programs and Standards Necessary to Respond to the Threats Posed by Pitch Canker and Sudden Oak Death

- Prohibit the removal of pine trees that clearly display a resistance to pitch canker (e.g., a healthy tree surrounded by diseased trees).
- Establish standard protocols for handling dead and diseased wood. These should include standard conditions that require: cleaning of cutting and pruning tools with a disinfectant prior to use on each individual tree; covering of all wood material being transported offsite to avoid dispersal of contaminated bark beetles; identification of the location to which the material will be transported (prohibit transfer to areas free of the disease). These conditions should also specify that in situations where wood material cannot be properly disposed of directly after cutting, it shall be cut into small logs and stored on-site under a clear plastic tarp until necessary preparations have been made for their removal. Other tree parts (i.e., branches, small limbs) should be chipped and left as a thin layer on-site.
- Designate location for green waste management and recycling facility.

- Coordinate with CDF and the US Forest Service regarding methods for preserving genetic resources (e.g., seeds and saplings). Potentially combine with green waste facility recommended above.
- Develop and require Forest Management Plan(s), backed by Forest Management District(s), to provide for long term management of the forest.

Preliminary Recommendation 4.41 suggests that the County update the LCP's TDC program for Cambria to improve its effectiveness at forest protection and provide greater incentive for participation. While in general agreement with this recommendation, the County response suggests that the Cambria Design Plan currently under development address the feasibility of two components of Preliminary Recommendation 4.41: the recommended reduction in size limitations for development in the forest; and, the proposal to formulate a specific system for allocating density bonuses. In addition, the County response suggests that the development of the Cambria Forest Management Plan being developed by the Cambria Community Services District could be used to satisfy the third component of Preliminary recommendation 4.41: the identification of new special project areas best suited as TDC sender sites. These recommendations have been incorporated into modified recommendation 4.41 as follows:

4.41: Provide Greater Incentives for Participation in the Cambria TDC Program and other Updates to the Program

- Reduce maximum size of development in urban areas to provide greater incentive to participate in TDC program and reduce the impact that density bonuses may be having on the forest. Eliminate footprint and GSA bonus available for Lodge Hill. To the degree feasible, implement this recommendation as a component of the Cambria Design Plan currently being developed.
- As part of the Cambria Design Plan or North Coast Update, formulate a more specific structure for allocating density bonuses to ensure that such bonuses provide an adequate contribution towards the protection of forest habitats otherwise threatened by development.
- Identify new "Special Project Areas" (i.e., sender sites) that contain the most biologically significant areas of pine forest habitat in conjunction with the CCSD's Cambria Forest Management Plan and other forest protection efforts.

Preliminary Recommendation 4.42, proposes the creation of an Open Space District as one method retire development potential from lots containing important pine forest habitat. The County response indicates that the feasibility of such a district should be evaluated in coordination with the CCSD (see also, Development Chapter discussion). Modified recommendation 4.42 addresses this comment as follows:

4.42: Develop Additional Methods for Lot Retirement

- Recognizing that new development within the forest has both direct and cumulative impacts on forest resources, and that the Monterey Pine Forest is increasingly threatened, a mitigation fee could be required for all new development within forested areas and applied to the acquisition and protection of the most sensitive forest areas.
- Creating an Open Space District could raise funds for the additional acquisitions. Efforts to establish an Open Space District should be coordinated with the Cambria Community Services District.

Preliminary Recommendation 4.43 suggests reducing buildout potential within forest habitats among other means by considering lot consolidation requirements when reviewing lot line adjustments and prohibiting adjustments that would increase development potential. The

County's conceptual agreement with this recommendation is conditioned on an evaluation of the feasibility of implementing this recommendation. Preliminary Recommendation 4.43 has been clarified as follows:

4.43: Reduce Buildout Potential

- Prohibit subdivisions that create new building sites in or within 100 feet of pine forest habitat.
- Establish very large minimum lot sizes within rural areas comprised of pine forest habitat (e.g., 160 acres).
- Expand clustering standards and revise Cluster Division Ordinance to achieve much more consolidated development envelopes. This should include, but not be limited to: applying Monterey Pine Forest SRA Standard 4 to all development (not just subdivisions and large scale projects); and, reducing the maximum clustered parcel size of 10 acres in the Rural Lands Category.
- ~~Consider lot consolidation requirements when reviewing lot line adjustments, and p~~Prohibit any lot line adjustments that would result in greater development intensity within forest habitat as compared to the development that would be possible under the existing configuration.

Los Osos Habitats

Preliminary Recommendations 4.44 – 4.46 were intended to establish a process for resolving the challenges of protecting ESHA in the South Bay Urban Area, and to coordinate this effort with the on-going development of an area wide HCP. An important first step in the process, reflected by Preliminary Recommendation 4.44, is to identify the ecologically significant units of sensitive habitats within the urban area (i.e., those habitat areas that may play a significant long-term role in the protection of rare biological resources). This information would be used to delineate habitat areas that would be afforded greater protection by the comprehensive habitat management plan, as compared to the fragmented and degraded habitat scattered elsewhere in the planning area.

In response to Preliminary Recommendation 4.44, the County response indicates disagreement, stating that the cost of undertaking this research would be better applied towards the establishment of a “bank” or district. It is assumed that the purpose of the bank or district encouraged by this comment would be to provide a centralized fund and administrative organization to implement the various functions of the habitat plan.

