

## **CHAPTER 4: ENVIRONMENTALLY SENSITIVE HABITAT AREAS (ESHA)**

### **A. Policy Framework**

1. Coastal Act: One of the primary objectives of the California Coastal Act is to preserve, protect, and enhance environmentally sensitive habitat areas (ESHA). Section 30107.5 of the Coastal Act defines an “Environmentally sensitive area” as:

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

The central provisions of Chapter 3 of the Coastal Act aimed at protecting ESHA include Sections 30240, 30230, 30231, and 30250a:

- Section 30240 prohibits any significant disruption of habitat values, and limits development within ESHA to uses that are dependent on the resources. It also requires that development adjacent to ESHA to be sited and designed to prevent significant degradation, and be compatible with the continuance of the habitat.
- Section 30230 applies to marine habitats, and calls for the maintenance, enhancement and restoration (where feasible) of marine resources, with special emphasis on areas and species of special biological or economic significance. Pursuant to this section, all uses of the marine environment must sustain the biological productivity of coastal waters, and maintain healthy populations of all marine organisms.
- Section 30231 provides that the biological productivity of coastal waters, streams, wetlands, estuaries, and lakes must be maintained and, where feasible, restored. This is to be achieved by, among other means: minimizing adverse effects of wastewater discharges and entrainment; controlling runoff; preventing depletion of groundwater supplies and substantial interference with surface water flow; encouraging wastewater reclamation; maintaining natural buffer areas that protect riparian habitats; and minimizing alteration of natural streams.
- Section 30250a directs new residential, commercial, or industrial development to existing developed areas. Where developed areas can not accommodate new development, is to be located in other areas where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

Recognizing that these policies have the potential to conflict with other goals of the Coastal Act, such as maximizing public access and recreation opportunities, increasing recreational boating, and protecting the public from flooding hazards, the Coastal Act provides the following guidance:

- The provision of maximum public access and recreation opportunities must be consistent with protecting natural resource areas from overuse and must take into account the fragility of natural resources (Sections 30210 and 30214).
- The diking, filling, or dredging of coastal waters is limited to specific purposes, and permitted only where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects (Section 30233).
- The alteration of rivers and streams are limited to necessary water supply, flood control, and habitat restoration projects, and must incorporate the best mitigation measures feasible. (Section 30236)

## 2. LCP

The programs, policies, ordinances, and standards of the San Luis Obispo County LCP intended to carry out these Coastal Act policies can be found in the Coastal Plan Policies document, LCP Ordinances (including the Coastal Zone Land Use Ordinance or CZLUO), and the four Area Plans.

In general, Chapter 6 of the Coastal Plan Policies Document provides the foundation of the LCP's habitat protection provisions. These ESHA policies fall into five general categories: Policies 1-4, applicable to all ESHA areas; Policies 5-17 regarding wetlands; Policies 18-26 addressing coastal streams and riparian vegetation; Policies 27-34 concerning terrestrial Habitats; and Policies 36-40 protecting Marine Habitats.

The Coastal Zone Land Use Ordinance (CZLUO) implements most of these ESHA Policies are implemented (others a classified as Standards or Programs). CZLUO Section 23.07.170 is applicable to all ESHA areas. Section 23.07.172 deals specifically with wetlands, while sections 23.07.174 and 23.07.176 address streams/riparian habitats and terrestrial habitats, respectively.

Finally, the Planning Area Standards of the four Area Plans contain specific habitat protection provisions designed to address the particular habitat needs and characteristics of distinct geographic regions.

All of these ESHA policies and regulations are integrally linked to the "Official Maps", reduced versions of which can be found in each of the area plans. These include "Combining Designation" maps that delineate environmentally sensitive habitat areas under the classifications of terrestrial habitats (TH), coastal streams and riparian vegetation (SRV), wetlands (WET), and marine habitats (MH). All four of these habitat types fall under the broader Combining Designation category of "Sensitive Resource Area" (SRA). The SRA overlay is applied to "areas having high environmental quality and special ecological or educational significance" (Framework for Planning, p. 7-3). Thus, while all ESHA Combining Designation are also SRA's, not all SRA's are ESHA;

the SRA overlay is also applied to scenic lands and important geological features. Sections 23.07.160 – 23.07.166 of the CZLUO regulate new development within SRA's.

## **B. Background**

The San Luis Obispo County coastal zone contains a wide variety of environmentally sensitive habitat areas that provide refuge for numerous rare and endangered native plants and animals. In addition to sustaining unique and important biological resources, these habitats are a significant component of the natural landscape. As discussed elsewhere in this report, the scenic and recreational qualities of these open space areas attract visitors from around the world and enhance the quality of life for County residents.

These habitats are also extremely vulnerable to degradation by development. Population growth and increasing development pressures, combined with the sensitivity of the remaining open space lands, threaten the long-term survival of these significant habitat areas. In an eleven year period since the County assumed permitting authority (between 1988 and 1998), the Commission has received notice of 2481 coastal development permits. Approximately 778 of these permits (31%) involved development on land that has an ESHA Combining Designation overlay. Maps 4-C, D, E, and F plot the location of this development.

These figures represent a conservative estimate of development approved within or adjacent to ESHA in this ten year period. This is due to the fact that the LCP's Combining Designations do not map *all* of the habitats that constitute ESHA under the Coastal Act and LCP. First, sensitive habitat areas appear to have been missed or overlooked during the original mapping effort. Second, several new species and habitat types have been listed as rare, threatened or endangered since the Combining designation Maps were certified in 1988. In addition, the Commission has not received notice of all development approved in the coastal zone, as discussed in Chapter 1 of this report.

### **1. North Coast Planning Area**

The North Coast Planning Area, extending from the Monterey County line in Big Sur to the coastal terrace North of Cayucos, includes a wide array of habitat types. These include Monterey Pine Forests, an ecosystem endemic to the Central Coast; beaches that support populations of Elephant Seals, the Western snowy plover, and other rare and threatened flora and fauna; streams that support important fish species such as the Steelhead trout and Tidewater goby; wetlands that are essential components to the health and biologic productivity of coastal watersheds; grasslands and oak woodlands that are home to raptors, their prey, and numerous types of unique plants, lichens, insects, and other living things; and, intertidal and marine environments that provide habitat for the Brown pelican, Southern sea otter, Gray whale and countless other ocean resources of statewide significance.

As adopted in 1988 and as currently certified, pages 46 and 47 of the North Coast Area Plan identifies and describes in more detail the following habitat types and areas as Sensitive Resource Areas (SRA's):

- the entire shoreline;
- the Monterey Pine Forest;
- San Simeon Creek Lagoon;
- San Simeon Point;
- North Coast Creeks (i.e., portions of Santa Rosa, San Simeon, Pico, Little Pico, Arroyo de la Cruz, and San Carpoforo creeks);
- the 600 acre site at the mouth of Arroyo de la Cruz; and,
- Piedras Blancas Dunes.

## 2. Estero

The Estero Planning Area contains different, but equally diverse, habitat types. Among the most notable are the Morro Bay Estuary, one of the most important wetland systems of the California Coast, and the surrounding dune/coastal scrub ecosystem that is a host to numerous rare and endangered species including the Morro Bay kangaroo rat, the Morro shoulderband snail, and Morro manzanita. As opposed to rocky coastline and pocket beaches of the North Coast, shoreline habitats within the Estero Bay are primarily comprised of long stretches of sandy beach, such as the Morro Bay sandspit, which provide critical habitat for the Western snowy plover. South of the sandspit to the San Luis Bay Planning Area, the character of the shoreline returns to rocky headlands and steep wave cut bluffs. The coastal terraces of this area support stands of relic native grasslands.

The Combining Designations chapter of the Estero Area Plan, and its accompanying maps, identify the following portions of the planning area as Sensitive Resource Areas:<sup>1</sup>

- undeveloped ocean shoreline and the Peaks Area;<sup>2</sup>
- the Morro Bay wetland and sand spit;
- the Morro Bay shoreline, including Sweet Springs marsh, Cuesta-by-the-Sea marsh, the Los Osos Estuary, the Baywood Peninsula, and the Fairbanks property;

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<sup>1</sup> For a description of these areas please refer to pages 7-1 through 7-4 of the Estero Area Plan.

<sup>2</sup> The LCP's designation of these areas as Sensitive Resource Areas is primarily related to their scenic quality rather than habitat value.

- Morro Rock Ecological Preserve;
- Morro Bay Kangaroo Rat Habitat; Montana de Oro Grassland; Coon Creek; Los Osos Oak Forest;
- Los Osos Creek;
- Eto and Warden Lakes;
- the Whale Rock reservoir watershed; and,
- the Camp San Luis Obispo Relict Grasslands.

### 3. San Luis Bay

The north end of the San Luis Bay Planning Area, between Port San Luis and Montana de Oro State Park, includes several unique natural plant communities. These include a Bishop Pine forest, one of the largest conifer forests in the County; the Coast Live Oak and grassland habitats of the Irish Hills; and the coastal terrace. At the south end of the planning area is the northern limit of the Guadalupe/Nipomo Dunes complex, one of the largest and most important dune habitats in Coastal California.

Sensitive Resource Areas identified by Chapter 7 of the San Luis Bay Area Plan and the Combining Designation Maps include:<sup>3</sup>

- the coastal terrace of the Irish Hills;
- upper Diablo Canyon;
- the stand of Bishop Pines on the ridge and hillsides south of Coon Creek.;
- the Ruda Ranch area of the Irish Hills;
- Ontario Ridge;
- the Oceano lagoon, dunes and beach area;
- Pismo marsh;
- San Luis Creek Estuary; and,
- the Arroyo Grande Creek.

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<sup>3</sup> For a description of these areas please refer to pages 7-5 through 7-6 of the San Luis Bay Area Plan

#### 4. South County

The sensitive habitats contained in the South County Planning Area are generally associated with the Guadalupe/Nipomo Dunes Complex, as well as various lakes, rivers and lagoons. The Sensitive Resource Area identified by Chapter 7 of the South County Area Plan include:<sup>4</sup>

- the Nipomo Dunes;
- Dune Lakes;
- Oso Flaco Lakes;
- Black Lake Canyon; and,
- Santa Maria River

### **C. Preliminary LCP Implementation Issues**

#### **C.1. Identifying ESHA**

Overview: One of the first and most important steps in the development review process is identifying the presence of ESHA within or adjacent to a proposed development site. As previously noted, the LCP uses a map-based system to differentiate areas where new development needs to be reviewed for conformance with the LCP provisions protecting ESHA. The primary problem with this approach is that where the LCP maps are outdated or inaccurate, the presence of sensitive habitats sensitive habitats on a development site may not be identified. As a result, the development may be designed and approved in a manner that does not protect the habitat area in a manner that is consistent with Coastal Act and LCP objectives.

**LCP Provisions:** An “Environmentally sensitive area” is defined by Section 30107.5 of the Coastal Act as:

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

In comparison, the LCP (CZLUO Section 23.11.030) defines “Environmentally Sensitive Habitat” as:

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<sup>4</sup> For a description of these areas please refer to pages 37 through 38 of the South County Area Plan.

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

The references to “Sensitive Resource Area” and “Land Use Element combining designation” contained in the County definition reflect the map-based approach to habitat protection that is a fundamental component of the LCP’s organization. Essentially, the LCP uses “combing designations” as geographic overlays to land use designations that identify particular resources or constraints that need to be considered during development review. As described on page 7-1 of the Framework for Planning:

*Combining designations identify areas with characteristics that are either of public value or are hazardous to the public. The special location, terrain, man-made features, plants or animals of these areas create a need for more careful project review to protect those characteristics, or to protect public health, safety and welfare. Combining designations are established to achieve the following:*

*...to identify sensitive coastal resources such as archaeological sensitive areas, wetlands, coastal streams, and habitats.*

The Combining Designation applied to ESHA is the Sensitive Resource Area (SRA) combining designation. As described on page 7-3 of the Framework for Planning the SRA overlay is:

*Applied to areas having environmental quality and special ecological or educational significance. The SRA includes four types of Environmentally Sensitive Habitats: Wetlands, Coastal Streams and Riparian Vegetation, Terrestrial Habitats and Marine Habitats.*

*WET Wetlands: Applied to lands that may be covered by shallow water, including saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats and fens.*

*SRV Coastal Streams and Riparian Vegetation: Applied to stream courses (those shown on USGS 7.5 quadrangle maps) and adjoining riparian vegetation.*

*TH Terrestrial Habitats: Applied to sensitive plant or animal habitats within land areas.*

*MH Marine Habitats: Applied to sensitive habitat areas for marine fish, mammals and birds.*

The application of these combining designations, and the development standards that accompany them, can be interpreted as applying only to those areas that have been mapped as such. Similar to the LCP's definition of ESHA, the CZLUO defines Sensitive Coastal Resource Area as:

*...those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity, pursuant to Section 23.01.043c(3) of this title.*

CZLUO Section 23.01.043c(3) describes Sensitive Coastal Resource Areas as including:

*(i) Special marine and land habitat areas, wetlands, lagoons, and estuaries mapped and designated as Environmentally Sensitive Habitats in the Local Coastal Plan. ...*

The consideration of streams as ESHA is similarly limited to a mapped based system, by virtue of the definition of streams contained in Appendix C of the Coastal Plan Policies. This appendix defines a stream as "a natural watercourse as designated by a solid and three dot symbol shown on the United States Geologic Survey map most recently published...."

In order to account for the changes in species and habitat status over time, such a mapped base system needs to be continually updated to reflect current on-the-ground conditions. The LCP's combining designation maps have not, however, been updated since January 1989. As a result, changed circumstances and new information regarding ESHA types and locations are not reflected in the LCP maps that dictate when and where habitat protection provisions apply to new development.

That is not to say that the LCP habitat maps do not provide valuable sources of information. Indeed, the sensitive habitat Combining Designations provide a useful tool for identifying many of the sensitive habitat areas where special considerations must be applied to development proposals. Nevertheless, problems occur where the maps do not accurately reflect on the ground resources, and as a result, such resources are overlooked or not granted the protection they deserve under the Coastal Act.

As previously described, there has been an increase in the number of species that are considered as threatened and endangered under the state and federal Endangered Species Acts since LCP certification. The LCP maps that designate ESHA have not, however, been updated to include the habitats of these newly listed species. In addition, there have been changes in species location and status, which in some cases render the Combining Designation maps incomplete in their depiction of ESHA.

The incomplete delineation of ESHA provided by the LCP Combining Designation Maps, and the implications this can have on the protection of ESHA, is an issue that has



been raised in many recent appeals. Table 4-1 provides a listing of appeals that involved development in or adjacent to habitats/potential habitats for rare and endangered species not mapped as ESHA by the LCP.

**Table 4-1: Appeals in/adjacent to unmapped ESHA**

| Appeal No.                        | Project  | Unmapped Habitat Type and Location             |
|-----------------------------------|--|--|
| A-3-SLO-96-021                    | Eady Motel   | Riparian, Cambria                              |
| A-3-SLO-97-40                     | Los Osos Wastewater Treatment Project                  | Coastal Scrub, Los Osos                        |
| A-3-SLO-98-108                    | Rodman/Holland Subdivision                             | Coastal Scrub, Los Osos                        |
| A-3-SLO-99-083                    | Wright Storage Project                                 | Coastal Scrub, Los Osos                        |
| A-3-SLO-99-014 and A-3-SLO-99-032 | Morro Bay Ltd. Lot Line Adjustment and Roadway project | Wetlands and Grasslands, Harmony Coast         |
| A-3-SLO-98-087                    | Cabrillo Associates/Pratt Subdivision                  | Maritime Chaparral (Morro Manzanita), Los Osos |
| A-3-SLO-00-40                     | Schneider Residence                                    | Grasslands, Harmony Coast                      |

In addition to the above appeals, the Commission staff is aware of the following locally approved development that was not appealed but also involved development in or adjacent to ESHA that is not mapped as such by the LCP:

**Table 4-2 Local Permits in/adjacent to unmapped ESHA**

| Local Permit No. | Project                   | Habitat Type and Location    |
|------------------|---------------------------|------------------------------|
| D870122D         | Monarch Grove Subdivision | Coastal scrub, Los Osos      |
| D960037          | Morro Shores Subdivision  | Coastal scrub, Los Osos      |
| D980300P         | Mehring residence         | Maritime chaparral, Los Osos |
| D990196P         | El Moro bike trail        | Coastal scrub, Los Osos      |
| D970257D         | MCI/Worldcom              | Coastal scrub, Los Osos      |

As shown by the above tables, the Los Osos/Baywood Park region of the Estero Planning area is an area where LCP maps do not effectively represent the full extent of sensitive habitats. This is largely due to the US Fish and Wildlife Service's listing of the Morro Bay Shoulderband snail and four local plant species as threatened or endangered in 1997.

The other area where ESHA exists but is not mapped by the LCP, as indicated by Table 4-1, is the largely undeveloped coastline between Cayucos and Cambria known as the Harmony Coast. It appears that the wetland and terrestrial habitat values of this area were not recognized during the original development and certification of the LCP, and have since been identified during project specific development reviews.

While these two geographic regions provide good examples of the problems raised by the LCP's map based system, the problem is not limited to these areas. Maps 4-A and 4-B compare the habitat areas for rare and endangered species identified by the Department of Fish and Game's National Diversity Database to the areas mapped as ESHA by the LCP. As shown by these figures, there are many important habitat areas that are essential to the protection and recovery of threatened and endangered species, but are not designated as such by the existing LCP. It should also be noted that habitat areas illustrated by these figures are limited to those that support for plants or animals listed as rare or endangered under the state and federal Endangered Species Acts. There are over 100 additional species in San Luis Obispo that have been listed as a Species of Concern, proposed for listing, or classified as rare by the California Native Plant Society whose habitats are not reflected by these figures.

#### LCP Implementation:

Between 1988 and 1998, the County's application of ESHA protection provisions appears to have been largely based upon whether the project is proposed in a location within or adjacent to a mapped ESHA Combining Designation. That is, the Combining Designation Maps provided the primary tool for identifying when proposed development posed potential impacts to ESHA, and was therefore subject to compliance with the range of habitat protection provisions provided by the LCP.

During this time period, however, potential impacts of new development on ESHA not mapped as such by the LCP were sometimes identified pursuant to an environmental review required under the California Environmental Quality Act (CEQA). Such examples are limited due to the fact that most of the developments authorized by local coastal development permits qualify for exemptions from the requirements of CEQA.

Environmental reviews conducted pursuant to CEQA that identified impacts to sensitive habitats not mapped by the LCP include the subdivisions known as Monarch Grove, Cabrillo Estates, and Morro Shores, all of which are located in the urban area of Los Osos. By virtue of the fact that the involved habitats were not mapped as ESHA, and the Land Use Designations allowed for smaller lots, the subdivisions were approved. While

some habitat mitigation was provided pursuant to CEQA, these measures did not achieve the same level of habitat protection otherwise required by the LCP for mapped ESHA, particularly those that prohibit land divisions within ESHA.

A significant change to this map-based approach occurred in 1998, after the Coastal Commission determined that an appeal of the Los Osos Wastewater Treatment project (A-3-SLO-97-40) raised a substantial issue. An important basis for this decision was the Commission's interpretation that LCP ESHA protection standards should be applied to any area that supports sensitive habitat resources, whether or not it is mapped as such by the LCP. The findings drafted in support of this interpretation state:

*The LCP is silent on what to do in those instances where environmentally sensitive habits are found at a particular site, as is the case here, but they have not yet been officially mapped. To interpret the LCP policies in a way that such environmentally sensitive habitats are not treated as such would be at odds with both the intent of the LCP's ESH protection policies and the clear direction of Coastal Act objectives. It would also be poor public policy and resource planning to suggest an accurate delineation of all sensitive habitats will be accomplished at only one specific point in time, due to the many dynamic variables that can affect the type and location such resources over time. Public policy must be able to account for new information and scientific understanding in the implementation of resource protection policies, such as the information that has been developed by the County regarding the habitat values of the treatment plant and disposal sites. The only rational response in such situations, therefore, is to treat existing environmentally sensitive habitats as such under the LCP, regardless of whether they are currently precisely mapped in the Land Use Element.*

Consistent with this interpretation, the County has not intentionally limited the application of LCP ESHA protection provisions to the mapped areas since the Commission's consideration of the Los Osos Treatment Project. In fact, since 1997, County staff has done a commendable job of identifying where development may impact ESHA regardless of the development area's mapping status, particularly in the Los Osos area. In addition, the draft updates to both the North Coast and Estero Area Plans include revisions that will require the protection of ESHA whether mapped or not.

Clearly, there are important reasons to update and/or revise the LCP's map based system for identifying ESHA. These include:

- Ensuring that all sensitive habitat areas are effectively identified and protected consistent with Coastal Act Sections 30240 and 30241; and,

- Establishing a clear and consistent process for development review, including an accurate identification of which projects are appealable to the Coastal Commission by virtue of their location in sensitive resource area.<sup>5</sup>

This does not mean that the use of maps and Combining Designations should be abandoned; as previously noted, these maps provide a useful tool for identifying particular areas known to support sensitive habitats. What it does mean is that these maps need to be supplemented with additional information and analysis to ensure that the protection of ESHA is not overlooked. This information base must be broad enough to identify all areas of the County coastal zone that meet the Coastal Act definition of ESHA.<sup>6</sup> In addition, the information base must be updated on a regular basis to reflect changes in the status and location of rare and valuable habitat resources over time.

There are numerous reference tools that can be used to supplement the LCP's existing Combining Designations in a manner that reflects the full range of plants and animals in the San Luis Obispo County coastal zone that qualify as ESHA. The most important of these are the lists of rare, threatened and endangered species maintained by the US Fish and Wildlife Service (USFWS), the California Department of Fish and Game (DFG), and the California Native Plant Society (CNPS). All of these lists are accessible on the internet, and are routinely updated, as described below.

- The US Fish and Wildlife Service provides lists of all species that are classified as threatened or endangered under the federal Endangered Species Act, as well as those that are designated as a species of concern, and those that are being proposed or considered for such listing. Updates to these lists are provided via the Federal Register.
- The California Department of Fish and Game maintains the California Natural Diversity Database (CNDDDB), a statewide inventory of the locations and condition of the state's rarest species and natural communities. As stated on the DFG website, the goal of this program is "to provide the most current information on the state's most imperiled elements of natural diversity and to provide tools to analyze these data. The California Natural Diversity Database (CNDDDB) is a continually refined and updated computerized inventory of location and condition information on California's rarest plants, animals, and natural communities." Among the information available are listings of "special status species" by County. Special Status Species include all plants and animals listed as a species of concern, threatened, or endangered under the Federal Endangered Species Act; listed as rare, threatened or endangered under the

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<sup>5</sup> Pursuant to Section 23.01.043c(3)(I), any development located within "Special marine and land habitat areas, wetlands, lagoons, and estuaries and mapped and designated as Environmentally Sensitive Habitats in the Local Coastal Plan" are appealable to the Coastal Commission.

<sup>6</sup> Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments (Coastal Act Section 30107.5).

California Endangered Species Act; and, those species that have been otherwise assigned special status by DFG or CNPS.

- The California Native Plant Society (CNPS) maintains a Rare Plant Inventory that provides information on the distribution, ecology, and conservation status of California's rare and endangered plants. The Program currently recognizes 857 plant taxa (species, subspecies and varieties) as rare or endangered in California. Another 34 taxa of native identified by the inventory are presumed to have gone extinct in California in the last 100 years.

Perhaps the most comprehensive of the above lists is the Natural Diversity Database, which strives to identify the full range of plants and animals that have been granted special status by the federal government, the state of California, the Department of Fish and Game, and the California Native Plant Society.