While the need to establish such funds and administrative protocols are acknowledged as a critical component to the area wide habitat protection plan, their creation will not eliminate the need to evaluate, from a biological resource standpoint, the way in which the plan can most effectively protect ESHA. Such information will be essential to determine the plans conformance with Coastal Act requirements, and is currently being developed as part of the Los Osos HCP effort. Due to the importance of such biological analyses, no change to Preliminary Recommendation 4.44 is proposed by this report. The need to establish the financing and administrative functions necessary to implement the area wide habitat plan, will be a key component of the off-site mitigation program and HCP coordination effort proposed by Recommendation 4.45 and 4.46.

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South County Habitats

The County response to Preliminary Recommendation 4.50 indicates that the Coastal Commission, as opposed to the County, is in a better position to consider prohibiting off-road events in the Open Space area designated by the South County Area Plan, through its on-going condition compliance review of Coastal Development Permit 4-82-300.

Notwithstanding that the Commission will play a lead role in addressing issues related to recreational vehicle use of the Oceano dunes, the County's LCP has significant influence on the Commission's deliberations. The certified LCP is advisory to the Commission in the areas that are in the Commission's permit jurisdiction, and is the standard of review for projects located in the Commission's appeal jurisdiction. In addition to the fact that the LCP can impact the Commission's review of 4-82-300, a new development project that is distinct from this permit will be subject to County review and application of LCP standards.

In recognition that the Commission's review of 4-82-300 will provide a framework for any LCP updates that relate to the Oceano Dunes Off-Highway Vehicle Recreation Area, and in light of current Habitat Conservation Planning efforts for this area, Preliminary Recommendation 4.50 has been revised as follows:

Recommendation 4.50: Update LCP provisions related to new and on-going development activities within the Oceano Dunes State Off-Highway Vehicle Recreation Area in conjunction with Coastal Commission actions related to Coastal Development Permit 4-82-300 as well as with the Habitat Conservation Plan currently being developed. Consider prohibiting special off-road events in the Open Space area designated by the area plan intended to be maintained in its natural state and provide a buffer from the OHV area.

With regard to Preliminary Recommendation 4.51, the County response states that the recommended review and update of land use designations in South County habitat areas should be preceded by an evaluation of site and community concerns. Similarly, the County response to Preliminary Recommendation 4.52 indicates the need to research the biological values and lot history of the Calendar-Garrett area in order to address the legal issues that would be raised by designating and protecting portions of this area as ESHA.

As previously noted, testimony received at the Commission's February 2001 hearing on the Preliminary Report requested that more attention be given to South County habitats. These comments appear to indicate that there is community support not only for the review proposed by Preliminary Recommendation 4.51 and 4.52, but for larger efforts to better protect the sensitive habitats such as the dune lakes.

In response to County and public comments, Preliminary Recommendations 4.51 and 4.52 have been updated as follows:

Recommendation 4.51: Re-evaluate existing and proposed land use designations and development standards in South County dune habitats to ensure protection, and where feasible,

enhancement of all ESHA (i.e., RS and Industrial designations over the undeveloped land of the Callendar-Garrett Village area south and west of Hwy 1; proposed redesignation of RL land use category to Recreation after termination of oil extraction activities). The evaluation of existing designations, as well as any updates intended to address habitat protection needs, should be coordinated with the community and other involved wildlife management entities.

Recommendation 4.52: Resolve lot history and any potentially illegal subdivisions in the Callendar-Garret area ~~if threatened by~~ that may facilitate non-resource dependent development, particularly in areas known to support rare and endangered plant species. Designate and protect such areas as ESHA in coordination with an area wide program that implements ESHA protection consistent with Coastal Act Section 30010 (protecting constitutional private property rights).

Western Snowy Plover and Least Tern Habitat

The Morro Coast Audubon Society has pointed out that the Morro Bay Sandspit is one of the most important nesting areas for the threatened Western snowy plover. Accordingly, Preliminary Recommendation 4.53 has been revised as follows:

Recommendation 4.53: Work with the US Fish and Wildlife Service, the California Department of Fish and Game, the California Department of Parks and Recreation, the Point Reyes Bird Observatory and other interested parties to identify all shoreline areas that provide habitat, or potential habitat, for the Western snowy plover and Least tern. Designate and protect these areas as ESHA. Re-evaluate land use designations in and around these habitats, and craft standards for future development to ensure effective protection. Work with land owners/managers to make certain that current and future use of these habitat areas are designed and managed in accordance with habitat continuance and enhancement. Particular emphasis should be placed on the protection of important nesting areas, including but not limited to the Morro Bay Sandspit.

Elephant Seal Habitats

Preliminary Recommendations 4.54 – 4.56 are intended to protect beach habitats used by the Northern elephant seal. The County response suggests incorporating the proposed standards and programs to manage human observation and visitation of these habitats within the Coastal Plan Policies and Section 23.07.178d of the Coastal Zone Land Use Ordinance. This has been included in the final recommendations as follows:

Recommendation 4.55: Establish standards and programs to manage human visitation and observation of ~~such areas~~ beaches used by elephant seals, such as by updating the marine resource provisions of the Coastal Plan Policies and Section 23.07.178d of the Coastal Zone Land Use Ordinance.

4. Conclusions

Recommendations 4.37 – 4.56 will enable San Luis Obispo County, through its implementation of the LCP, to better protect environmentally sensitive terrestrial and marine habitats consistent with Coastal Act Sections 30210, 30230, 30231, and 30240.

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I. Errata

The incomplete sentence found at the end of the second paragraph on page 121 is corrected as follows:

These standards should be reviewed by, and incorporate the recommendations of, other resource management agencies, including the California Department of Fish and Game, U.S. Fish and Wildlife Service, and National Marine Fisheries Service.

*Adopted Report
San Luis Obispo County LCP Periodic Review
July 12, 2001
As revised August 24, 2001 to incorporate changes from
the addendum and hearing of July 12, 2001*