While these lists certainly provide an important tool for identifying the particular species whose habitats' should be protected as ESHA, the delineation of ESHA should not be limited to the habitats of listed species. Other sensitive habitats that may not support threatened and endangered species may be considered "rare or especially valuable" from a local, regional, or statewide perspective, and therefore should be protected as ESHA by the LCP. Good examples of such habitat areas include over-wintering sites for Monarch butterflies; elephant seal haul-out and breeding areas; and coastal dune/dune scrub, oak woodland, native grassland, and maritime chaparral plant communities.

In addition to updating the full range of species and habitat types that qualify as ESHA, it is essential to obtain the site-specific information that identifies if ESHA exists on or adjacent to a proposed development site.

Currently, the coastal development permit application requirements contained in sections Section 23.02.030, 23.02.033, and 23.02.034 of the CZLUO require applications to provide, among other information, "the generalized location of any major topographic or man-made feature on the site, such as rock outcrops, bluffs, streams and watercourses, or graded areas". While this information will help identify when a development proposal may impact a stream or riparian habitat, it will not lead to the identification of other sensitive habitats, such a coastal dune scrub.

For development within a Combining Designation, Section 23.02.030 requires applications to include "additional information", but does not specify what type of additional information must be provided. Presumably, the additional information should identify the resources present on the site that was the basis for the Combining Designation. Regardless, since this additional information is only required for projects within a Combining Designation, it will not lead to the identification of sensitive habitats that may be present on a development site that is not mapped as a Combining Designation.

Finally, Section 23.02.030b(ix) requires permit applications within urban or village reserve lines to show the location of trees existing on the site or within 40 feet of the proposed grading or other construction, which are eight inches or larger in diameter at four feet above natural grade. While this information is important in terms of protecting older and larger trees that are important environmental and visual resources, it is not adequate to determine the presence of terrestrial habitats. Not only is the identification of trees limited to projects within urban and village reserve lines, but the limited size of trees identified under this standard does not include younger trees crucial to the long-term health of a forested area or sensitive tree-like shrubs such as Morro manzanita.

Thus, expanding upon the information required at the application stage regarding the type and extent of native habitat that may exist on and adjacent to the proposed development would help address the deficiencies of the existing Combining Designations. The requirements for such information needs not only to be broad enough to ensure that the potential presence of ESHA is not overlooked, but balanced so that they do not place unnecessary burdens on the development review process. Alternative methods of addressing this need are analyzed below.

Preliminary Policy Alternatives:

The issues that need to be addressed to effectively resolve what constitutes ESHA include:

- Identifying the sources of species and habitat information that must be used to determine the presence of ESHA;
- Obtaining site specific information regarding the potential presence of biological resources on or near proposed development as part of coastal development permit applications; and
- Establishing a more definitive process for delineating the extent of ESHA on a particular site.

Alternative methods of responding to these needs are detailed below.

***Alternative Sources of Species and Habitat Information:*** As previously described, there is a wide range of reference materials available to determine whether the plants, animals, or habitats present on a particular site may qualify as ESHA. These include the existing Combining Designation Maps and descriptions; the lists of sensitive species maintained and update by USFWS, DFG, and CNPS; the CEQA review process; and, other sensitive habitats that may be determined to be especially rare and valuable by the County and the State.

Alternative A1: Updated Combining Designation Maps

Under this alternative, the current map based approach for determining the presence of ESHA would be retained, but an intensive effort to update these maps consistent with the current status and distribution of rare and endangered species would take place. In addition to considering the data and information available from USFWS, DFG, and CNPS (among others), the update of the maps would involve assessments and verification of habitat boundaries using field research, aerial photo analysis, and other methods. Habitat maps provided by project specific biology reports could also be used to update the Combining Designation maps.

To account for future changes in special status species, this alternative would also need to include provisions to ensure that subsequent updates of the Combining Designation maps would occur on a periodic basis. Various triggers to future updates could include a commitment to such updates once a year (or other appropriate time frame). The Resource Management System (RMS), described in the New Development Chapter, could be expanded to provide procedures for such updates. In addition, standardizing the requirements for biology reports, particularly mapping, would facilitate the incorporation of new information/habitat delineations within the Combining Designation mapping system.

Benefits of this approach include providing greater certainty about the specific geographic regions where LCP ESHA protection provisions apply; and, facilitating comprehensive interagency periodic reviews of the type and location of biological resources that should be protected as ESHA by the LCP.

Problems with this approach include the difficulties sure to be encountered in reaching timely and acceptable updates to the maps, and the remaining possibility for development to occur on unmapped ESHA. The amount of research, conflict resolution, and debate accompanying these updates would likely present significant obstacles. Even if such updates could be efficiently processed, the potential for development to impact ESHA that was unknown or overlooked during the amendment process would remain. An additional problem would be the limited ability to do research on private property necessary to effectively update these maps.

**Alternative A2: Supplement the Use of Combining Designation Maps with Additional Tools to Determine the Presence of ESHA**

Rather than basing the presence of ESHA on the Combining Maps alone, the LCP could acknowledge that certain habitats constitute ESHA, regardless of their mapping status. For example, habitats for special status species listed by the Natural Diversity Database, as well as other habitats determined by the County and the Coastal Commission to be ESHA through the LCP Amendment and Update process, could be protected as ESHA whether or not they are mapped as such by the Combining Designations. Under this alternative, if the habitats for any of the species listed by the Natural Diversity Database, or other specified ESHA, are identified as existing, or having the potential to exist on or

adjacent to a proposed development site, a thorough biological analysis to make a final determination of the presence and extent of ESHA would follow.

This alternative is similar to the approach being proposed in the current North Coast and Estero Area Plan Updates, which recognize habitat for species listed by federal or state agencies as ESHA. The Estero Update goes one step further than the North Coast Update by also recognizing habitat for rare or endangered species “as defined by State CEQA Guidelines as ESHA”. This would include, but not be limited to, the threatened and endangered species listed pursuant to state and federal Endangered Species Acts; habitats for other species that have not been placed on an official list, but meet the criteria of Section 15380(b) of the CEQA Guidelines, would also be protected as ESHA.

Neither the North Coast nor Estero Updates address the use of the Natural Diversity Database, which includes plants classified by the California Native Plant Society, as well as plants and animals that are proposed for listing by the state or federal governments and other species identified as a “species of concern”. However, such information is typically considered in the evaluation of whether a species meets the CEQA Guidelines definition of a rare or endangered species.

The Updates also appropriately identify particular habitat types that should be added to the LCP’s current list of ESHA. For the North Coast, this includes central foredunes, coastal freshwater marshes, central dune scrub, central maritime chaparral, coastal dunes (including oak groves and native groundcover vegetation that stabilize the dune landform north of San Simeon Pt.), trees used as over-wintering habitat by the Monarch butterfly; and elephant seal haul out and breeding areas. In the Estero Planning Area, the update identifies ecologically significant areas of oak woodland, coastal strand, coastal sage scrub, dune scrub, maritime chaparral communities, and other significant stands of vegetation such as Bishop pine, eucalyptus, and cypress<sup>7</sup> as environmentally sensitive areas. Both the Updates recognize all riparian habitat corridors as ESHA, whether or not they border a “blue-line” stream shown by USGS quadrangles.

Clearly, both the updates represent significant improvements to the LCP’s current mapped based system for defining ESHA, and the County should be commended in this regard. Further consideration should be given to the use of the Natural Diversity Database as an additional tool to supplement the use of the Combining Designation maps. In addition, the Area Plan Updates will need to be accompanied by amendments to the Coastal Plan Policies document and the Coastal Zone Land Use Ordinance to achieve internal consistency and ensure effective implementation of these changes, as recommended below.

Perhaps the most complicated aspect of this alternative is obtaining a quality inventory of biological resources at the development application stage. Obviously, such an inventory

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<sup>7</sup> Provided that these stands of vegetation do not need to be removed due to hazardous conditions or restoration/enhancement of native habitat.



is essential to determine whether any listed species or other sensitive habitats are present on a site. This issue is addressed in the next alternative analysis presented below.

***Alternative Methods of Obtaining Site Specific Biological Information:*** Effective implementation of Alternative A2 (above) is dependent upon obtaining a comprehensive inventory of the biological resources (i.e., plants, animals, and sensitive habitat types) that are on and adjacent to a proposed development site. It appears that the original intent of the Combining Designations was to identify the particular areas where such detailed biological assessments would be required. However, as previously discussed, the Combining Designation maps do not effectively delineate all locations of potential ESHA, and therefore should not be relied upon to identify the particular areas where biological evaluations are needed. Thus, it appears that biological evaluations to determine the potential presence of ESHA are needed outside of the mapped areas. Yet, a blanket requirement that *all* new development provide such biological evaluations may place unnecessary burdens on the permit application and review process. The challenge is therefore to establish an appropriate balance between requiring biological evaluations where there is the potential for ESHA to exist, and exempting certain areas from such evaluations where it can be definitively shown that new development will not impact ESHA.

Alternative B1: Rely on the Biological Evaluation Conducted Pursuant to the California Environmental Quality Act

According to County Planning staff, every proposed development site is inspected as part of the Initial Study required under the California Environmental Quality Act (CEQA). While many of these projects are later determined to be exempt from the full environmental review requirements of CEQA, such exemptions are not granted until an initial site inspection has occurred. If a site appears to provide important habitat values based on the professional judgement of the local planning staff during this initial inspection, the applicant is typically required to provide additional biological information (e.g., habitat survey).

Under this alternative, local planning staff would determine if biological evaluations are needed based on the results of their initial field inspections. If the vegetation, soils, or other features of a site appear to have the potential to support sensitive habitats, or the site appears to be within 100 feet of an ESHA, a biological report prepared pursuant to CZLUO Section 23.07.170<sup>8</sup> would be required as part of the development permit application. To ensure that these procedures are appropriately followed, new provisions should be incorporated into Chapter 2 of the CZLUO regarding the content and processing of permit applications.

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<sup>8</sup> Recommended changes to this section of the CZLUO can be found in Preliminary Recommendation 4.3 on pages 124-125 of this report. As part of the recommended changes, development projects within specific habitat types that can be protected through the development and implementation a comprehensive system-wide program (e.g., the Cambria Pine Forest and the Los Osos Dunes) may not be required to submit a complete biological report.

In general, this seems to be the approach being proposed in both the current Estero and North Coast Area Plan Updates. As proposed on page 7-8 of the Estero Update, a biological or other applicable report that identifies sensitive features must be prepared when required by the Coastal Zone Land Use Ordinance (e.g., when located in a mapped ESHA Combining Designation), or when required by the Planning Director. Although not specifically stated, it is assumed that the Planning Director would require such reports when the initial investigation of the site by County planning staff indicated the potential for ESHA to exist on a site.

Similarly, the current North Coast Area Plan Update proposes on page 7.17 that “all projects which have the potential to adversely impact and Environmentally Sensitive Habitat Area (ESHA) will be subject to mandatory environmental site review, whether or not located within a previously mapped Sensitive Resource Area. If the review identifies the potential for impacts to sensitive habitat and/or wildlife, a biological assessment shall be conducted by a qualified expert.” It is not clear how it shall be determined whether a project has the potential to adversely affect ESHA, and therefore requires a mandatory site review. Again, it is assumed that local planning staff will make such determinations in the field.

The benefit of this approach is that it makes use of existing procedures rather than creating additional application requirements. Potential problems with this approach is that local planning staff may not have the biological expertise to effectively determine if the site may support or be adjacent to ESHA, and/or may not have adequate time to do a complete assessment of a sites biological values.

In this regard, it is noted that as modified by the Coastal Commission in January 1998, the mandatory site review required by the North Coast Update was to be undertaken by a qualified expert, during the season of the year most likely to result in successful observation of the sensitive species. These important provisions have been eliminated from the initial (“mandatory”) site review required by the current update. Reinstatement of these provisions may help resolve this issue. However, the question of how to determine whether a project has the potential to impact ESHA, and therefore requires such a site review, remains.

**Alternative B2: Require All Development Applications Involving New Site Disturbance to Provide Site Specific Biological Information**

Under this alternative, every coastal development permit application that involved new site disturbance would be required to include a comprehensive list of all biological resources that occur, or have the potential to occur, on the site. Where development would be located within 100 feet (the minimum ESHA setback) of the property line, the required biological survey would need to extend onto adjacent property to a distance of 100 feet from the proposed development. This is similar to the existing LCP requirement that applications for development within 100 feet of the boundary of a mapped ESHA include a biological report that, among other things, confirms that setbacks are adequate

to protect the ESHA (CZLUO Section 23.07.170a(4)). The main difference is that the provision of this information would not be limited to projects that are in, or within 100 feet of, a mapped ESHA.

Procedurally, this would require all new development applications to be accompanied by an inventory of the plants and animals identified as occurring, or having the potential to occur, within 100 feet of the proposed development, prepared by a qualified biologist. Should this inventory identify the presence or potential presence of any species listed by the Department of Fish and Game's National Diversity Database, or any type of habitat designated by the LCP as ESHA, a full biological report required pursuant to CZLUO Section 23.07.170 would be required to process the application. Such procedures could be incorporated into Chapter 2 of the CZLUO.

The problem with this approach is that it adds a significant additional requirement to the application process that in some cases may be unnecessary. Certain urban environments and other areas that have been previously degraded may be clearly devoid of biological value, making a requirement for a biological survey an unnecessary component of the development review process. To address this issue, the County could evaluate the particular areas where development should be exempt from the need to provide a biological inventory as part of the application process, based on scientific evidence demonstrating the absence of ESHA in such areas.

It is noted, however, that the incorporation of exemptions from biological inventory requirements into the LCP would have to be held to very high standards. Many urban areas such as Los Osos that were not considered ESHA by the LCP have been recently determined to support sensitive species and habitats.<sup>9</sup> Similarly, rural lands used for agricultural activities such as grazing may have been previously viewed as providing little in the way of habitat. They have, however, been shown to provide important habitat for raptors, wetland resources, riparian species, and diminishing native grasslands.<sup>10</sup>

Alternative B3: Obtain the Necessary Biological Information through a Comprehensive Habitat Conservation Planning Effort

Regional and sub-regional areas that support specific sensitive habitat types may lend themselves to an ecosystem based approach to habitat identification and protection. If addressed through a comprehensive planning effort, such an approach would minimize, and perhaps avoid, the need for all development proposals to provide site-specific comprehensive biological surveys.

Under this alternative, specific types of ESHA would be delineated according to the particular physical characteristics they are dependent upon (e.g., soil type, climate). The

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<sup>9</sup> Morro Shoulderband Snail and Four Plants for Western San Luis Obispo County, California Recovery Plan, U.S. Fish and Wildlife Service, September 1998

<sup>10</sup> Coastal Development Permit Files A-3-SLO-99014 and A-3-SLO-99-032 (Morro Bay Limited), A-3-SLO-00-40 (Schneider)

delineation of the habitat planning area would be at a gross scale, encompassing the full range of the habitat type, irrespective of the fact that certain properties within the delineated area may no longer support the biological resources associated with the system.

Within the delineated habitat region, habitat values would be assigned to properties based upon factors including size and connectivity to other habitats. The greatest value would be assigned to those habitat areas that are essential to the systems survival and recovery, as well as those areas that represent an “Ecologically Significant Unit” (i.e., an area of habitat that is adequate in size and setbacks from incompatible uses to be self-sustaining). The lowest value would be assigned to small properties that are either too small or removed from other habitat areas to be a viable habitat area over the long-term.

The objective of the program would preserve all habitat areas that are either essential to the survival, recovery, and enhancement of special status species, or represent an Ecologically Significant Unit. Properties within the habitat planning area that do not meet these criteria could be developed in return for contributions to the preservation of essential and sustainable habitat areas that are otherwise threatened by development, in amounts proportional to the habitat value assigned to the development site. In addition, protection of the preservation area could be facilitated by granting bonuses (e.g., increased square footage or density) to projects in the development area in return for extinguishing development credits in the preservation area. Among the many difficult details that would need to be addressed by the program would be the means of ensuring the protection of the entire preservation area(s) before development could be authorized on properties of lesser habitat value.

To ensure that such programs comply with federal and state endangered species acts, as well as the Coastal Act, they are encouraged to be developed in coordination with a Habitat Conservation Plan (HCP) and Natural Communities Conservation Program (NCCP), as administered by the US Fish and Wildlife Service and California Department of Fish and Game, respectively. Such a coordinated approach could facilitate resolution of ESHA issues on an ecosystem basis, in a manner that meet the needs of all the regulatory agencies.

While this may be an attractive approach from both an ecological and development standpoint, a great deal of research and planning would be required to develop and implement such programs. As a result, integrating such programs into the LCP is expected to be an intensive effort. Currently, both the Estero Area Plan Update and the Wastewater Treatment Project being developed by the Los Osos Community Services District, proposes such a program for the Los Osos area. This program is in its infancy, but may provide a blueprint for similar efforts elsewhere in the County, with further development and coordination with the involved parties and regulatory agencies.<sup>11</sup> The

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<sup>11</sup> Described in: Crawford Multari Clark & Mohr Associates, *Draft Environmental Impact Report for the Los Osos Community Services District Wastewater Facility project*, November 2000, page 290; and, SLO County Estero Area Plan Update. pages 6-25 and 6-28 – 6-30 .

other area where such an ecosystem approach appears to be warranted is the Monterey Pine forest in and around the Cambria urban area. This is discussed in more detail elsewhere in this chapter.

To encourage such ecosystem based planning, new Combining Designation Programs could be incorporated into the LCP that call for the County, or other appropriate entity, to secure grants and other funding that would set these plans in motion.

***Alternative Procedures for Delineating the Extent of ESHA:*** An additional variable in the ESHA identification issue is the process for delineating the extent of the habitat. Assuming that a biological inventory of a particular site indicates the presence, or potential presence of particular sensitive species or habitat type on a proposed development site, what protocols should be used to delineate the extent of ESHA on the site? Other than requiring a biological report for development within or adjacent to ESHA that addresses setbacks from the habitat area (CZLUO Section 23.07.170), the LCP is silent in this regard.

Alternative C1: Rely on the Physical Presence of Particular Plants and Animals

It could be suggested that the limits of the ESHA should be co-terminus with the specific locations where sensitive plants and animals have been documented to occur on the site. A significant problem with such an approach is that it does not account for the natural movement of sensitive species occurring through seed germination and/or physical migration. As a result, this alternative would not effectively protect the full range of areas that provide habitat for rare and endangered species and may be essential for their biological continuance.

Alternative C2: Consider the Current Physical Characteristics of the Site

A much more scientifically based approach that considers the full range of the site's physical characteristics is needed to effectively delineate ESHA. Soil type, topography, vegetation, microclimate, migration corridors, and other such physical characteristics all play a significant role in defining the areas of a site that represent habitat for the particular species of concern. In addition, seasonal variations in the presence of sensitive species must also be taken into account. A thorough biological analysis of these variables and characteristics based on a current site specific evaluations conducted during the appropriate seasons, accompanied by maps accurately delineating the areas that currently provide, or have the potential to provide, habitat for rare and sensitive resources, would need to be completed by a qualified biologist. Standards specifying the minimum requirements for such biological reports would need to be incorporated into Section 23.07.170 of the CZLUO to implement this alternative. 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.

This is similar to the approach suggested by the Commission in its modifications to LCP Amendment 1-97 and incorporated into the current North Coast Update (p. 7-18) being developed at the local level. However, this important addition has not yet been incorporated in the Estero Update or the other two Area Plans. Changes to CZLUO Section 23.07.170 are needed to ensure effective implementation of this alternative, not only within the sensitive areas of the North Coast and Estero, but for all ESHA areas in the San Luis Obispo County coastal zone.

**Alternative C3: Evaluate Restoration Potential**

There may be particular areas where development has disturbed or removed physical characteristics that previously provided important habitat values, but the area remains an important component of an ESHA ecosystem, and therefore should be protected as ESHA. For example, industrial development in the Guadalupe Dunes of South County has removed significant dune habitats. Yet, if and when these industrial developments are abandoned, the facilities could be removed and the natural dune habitats restored, in a manner that aids in the survival and recovery of the rare and threatened species native to the area.

In instances such as these (i.e., where previous development has disturbed or fragmented otherwise significant habitat areas) it may be warranted to take a broader view of what constitutes ESHA on a development site. In addition to the physical characteristics that currently provide habitat value, the potential to restore the previously disturbed habitat areas should also be considered. Under this alternative, Biological Reports would be required to delineate the full extent of existing and restorable habitat areas as ESHA. Where the disturbed but restorable area is surrounded by ESHA. Again, changes to CZLUO Section 23.07.170 would be required for implementation.

**Alternative C4: Establish a Process for Confirming the Presence and Extent of ESHA with DFG and USFWS**

As a final tool for confirming the accurate delineation of ESHA, the applicant and/or the County Planning Department could be required to submit the required biological report for review and comment by the California Department of Fish and Game and the US Fish and Wildlife Service. The purpose of this review would be to ensure that no important habitat values were overlooked, or afforded adequate protection, by the required biological report. To prevent this from causing significant delays in the review process, a specific timeline could be assigned to these reviews (e.g., two weeks from the agencies' receipt of the Biological Report).

The LCP currently requires the Department of Fish and Game to review all applications for development in or adjacent to wetlands. Where needed, DFG is to recommend appropriate mitigations which "should be incorporated into project design" (Policy 10 for Environmentally Sensitive Habitats and CZLUO Section 23.07.172c). As discussed in the section of this Chapter regarding wetlands, it is not clear that this requirement is being consistently implemented; only 4 of the 23 permits reported to the Commission between

1988 and 1998 involving development in or adjacent to wetlands indicated that DFG was consulted. Changes to Section 23.07.170 of the CZLUO requiring that Biology reports be submitted for the review and comment of DFG and the US Fish and Wildlife Service would therefore not only help ensure that ESHA was being accurately delineated, but would also enhance implementation of existing wetland protection policies.

**Preliminary Recommendation 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.
- 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 used by the Department of Fish and Game.

**Preliminary Recommendation 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.
- 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.

### **Preliminary Recommendations 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.
- 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 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; please see recommendation 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.
- 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 the California Coastal Commission before applications for development in or adjacent to ESHA are filed as complete. The incorporation of such a requirement into the LCP (e.g., within Section 23.07.170 of the CZLUO) could be accompanied by a specific time frame for such reviews to ensure that they would not result in undue delays in the development review process.

## **C.2. Avoiding and Minimizing Impacts to ESHA**

Overview: The effective protection of ESHA is a multi-tiered process, which, as discussed above, starts with determining whether a site contains or is adjacent to ESHA. The next step is to avoid adverse impacts to ESHA, through a combined approach of limiting allowable uses in such areas, and implementing standards that ensure the allowable uses will be constructed and carried out in a manner that is compatible with the sensitive habitats' continuance. Such standards include ESHA setbacks, prescribed construction procedures, landscaping requirements, and long term management and monitoring of the habitat. In general, the objectives of these standards are to avoid impacts to ESHA, and ensure that the development will safeguard the biological continuance of the habitat.

Application of these policies must, however, ensure that property owners have the ability to make a reasonable economic use of their land, consistent with the rights granted under the Constitution and related legal precedents. Thus, the first problem in avoiding impacts to ESHA is limiting the use of such areas to those that are dependent on the resource, while at the same time, providing the property owner with a reasonable economic use. This necessitates that non-resource dependent development in ESHA be limited to the minimum necessary to avoid a taking, and that the full range of siting and design alternatives that would avoid impacts to ESHA be considered and pursued.

Where it is impossible to completely avoid impacts to ESHA and accommodate a reasonable economic use of private property, a wide range of measures to minimize the development's impact on ESHA and ensure the biological continuance of the habitat must be implemented. Accomplishing these objectives provide another unique set of

challenges. Finally, mitigation to offset the unavoidable impacts should be required, as discussed in a subsequent section of this chapter.

### **LCP Provisions**

Limiting Development in ESHA to Resource Dependent Uses: Although neither the Coastal Act nor the LCP define “resource dependent”, the LCP definition of “Coastal-Dependent Development or Use” provides a good reference:

*Any development or use that requires a permanent location on or adjacent to the ocean. (CZLUO, p. 11-7)*

Similar to the above definition, a use that is dependent upon an ESHA can be considered a development or use that requires a location within or adjacent to the resources particular to the ESHA.

The primary means by which the certified LCP carries out the Coastal Act requirement to limit development within ESHA to resource dependent uses is LCP Policy 1 for Environmentally Sensitive Habitats, which states in part:

*Within an existing resource, only those uses dependent on such resources shall be allowed within the area.*

Sections 23.07.170-178 of the CZLUO implement this Policy. In particular, the development standards for environmentally sensitive habitats specified by Section 23.07.170d(2) states:

*New development within the habitat shall be limited to those uses that are dependent on the resource.*

Avoiding Impacts to ESHA: There are many LCP provisions that prohibit new development which would significantly disrupt or threaten the continuance of sensitive habitats. Among the most important is CZLUO Section 23.07.170, which specifies the application materials, required findings, and development standards for development proposed within or adjacent to (“within 100 feet of the boundary of”<sup>12</sup>) an area mapped by the LCP as ESHA. In particular, part b of this section requires the following findings:

*There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat. And,*

*The proposed use will not significantly disrupt the habitat.*

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<sup>12</sup> This definition of adjacency conflicts with Policy 1 for Environmentally Sensitive Habitats, which qualifies that adjacency is generally within 100 feet “unless sites further removed would significantly disrupt the habitat”.

As an additional means of avoiding adverse impacts to ESHA, part c of Section 23.07.170 prohibits land divisions in ESHA unless all building sites are located entirely outside of the minimum setbacks established by the LCP.

Another important ordinance is 23.05.034c, which prohibits grading within 100 feet of environmentally sensitive habitat unless a setback adjustment is granted pursuant to Sections 23.07.172d(2) for wetlands or 23.07.174d(2) for streams. (The application of these adjustments are analyzed in subsequent sections of this chapter specific to stream and wetland habitats). Section 23.05.034c also allows an adjustment to this setback where the grading is necessary to locate a principally permitted use within an urban service line and the 100 foot setback would render the site physically unsuitable for the principally permitted use. In such instances, no grading may occur closer than 50 feet to the habitat or as allowed by planning area standard (whichever is greater); and, the grading permit application must be accompanied by a grading plan prepared and certified by a registered civil engineer.

*Minimizing Impacts to ESHA*: Where it may not be possible to avoid development in or adjacent to ESHA, the Area Plan Standards provide important regulations for new development designed to minimize impacts. In particular, Combining Designation Standards for all rural areas of the North Coast and Estero Planning Area mapped as Sensitive Resource Areas (SRA) state:

*Projects requiring Development Plan approval are to concentrate proposed uses in the least sensitive portion of the property and retain native vegetation as much as possible.*

The same standard is also included in the San Luis Bay Area Plan, with the added caveat that:

*Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas. Native vegetation is to be retained as much as possible.*

Other LCP provisions that seek to minimize impacts on ESHA include:

ESHA Policy 12, which limits mosquito abatement practices to the minimum necessary to protect health and prevent damage to natural resources, and encourages biological control measures;

ESHA Policy 29, which requires that the design of trails in and adjoining sensitive habitats minimize adverse impact on these areas; and,

CZLUO Section 23.07.172, which requires that development of a structure larger than 1000 square feet in floor area on a site over 1 acre containing a wetland be accompanied

by an open space easement or fee title dedication be granted to the County for all portions of the site not proposed for development, as well as the entire wetland.

### LCP Implementation

*Limiting Development in ESHA to Resource Dependent Uses:* While the LCP contains appropriate policies and ordinances to carry out the provision of Coastal Act Section 30240 limiting development in ESHA to uses that are dependent on the resource, a review of the development approved by the County in ESHA indicates that these provisions have not been consistently implemented. Between 1988 and 1998, the Commission has been notified of approximately 778 permits approved by the County that involved development in or adjacent to areas that have been mapped as ESHA<sup>13</sup> (please see Maps 4-C, D, E, and F). An evaluation of this data indicates that very few of these permits were for development that is dependent upon ESHA resources.

For example, approximately 666 permits approved by the County between 1988 and 1998 and reported to the Commission involved development within the Terrestrial Habitat (TH) Combining Designation overlay. Of these permits, 626 (94%) involved new or expanded residential development within the Cambria pine forest, a use that is not dependent on forest resources. This is not a criticism of the County's approval of residential development on legal lots of record. Rather, it illustrates the difficulties in limiting development in ESHA to resource dependent uses while respecting existing private property rights. It also indicates the need to evaluate alternative means of planning and regulating non-resource dependent development in such areas to ensure that cumulative impacts do not jeopardize the continuance of the habitat.

A sampling of the permits involving development within ESHA Combining Designations shows that the resource dependence criteria for development in ESHA (e.g., ESHA Policy 1 and CZLUO Section 23.07.170d(2)) is typically not identified or discussed in the staff report and findings that accompany the Final Local Action Notices (FLANs).

In order to provide an adequate evaluation of project's consistency with the resource dependence requirement where applicable, the following information should be, but has not been, provided in the County's discussion and findings for development approved in ESHA:

- A description of why the proposed use is dependent upon a location in the resource area.
- If the proposed development is not dependent on the resource, an analysis of alternative project sites and designs that would avoid direct impacts to ESHA.

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<sup>13</sup> this does not include permits for development that may be in or adjacent to unmapped ESHA

*Pursuing Development Alternatives that Avoids Impacts to ESHA:* Where a non-resource dependent use is proposed on a site containing ESHA, the preferred course of action should be to identify and pursue siting and design alternatives that avoid any impacts to ESHA resources and comply with ESHA setback requirements.

One way to achieve this objective is to cluster development outside of the ESHA and its setback. Unfortunately, the Area Plans currently limit this clustering requirement to project requiring Development Plan approval, while the large majority of development in ESHA is permitted through the Minor Use Permit process. This problem is proposed to be corrected by both the North Coast and Estero Area Plan Updates.<sup>14</sup> Similar corrections should be pursued for both the San Luis Bay and South County Planning Areas as well.

Another problem in implementing clustering requirements, and one that has not yet been tackled by the Area Plan Updates, is that the standards for clustering land divisions established by CZLUO Section 23.04.036 are not stringent enough to ensure the effective protection of ESHA. One such “clustered” division approved by the County in the Monterey Pine forest area immediately north of the Cambria Urban Area created lots of over 20 acres in size that significantly expanded the amount of development potential within this ESHA area (see Chapter 2 for details).

In addition to clustering, the transfer of development credits outside of ESHA to areas that are better suited for non-resource dependent development is another alternative for avoiding impacts to ESHA that can be pursued through the incorporation of such programs into the LCP. A TDC program has been implemented with some success in the Cambria Urban Area, but appears to be in need of an update as discussed later in this chapter. The Estero Area Plan Update has also proposed such a program for the Los Osos area, although many of the important details have yet to be resolved. Nevertheless, such a program offers promise towards avoiding development in the most sensitive habitats of this area.

Sub-regional habitat conservation and management plans, oriented to the protection of particular habitat systems or units, also provide a promising way to ensure that new development will not have an adverse impacts on ESHA. The development of such plans, and their incorporation into the LCP could not only provide a more comprehensive planning framework for habitat conservation on an ecosystem basis, but could also resolve other regulatory requirements related to federal and state Endangered Species Acts. Such an effort is currently underway in Los Osos. As described later in this Chapter, a similar effort to address the Monterey Pine Forest ecosystem of the North Coast area, that builds upon the Cambria CSD’s current forest management planning efforts, would help ensure that the buildout of this area occurs consistent with the continuance of this important habitat.

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<sup>14</sup> Estero Area Plan Update pages 7-9 – 7-10 and the North Coast Area Plan Update page 7-25

Clearly, a thorough evaluation of all alternatives that would avoid development within ESHA must be conducted during local permit review. While the pursuit of alternatives involving the transfer of development credits or implementation of a large scale habitat conservation and management plan may be predicated on the incorporation of such programs into the LCP, other alternatives involving changes in project siting or design are currently ripe for consideration. However, the limited information contained in the Final Local Action Notices for development approved within or adjacent to ESHA Combining Designations does not shed much light on the degree to which the full range of alternatives that would achieve these objectives are considered during the local review process.

The general observation of the Commission staff has been that while alternative siting and access routes are occasionally considered during local review, it is less common for the County to pursue changes to a project design, particularly a single family residence, that would avoid or minimize impacts to ESHA. For example, relocating a proposed residence to a less sensitive portion of a site may be considered, but changes to that house design (e.g., smaller size, different footprint) to avoid the direct removal of sensitive habitats is a less common approach. Nevertheless, the County has made strides in this regard, as recent coordination efforts indicate that design alternatives are being more aggressively pursued.

Another problem appears to be that greater emphasis appears to be placed on mitigating, rather than avoiding impacts to sensitive habitats. One source of this problem may be that the Biological Reports required for development within or adjacent to ESHA by CZLUO Section 23.07.170a calls for such reports to “identify the maximum feasible mitigation measures to protect the resource”. Biological reports are not, however, required to evaluate siting and design alternatives that would avoid impacts to ESHA.

It must be acknowledged that the full range of alternatives considered for each development approved by the County in or adjacent to ESHA may not be evident in the information provided to the Commission staff. Better documentation of the alternatives considered, particularly those that would avoid direct impacts to ESHA, would go a long way towards reducing the number of local permit being appealed and ensuring that Coastal Act Section 30240 is effectively being carried out.

Finally, to adequately consider alternatives that will avoid impacts to ESHA, it is essential to understand the complete scope of the impacts posed to ESHA by the proposed development. One potentially significant impact that is commonly overlooked is the fire safety requirements that will be placed on the development. These requirements can often include roadway expansions or improvements that may impact ESHA, and/or the clearing of vegetation that may qualify as ESHA. Thus, it is essential that these fire safety needs are fully understood prior to acting on a development application. This will allow alternatives to avoid impacts to ESHA to be pursued at two levels: first, by modifying the siting, design, or intensity of the development to obviate the need for roadway improvements or vegetation clearance that would damage ESHA;

and second, by exploring alternative fire safety solutions. This is another issue area where increased coordination between County and Commission staff, as well as other interested parties, has yielded more complete assessments of fire clearance impacts and alternatives in recent permits.

Analyzing the “Takings” Issue: A critical step in evaluating whether avoidance is possible, and to what degree impacts can be minimized, is to understand the economic backed expectations of the property owner when the property was acquired. Recognizing that the implementation of LCP Policies can not deprive a property owner of an economically viable use (i.e., constitute a taking), some non-resource dependent development may be allowed in an ESHA, even though the LCP specifically prohibits such development.<sup>15</sup>

This is a complex issue, one that is not sufficiently addressed by the existing LCP. Certainly, the protection of private property rights is a legitimate concern that has affected the County's, as well as the Coastal Commission's, implementation of LCP and Coastal Act ESHA protection policies, and has contributed to the approval of non-resource dependent development in ESHA. Yet the particular facts related to these concerns are rarely analyzed during the local review of such projects. This may be a result of the fact that the LCP, as currently certified, provides very little guidance on how to balance the rights of private property owners with the ESHA protection principles of the LCP and Coastal Act.

Although not directly addressed by findings or analysis, concerns regarding the taking of private property have likely impacted the County's implementation of LCP ESHA protection provisions. This was a probable factor in the County's approval of new subdivisions in ESHA, contrary to ESHA Policy 4 and CZLUO Section 23.07.170c specifically prohibiting such land divisions.

At least two components of the LCP may be contributing to this problem. Table O, contained in the LCP's Framework for Planning, identifies allowable uses per land use designation, but does not identify the resource dependent criteria for ESHA. Similarly, the parcel size standards established by CZLUO Sections 23.04.020 - 036 do not acknowledge the prohibition against subdividing in ESHA. Preliminary Recommendations 4.4 and 4.5 are intended to address this concern.

Minimizing Unavoidable Impacts: As required by the LCP, the impacts of development in or near an ESHA must be contained to a level that does not significantly impact or disrupt the habitat. Development must also be consistent with the biological continuance of the habitat.<sup>16</sup> Where avoiding development in or near ESHA is not possible, the

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<sup>15</sup> A non-resource dependent development in ESHA can still be denied if it would constitute a nuisance under State law, or if a more modest alternative that would assure an economically viable use and better protect ESHA is available.

<sup>16</sup> ESHA Policies 1 and 2, CZLUO Section 23.07.170b.

primary means of achieving compliance with these requirements is to minimize the impacts of the development on ESHA to the greatest degree feasible.

Where it is impossible to accommodate a reasonable economic use of private property that avoids impacts to ESHA, measures to minimize both temporary and long-term impacts, and ensure the biological continuance of the habitat, must accompany the development. The remaining habitat should be permanently protected through the implementation of monitoring and maintenance requirements, and through the use of deed restrictions, conservation easements, and/or other legal mechanisms. Finally, mitigation to offset the unavoidable impacts should be required, as discussed in the following section of this chapter.

A review of the development approved by the County within or adjacent to ESHA between 1988 and 1998 and reported to the Commission indicates that the County has diligently applied conditions intended to minimize the impacts of project construction on ESHA. Drainage plans, landscape/revegetation plans, construction fencing and other conditions of approval intended to minimize construction impacts are routinely required as a condition of approval for development in or adjacent to ESHA.<sup>17</sup>

Long-term monitoring and maintenance provisions appear to have been implemented with more limited success. While monitoring and maintenance of landscaping/revegetation is typically required, it is not clear that these requirements are adequately carried out or enforced.

The LCP's ability to minimize impacts to ESHA by requiring undeveloped portions of the site to be permanently protected is limited to development over 1,000 square feet on sites over one acre with wetland habitats. A review of the permits approved by the County between 1988 and 1998 on sites with a Wetland Combining Designation and reported to the Commission indicates that this LCP requirement is rarely enforced. In addition to implementing this requirement on a consistent basis, a similar provision that would apply to all sites containing ESHA should be considered.

#### Preliminary Policy Alternatives

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

- Revise "Table O" to clarify that Resource Dependent Uses are the only allowed 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

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<sup>17</sup> Requiring these plans as a condition of approval, rather than at the application stage, presents another set of issues, as discussed in the Chapter of this Report regarding Procedures.



alternatives that avoid impacts to ESHA), require applicants to submit specific information to establish that 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).

#### **Preliminary Recommendation 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, 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.

#### **Preliminary Recommendation 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.

#### **Preliminary Recommendation 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 that would first avoid, then minimize impacts to ESHA.

- Require Biological Reports to include an assessment of the impacts posed by fire safety requirements, such as vegetation clearance and roadway improvements. Where such development may impact ESHA, project alternatives that avoid these impacts should be identified.

**Preliminary Recommendation 4.8: 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<sup>18</sup> at the time of the application.
- Provide flexibility in non-habitat related setback requirements where necessary to avoid and minimize ESHA impacts.

**Preliminary Recommendation 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 in the biological report (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.

**Preliminary Recommendation 4.10: Evaluate Economic Backed Expectations before Concluding that Avoidance is not Possible due to “Takings” Concerns**

- 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:

1. Date the applicant purchased or otherwise acquired the property, and from whom.

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<sup>18</sup> 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.

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, 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 4.6, above).

**Preliminary Recommendation 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 that a non-resource dependent use must be accommodated, require that such development be limited to 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 unless the road is necessary to provide an economically viable use of the overall development plan area.

**Preliminary Recommendation 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 ¼ 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).

**Preliminary Recommendation 4.13: Require Conservation Easements/Deed Restrictions Over All ESHA Outside Development Envelope**

- Where non-resource development must be accommodated within or adjacent to ESHA, minimize the long-term impacts of such development by requiring all ESHA on the project site outside of the development envelope to be restricted to natural resource management, restoration and enhancement.

- Submit such easements and deed restrictions for the review and approval of the California Coastal Commission Executive Director pursuant to Section 13574 of the California Code of Regulations.

**Preliminary Recommendation 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) include: 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.

**Preliminary Recommendation 4.15: Specify Mitigation Requirements<sup>19</sup>**

- 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.
- 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. 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 biological productivity as the area of impact. Incorporation of in-lieu fee programs into the LCP to implement such off-site mitigation is an option.

**Preliminary Recommendation 4.16: Specify Mitigation Monitoring and Evaluation Requirements**

To ensure mitigation effectiveness, established minimum requirements for monitoring and implementation. In general, this should include: preparation of an 5 year implementation and monitoring plan, for the review and approval of the Planning Director, that identifies the specific mitigation objectives and the performance standards that will be used to evaluate success; and, the submission of a report at the conclusion of the 5 year period, again for the review and approval of the Planning Director, that either documents the successful implementation of the mitigation or proposes corrective actions

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<sup>19</sup> E.g, CZLUO Sections 23.07.170a(1) and 23.07.174d(2)(ii)

and additional monitoring and reporting that will be implemented until the mitigation objectives have been achieved to the satisfaction of the Planning Director.

### **C.3. Streams and Riparian Habitats**

Overview: Coastal Act Section 30231 requires that the quality and biological productivity of coastal streams be protected, through other means, minimizing wastewater discharges and entrainment, controlling runoff, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

In furtherance of this objective, Section 30236 limits channelizations, dams, or other substantial alterations of rivers and streams to:

- necessary water supply projects;
- flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development; or
- developments where the primary function is the improvement and fish and wildlife habitat.

Fulfillment of the above policies, and the LCP provisions that are intended to implement them present numerous challenges. First, within the more urbanized areas of San Luis Obispo County such as Cambria and Cayucos, many small streamside properties have limited space to accommodate new residential or commercial development and provide adequate setbacks. Unless aggressive and creative methods are used to minimize the encroachment of such development into riparian areas, the biological productivity and water quality of coastal streams will be adversely affected. In addition to resulting in the direct removal of riparian vegetation and other trees that are critical components of healthy creek habitats, the intrusion of noise, light, domestic pets, urban runoff and debris can have significant adverse affects on the health and ecological functioning of coastal waterways.

Second, the repair, protection, and improvement of existing development in and near coastal streams, unless appropriate regulated, can also degrade riparian habitats. The maintenance and expansion of essential public services (e.g., roadways, bridges, pipelines, and utility lines) that cross and are adjacent to coastal streams pose similar direct and indirect impacts to those discussed above. Other municipal service facilities, such as the power plant in Avila Beach, and facilities owned and operated by the Cambria Community Services District along Santa Rosa and Simeon Creeks, have required

construction in and adjacent to coastal streams in order to protect them from flood and landslide damage. Similar protection has been required for a wide range of existing private development, from recreation facilities to domestic wells and residences.

Third, new development in rural areas of the County often necessitates new water wells. Highly constrained water supplies in this area commonly require that wells or other water supply projects be located in close proximity to coastal streams. The construction of these facilities can result in the removal and disturbance of riparian vegetation and habitats, and the long-term use of these wells can have a cumulative adverse affect on flow levels necessary to sustain aquatic life. Even when the wells are appropriately setback from coastal streams, they can adversely affect biological resources by overdrafting and thus lowering local groundwater levels below the root depth of riparian vegetation.

Fourth, new and on-going agricultural, industrial, commercial, and residential development are contributing to the declining health of coastal stream habitats through, among other means the direct removal of riparian vegetation and the discharge of sediments, chemicals, and other pollutants. As further discussed below, the build up of sediments in creeks, as well as elevated levels of pollutants such as MTBE, pose significant threats to the biological health and productivity of these habitats. The construction of dams, new bridges, and/or expansion of existing bridges necessary to meet fire protection requirements, can similarly disturb riparian resources, interfere with fish passage, as well as add new sources of urban pollutants.

Finally, the effective protection of coastal streams and riparian habitats cannot be accomplished through the regulation of development in the coastal zone alone. Indeed, development throughout the various watersheds (which in many cases extend inland of the coastal zone boundary) has a cumulative impact on the overall health of coastal streams. While a review of the regulations addressing inland development is beyond the scope of this review, there may be opportunities to encourage and facilitate watershed based planning and protection efforts through future updates to the LCP.

The coastal streams of San Luis Obispo County and the riparian resources they support are extremely important components of the Central Coast's natural heritage. In addition to providing habitat for numerous rare and endangered species (e.g., Steelhead trout, red-legged frog, southwestern pond turtle), they are scenic and recreational resources, and a primary source of water for domestic and agricultural uses. These corridors of flowing fresh water are dominant forces that shape landforms, ecotones, and development patterns.

The biological significance of riparian habitats is profound. It has been estimated that over half of breeding birds in many areas, and over eighty percent of reptiles and

amphibians, are associated with riparian habitat.<sup>20</sup> Riparian vegetation plays a critical role in supporting this diverse assemblage of wildlife that can be by providing food and shelter, as well as by regulating stream temperatures necessary to maintain healthy fish populations. Stream side vegetation also helps prevent erosion, trap sediments, and filter pollutants that degrade water quality and smother underwater habitat and fish spawning grounds.

Unfortunately, the biological health and productivity of the coastal streams up and down the west coast of the United States appear to be on the decline. In December of 1997 the US Fish and Wildlife Service listed the Steelhead trout as a federally threatened species.

As described above, there are many ways in which new development may be contributing to this decline. These impacts can be especially severe in the relatively small watersheds characteristic of coastal San Luis Obispo County; riparian areas in smaller watersheds tend to be disproportionately affected by the hydrologic changes and increased sedimentation associated with overgrazing or other human activities.<sup>21</sup>

Partly in response to the critical situation facing many native riparian resources, great strides have been made throughout the state and nation in recent years towards comprehensive watershed planning and protection. These efforts have led to the development of specific Best Management Practices that can be implemented to avoid and minimize polluted runoff, coordinated monitoring and volunteering programs that enhance the public's understanding and stewardship of riparian resources, and improved regulatory procedures for achieving effective resource protection and enhancement. This new information can be used to better implement the existing LCP policies protecting coastal streams and riparian habitats, and update them where necessary.

### LCP Implementation

The Coastal Plan Policies component of the LCP contains 9 policies specifically regarding Coastal Streams (LCP Policies 18 –16 for Environmentally Sensitive Habitats), all but one of which are implemented by Section 23.07.174 of the CZLUO. (The one policy that is not implemented by Section 23.07.174 is Policy 22, which allows the Department of Fish and Game to institute a voluntary program to control grazing impacts on coastal streams.)

Notwithstanding the references to CLUO Section 23.07.174, four of these stream policies are considered “standards” (i.e., they have equal or greater standing as an ordinance). These include:

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<sup>20</sup> Faber and Holland, *Common Riparian Plants of California*, p.7, Pickleweed Press, Mill Valley, CA, 1988

<sup>21</sup> *ibid*, p.3



Policy 18, which states:

*Coastal streams and adjoining riparian vegetation are environmentally sensitive habitat areas and the natural hydrological system and ecological function of coastal streams shall be protected and preserved.*

Policy 19, providing:

*Development adjacent to or within the watershed (that portion within the coastal zone) shall be sited and designed to prevent impacts which would significantly degrade the coastal habitat and shall be compatible with the continuance of such habitat areas. This shall include an evaluation of erosion and runoff concerns.*

Policy 20:

*Significant streambed alterations require the issuance of a California Department of Fish and Game 1601-1603 agreement. The Department should provide guidelines on what constitutes significant streambed alterations so that the county and applicants are aware of what is considered a “significant” streambed alteration. In addition, streambed alterations may also require a permit from the U.S. Army Corp of Engineers.*

And, Policy 21, which provides:

*The State Water Resources Control Board and the county shall ensure that the beneficial use of coastal stream water is protected, for projects over which it has jurisdiction. For projects which do not fall under the review of the State Water Resources Control Board, the county (in its review of public works and stream alterations) shall ensure that the quantity and quality [of] surface water discharge from streams and rivers shall be maintained at levels necessary to sustain the functional capacity of streams, wetlands, estuaries and lakes.*

CZLUO Section 23.07.174, which is intended to implement these and 4 other policies for coastal streams, generally reiterates Policies 18 and 19 above, and limits channelizations, dams or other substantial alteration of stream channels to:

- (1) Water supply projects, provided that quantity and quality of water from streams shall be maintained at levels necessary to sustain functional capacity of streams, wetlands, estuaries, and lakes.

- (2) Flood control Projects, where such protection is necessary for public safety or to protect existing commercial or residential structures, where no feasible alternative to streambed alteration is available;
- (3) Construction of improvements to fish and wildlife habitat;
- (4) Maintenance of existing flood control channels.

Streambed alterations shall not be conducted unless all applicable provisions of this title are met and if applicable, permit approval from the California Department of Fish and Game, the U.S. Army Corps of Engineers, and California State Water Resources Control Board.

Section 23.07.174 also provides the following 3 important additional regulations:

Part c of this section regulates stream diversion structures in the following manner:

*Structures that divert all or a portion of streamflow for any purpose, except for agricultural stock ponds with a capacity of less than 10 acre-feet, shall be designed and located to not impede the movement of native fish, or to reduce streamflow to a level that would significantly affect the production of fish and other stream organisms.*

Part d establishes the following standards for riparian setbacks:

*New development shall be setback from the upland edge of riparian vegetation a minimum of 50 feet within urban areas (inside the USL) and 100 feet in rural areas (outside the USL), except as provided in subsection b. of this section, and as follows<sup>22</sup>:*

- (1) *Permitted uses within the setback: Permitted uses are limited to those specified in Section 23.07.172d(1) (for wetland setbacks, provided that the findings required by that section can be made.<sup>23</sup> Additional*

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<sup>22</sup> In addition to the exceptions provided in this ordinance, lesser setbacks are also permitted pursuant to Area Plan standards, which supersede the provisions of the CZLUO.

<sup>23</sup> The uses permitted in wetland and stream setbacks pursuant to this section are “passive recreation, educational, existing non-structural agricultural development in accordance with best management practices, utility lines, pipelines, drainage and flood control facilities, bridges and road approaches to bridges to cross a stream and roads where it can be demonstrated that: (I) Alternative routes are more environmentally damaging. [And,] (ii) Adverse environmental effects are mitigated to the maximum extent feasible.”

*permitted uses that are not required to satisfy those findings include pedestrian and equestrian trails, and non-structural agricultural uses.*

- (2) Riparian habitat setback adjustment: The minimum riparian setback may be adjusted through Minor Use Permit approval, but in no case shall structures be allowed closer than 10 feet from a stream bank, and provided the following findings can first be made:*
- (i) Alternative locations and routes are infeasible or more environmentally damaging; and*
  - (ii) Adverse environmental impacts are mitigated to the maximum extent feasible; and*
  - (iii) The adjustment is necessary to allow a principal permitted use of the property and redesign of the proposed development would not allow the use within the standard setbacks; and*
  - (iv) The adjustment is the minimum that would allow for the establishment of a principal permitted use.*

Finally, part e limits “cutting or alteration of natural vegetation that protects a riparian habitat” to:

- (1) Streambed alterations allowed by subsections a and b;*
- (2) Where no feasible alternative exists;*
- (3) Where an issue of public safety exists;*
- (4) Where expanding vegetation is encroaching on established agricultural uses;*
- (5) Minor public works projects, including but not limited to utility lines, pipelines, driveways and roads, where the planning director determines no feasible alternative exists;*
- (6) To increase agricultural acreage provided that such vegetation clearance will:*
  - (i) Not impair the functional capacity of the habitat;*
  - (ii) Not cause significant streambank erosion;*
  - (iii) Not have a detrimental effect on water quality or quantity;*

(iv) *Be in accordance with applicable permits required by the Department of Fish and Game.*

(7) *To locate a principally permitted use on an existing lot of record where no feasible alternative exists and the findings of Section 23.07.174b can be made.<sup>24</sup>*

The CZLUO grading ordinance also has important provisions regarding grading near streams. Section 23.05.034f provides:

*Grading dredging or diking (consistent with Section 23.07.174) shall not alter and intermittent or perennial stream, or natural body of water shown on any USGS 7-1/2 minute map, except as permitted through approval of a county drainage plan and a streambed alteration permit from the California Department of Fish and Game issued under Sections 1601 or 1602 of the Fish and Game Code. (Additional standards are contained in Sections 23.07.172 [for wetlands] through 174 [for streams] of this title. Watercourses shall be protected as follows:*

- (1) Watercourses shall not be obstructed unless an alternate drainage facility is approved.*
- (2) Fills placed within watercourses shall have suitable protection against erosion during flooding.*
- (3) Grading equipment shall not cross or disturb channels containing live streams without siltation control measures approved by the County Engineer in place.*
- (4) Excavated materials shall not be deposited or stored in or along a watercourse where the materials can be washed away by high water or storm runoff.*

In addition to the above policies and ordinances, the four area plans provide standards for development near streams. For example, the North Coast Rural Area Combining Designation Standard 6 for Arroyo de la Cruz limits development in or adjacent to this creek as follows:

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<sup>24</sup> The reference to Section 23.07.174b appears to be a typographical error, since this section identifies the limited situations under which streambed alterations can be permitted. It is likely that the intended reference is part b of Section 23.07.170, which requires the following findings for the approval of development within or adjacent to ESHA:

- (1) There will be no significant impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat.*
- (2) The proposed use will not significantly disrupt the habitat.*

*No development is permitted unless it is agriculturally related, for water diversion projects, coastal accessways, or water wells and impoundments.*

North Coast Planning Area Standards 8 and 9 for Rural Recreation areas regulate development near Van Gordon Creek as follows:

8. *Limitations on Use. Uses are limited to: recreation vehicle park and support facilities; coastal accessways; water wells and impoundment[s]. (This is a visitor-serving priority area.)*
9. *Site Planning. Development shall be setback and buffered from the riparian vegetation along Van Gordon and "Warren" Creeks for a minimum of 100 feet. Uses within the buffer area shall be limited to passive recreation, (including nature study, and educational and scientific research). No permanent structures shall be allowed within the buffer. Fences and signs to limit access to the buffer and sensitive habitat area shall be constructed with any recreational development.*

Standard 10 of the same section applies to future development on the Hearst Ranch, and requires such development to be phased in a manner that addresses, among other things, available water supplies. To ensure that water withdrawals from the Arroyo de la Cruz or San Carpoforo watersheds associated with such development does not adversely affect coastal resources, the review of each phase of development must include:

- a. *The preparation of a hydrological monitoring program and analysis as outlined in the State Water Resources Control Board Water Application No. 25881, based upon a one year ground-water and surface flow data base and all available rainfall and run-off data which projects the ability of water for out-of-stream uses consistent with the protection of in-stream uses (e.g., anadromous fish) over the life of the development(s), and*
- b. *Biological assessments and analysis to determine the effect of the water extraction on the biological resources which are dependent on the waters of Arroyo de la Cruz Creek (or San Carpoforo Creek if this creek or its groundwater basin is used as a water source).*

For the urban areas of the North Coast, the Area Plan provides the following standards:

- On the East West Ranch, as well as within the Recreation land use designation, no development is allowed within the floodway, stream, or riparian corridors except for "crossing bridges" or pedestrian and bicycle paths where no feasible, less environmentally damaging alternative exists. In such cases, impacts of stream crossings must be "mitigated to the maximum extent feasible". All public improvements on the East West Ranch must be setback a minimum of 50 feet from the inland extent of riparian vegetation along Santa Rosa Creek, with provisions for

access trails within the buffer area. (Communitywide Standards 8a and 9 and Recreation Standard 25).

- In the Recreation Land Use Category for Cambria’s East Village, Development, parking drives and spaces must be setback 50 feet from the edge of riparian vegetation or top of the bank of Santa Rosa Creek, whichever is greater. (Recreation Standard 23.) Exceptions to this standard may be allowed “as stated by Standards 21 and 22”. Although it is not exactly clear under what circumstances Standards 21 and 22 would allow for such exceptions, one interpretation is that such exceptions can be granted when needed to maintain a consistent architectural character, and where encroachments into the setback is needed to elevate development above the flood plain.

The Estero Area Plan does not provide additional standards for streams in the rural area, but does establish the a setback standards for a wastewater treatment facility previously proposed, but never constructed in a rural area near Los Osos. Since the current wastewater treatment proposal does not involve this site, this standard is moot.

For the Cayucos Urban Area, Combining Designation Standard 1 for Sensitive Resource Areas contained in the Estero Area Plan establishes the following setback standards:

*Setbacks – Coastal Streams. Development shall be setback from the following coastal streams the minimum distance established below. Such setbacks shall be measured from the outer limits of riparian vegetation or the top of the stream bank where no riparian vegetation exists. This may be adjusted through the procedure provided in the Coastal Zone Land Use Ordinance.*

|                                   |   |
|-----------------------------------|---|
| <i>Cayucos Creek:</i>             | <i>25 feet from either bank</i>                       |
| <i>Little Cayucos Creek:</i>      | <i>20 feet from either bank</i>                       |
| <i>Old Creek:</i>                 | <i>50 feet from either bank</i>                       |
| <i>Willow Creek:<sup>25</sup></i> | <i>20 feet from either bank north of Ocean Avenue</i> |

In the South Bay Urban Area, Residential Suburban Standard 1 of the Estero Area Plan limits uses in the area adjacent to Los Osos Creek by prohibiting special uses otherwise allowed by Table O, except for:

*Ag accessory structures; animal raising and keeping; home occupations; residential accessory uses; temporary dwellings; accessory storage;*

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<sup>25</sup> Notwithstanding this standard, Standard 7 for the Residential Single Family category requires “residential development on the eastern portion of APN 64-275-24 (Tract 1078)(Schmitz) shall be setback and buffered from Willow Creek a minimum of 50 feet and shall not allow development within the 100 year flood plain. Any development shall be clustered so as to minimize habitat and scenic/visual quality impacts.”

*participant sports and active recreation; coastal accessways; water wells and impoundments; pipelines and power transmission; and public utility centers.*

Pursuant to Standard 2, these and other permitted uses must:

Maintain a minimum building setback of 50 feet for development on lots adjacent to riparian areas along Los Osos Creek and Eto Lake.

### Overview of Approved Development

Between the time the County assumed coastal permitting authority (March 1, 1998) and January 1, 1999, the Commission staff received approximately 78 Final Local Action Notices for development approved by the County on sites containing the Streams and Riparian Vegetation (SRV) Combining Designation Overlay. Commission staff's review indicates that additional local permits have likely been authorized that raised riparian habitat issues. One of the reasons for this discrepancy may be that the SRV Combining Designation does not map all the coastal stream courses. Another, but related reason may be that in order to meet the LCP's definition, a stream must be mapped on the most recently published United States Geological Survey (USGS) map.<sup>26</sup>

Of the 79 permits identifying development on or next to an SRV designation, 25 involved development(s) within the riparian setback required by the LCP,<sup>27</sup> and an additional 22 permits involving structural development (i.e., not lot line adjustments) did not identify the setback distance provided by the development.

For those permits that did identify development within the standard setbacks, 5 involved new or improved roads;<sup>28</sup> 7 involved residential, commercial, or private recreation facilities; 9 involved the armoring of streambanks and/or bridge footings;<sup>29</sup> 1 involved habitat restoration; 1 involved a public facility, and 3 involved new wells. A review of these permits raises the following issues important issues regarding to the way in which the County has implemented the stream protection provisions of the LCP.

***Identification of Riparian Resources:*** As described above, the LCP relies of the Combining Designation and USGS maps to determine where a new development proposal must comply with LCP stream protection provisions, but is silent on how these

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<sup>26</sup> Appendix C of Coastal Plan Policies, Page C-3

<sup>27</sup> Unless otherwise established by Area Plan, the standard riparian setback is 50 feet from the edge of riparian vegetation in urban areas, and 100 feet in rural areas, per CZLUO Section 23.07.174d

<sup>28</sup> Minor Use Permits D970277P, D940210P, D950077P, and D950049P; and Development Plan D870182D

<sup>29</sup> Minor Use Permits D980042P, D980041P, D980038P, D970067P, D970064P, D960019P, D950007P, and D910287P; Development Plan D930158D

provisions may apply to unmapped streams. As a result, some riparian habitats may not be afforded the protection needed to achieve the habitat protection and enhancement objectives of the LCP and Coastal Act.

Such a situation appears to have been faced in the processing of Minor Use Permit D950077P, involving the development of a new residence and driveway in a rural area northeast of the town of Harmony and near Highway 46. In addition to the mapped SRV Combining Designation located on the property, an “incised stream channel” was identified by the geotechnical report completed for the project. There was no evaluation of whether riparian setback and habitat protection provisions should be applied to this stream channel, and rather than applying the standard 100 foot creek setback, the project was setback 20 feet from the channel as recommended in the technical report.

The same problem was identified when the Commission considered an appeal of a motel approved by the County that involved development within 10 feet of an unmapped stream in Cambria, and a driveway crossing this creek (local permit D930204D; CCC Appeal No. A-3-SLO-96-021). Again, the County did not apply the standard 50’ foot setback from *mapped* SRV Combining Designations in urban areas as required by the LCP. Instead, riparian habitat and setback issues were evaluated under the California Environmental Quality Act and in consultation with the Department of Fish and Game. As a result of this review, the County determined the proposed 10-foot setback and driveway creek crossing would adequately protect environmental resources with implementation of specific mitigation measures. The Commission concurred with this action on appeal, primarily because LCP setback standards could not be applied due to the fact that the stream was not mapped as an SRV Combining Designation.<sup>30</sup>

*Streambed Alterations:* Of the 76 permits noticed to the Commission staff involving development in or adjacent to areas with a mapped SRV combining Designation, 12 projects appear to have involved some alteration of the natural flow and characteristics of a coastal stream. Nine of these alterations occurred through the installation of rip rap (i.e., large rocks), while the three others involved the placement of culvert(s) needed to accommodate new or expanded roads and driveways across creeks.

Such streambed alterations can adversely impact of riparian habitats in a number of ways. The rocks’ footprint consumes habitat area, thereby reducing areas of biological productivity. In addition, the rocks alter stream flows and modify the natural process of erosion and deposition, which can effect fish spawning and streamside habitats. More broadly, the establishment of “hard edges” precludes the natural migration of otherwise dynamic stream channels, which in turn can limit the width, and therefore the biological productivity, of the riparian habitat in the vicinity of the revetment.

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<sup>30</sup> This action occurred prior to the Commission’s consideration of an appeal of the Los Osos Wastewater Treatment Project (A-3-SLO-97-040), where the Commission determined that LCP ESHA provisions should be applied irrespective of the Combining Designation maps.



Based on these potentially significant impacts, the Coastal Act and the LCP (i.e., CZLUO Section 23.07.174b allow streambed alterations for limited reasons and under specific circumstances. Thus, one of the first and most critical steps in analyzing a streambed alteration project for conformance with the LCP is determining if the purpose of the project meets the criteria of Section 23.07.174b. However, while most of the Final Local Action Notices for streambed alteration projects listed Section 23.07.174 as an applicable ordinance, **none** provided a specific analysis of why the streambed alteration could be allowed under part b.

The purposes of the streambed alteration projects approved by the County were to:

- protect bridges across San Simeon and Santa Rosa creeks in the North Coast planning area and across Villa Creek and San Bernardo Creek in the Estero Planning area;<sup>31</sup>
- protect public facilities along Santa Rosa, San Simeon and Van Gordon Creeks (all in the North Coast Planning Area);<sup>32</sup>
- protect tennis courts and an archaeological site beneath the tennis courts<sup>33</sup> along San Luis Obispo Creek;
- protect agricultural land along Los Osos creek in Estero,<sup>34</sup> in coordination with the Soils Conservation Service;
- increase the flood capacity of Santa Rosa Creek beneath the Highway One bridge in Cambria,<sup>35</sup> and
- accommodate new or improved roadway crossings.<sup>36</sup>

Arguably, the 7 projects involving the protection of bridges, public facilities, and the flood capacity of Santa Rosa Creek were necessary either for public safety reasons or to protect existing commercial or residential structures. However, to be allowable under Section 23.07.174b, these projects had to be the only feasible alternative (i.e., no options to streambed alteration was available). This important requirement was not specifically addressed during the local review of these projects. In the case of the flood control project designed to protect existing and commercial and residential from flooding by Santa Rosa Creek (D930158d), inadequate consideration of alternatives that would avoid

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<sup>31</sup> Minor Use Permits D980042P, D980041P, D980038P, and D970064P

<sup>32</sup> Minor Use Permits D970067P, D960019P, and

<sup>33</sup> Minor Use Permit D950007P; this project also obtained a coastal development permit from the California Coastal Commission.

<sup>34</sup> Minor Use Permit D910287P

<sup>35</sup> Development Plan D930158D

<sup>36</sup> Minor Use Permits D970277, D940210P, and D950049P

or minimize streambed alterations resulted in the project being denied on appeal to the Commission (A-3-SLO-95-12).

The rip rap structure constructed along Los Osos Creek to prevent the erosion of agricultural land, and designed in coordination with the Soils Conservation Service (currently known as the Natural Resources Conservation Service), could potentially be considered allowable as an improvement to fish and wildlife habitat. This is due to the fact that the erosion of agricultural soils can contribute sediments and pollutants to coastal streams, thereby smothering natural habitats and degrading water quality. The potential environmental benefits of this project, versus its potential adverse impacts, were not, however, analyzed by the local staff report.

The other streambed alteration project involving the installation of rip rap, approved by both the County and the Coastal Commission, may have been considered allowable as “flood control projects”, but did not meet the test of being for “the protection of existing commercial or residential structures”. Nevertheless, it was intended, in part, to protect cultural resources that had been previously excavated and placed in this hazardous location as fill. Given the fact that these resources had been previously disturbed (i.e., their original placement, which can be important from an archaeological standpoint, had already been altered) it seems that an alternative of relocating the tennis court and the cultural artifacts should have been considered.

Perhaps the most significant inconsistency with the limits to streambed alterations established by the LCP is the construction of new or expanded private roadways across coastal streams. The alteration of streams for such purposes is prohibited by Section 23.07.174b of the CZLUO and Section 30236 of the Coastal Act. Yet, the County approved such access routes on at least 3 occasions:

- In D970277P, a new driveway crossing involving a culvert and rip rap protection was allowed to cross a tributary to Chorro Creek. No discussion of alternative siting options on the 10.6 acre site that could have eliminated the need for such a crossing was included in the local staff report.
- D940210P involved the development of a new residential estate on a 120 acre site in the Rural Lands area north of Cambria. To obtain access to the development site, a new driveway and expanded culvert across Leffingwell creek was proposed. Although a less environmentally damaging access route that did not involve culverting the creek was documented, the County approval allowed the applicant to use either route.<sup>37</sup>
- D950049P involved the conversion of a portion of an existing residence to a winery that necessitated the expansion of an existing roadway, including at its crossing of

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<sup>37</sup> The alternative access route, not the creek crossing, has since been constructed.

Ellyly creek. No evaluation of impacts to riparian resources associated with this improvement was contained in the County staff report accompanying the FLAN.

While the above decisions appear to be deficient in carrying out the LCP's limitations on streambed alterations, it is possible that they may have been influenced by a perceived obligation to accommodate an economic use of private property. However, the facts of these cases do not indicate that this was a legitimate concern; alternative routes that would not impact streams may have been available in D970277P and D940210P, and an economic use (i.e., residential) had already been accommodated on the property involved in D9500049P.

Finally, for those streambed alterations that are determined to be necessary and allowable, coordination with the California Department of Fish and Game (DFG), and other applicable regulatory agencies, is required by ESHA Policy 20 as well as CZLUO Section 23.07.174. Yet out of the 12 projects that seemingly involved streambed alterations, only 4 addressed the need to obtain DFG approval in either the staff report or conditions of approval.

*Riparian Setbacks:* In addition to the projects involving streambed alterations discussed above, the Commission staff was notified of 12 permits between 1988 and 1998 involving development within the standard stream setbacks required by the LCP. This included 2 roadways,<sup>38</sup> 1 horse jumping course,<sup>39</sup> 3 residential structures,<sup>40</sup> 3 commercial facilities,<sup>41</sup> 3 private wells,<sup>42</sup> and 1 public facility (Cayucos Water Treatment Plant).<sup>43</sup> (This totals 13 developments, as compared to 12 permits, because Minor Use Permit D950077P authorized both a new road and residence within the setback area.)

Of these developments, the following could be considered allowable uses within the setback area under Sections 23.07.174d of the CZLUO:

- roads, where there are no feasible less environmentally damaging alternatives and adverse effects are mitigated to the maximum extent possible;
- water supply projects, provided that the quantity and quality of water from streams are maintained at levels necessary to sustain the functional capacity of streams, wetlands, and estuaries;
- and, equestrian trails.

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<sup>38</sup> Minor Use Permit D950077P and Development Plan D870182D

<sup>39</sup> Minor Use Permit D870297P

<sup>40</sup> Minor Use Permits D950201P, D950077P, and D930164P

<sup>41</sup> Minor Use Permits D960072P, D910107P, and D900370P

<sup>42</sup> Minor Use Permits D930241P, D910210P, and D900254P

<sup>43</sup> Minor Use Permit D940208P

All other uses would need to be granted a riparian setback adjustment pursuant to Section 23.07.172d(3) of the CZLUO.

In the case of D870297P, the proposed “horse-riding course” may have been allowed based on the LCP’s allowance of equestrian trails within riparian setback areas, although the findings and analysis for the approval did not specifically discuss this issue. The local staff report did, however, prohibit the installation of permanent structures, allowing only “movable horse jumping obstacles”. Notwithstanding this restriction, the high level of use associated with such an obstacle course, compared to the lower intensity of use associated with a typical equestrian trail, poses greater impacts to riparian resources (i.e., erosion and sedimentation). While the County conditioned the project to protect and restore the riparian habitat on the project site by requiring the applicant to discontinue grazing activities within 100 feet of the creek, the allowance of the jumping course does not appear to be in compliance with applicable setback standards.

In cases involving new or improved roads, the applicant must demonstrate that alternative routes are infeasible or more environmentally damaging, and that adverse environmental effects are mitigated to the maximum extent feasible, pursuant to Section 23.07.174d of the CZLUO. D950077P included a new driveway within 20 feet of a coastal stream. The limited information accompanying the FLAN for this project did not include an analysis of alternative routes. The absence of an SRV Combining Designation for this stream may have been a contributing factor to the absence of such an analysis.

In the other case involving a roadway within the required riparian setbacks (D870182), the presence of the SRV Combining Designation was identified in the staff report but again the required analysis of alternative access routes was not provided. This was likely due to the fact that the authorized development (a commercial aquaculture operation approved “after-the-fact”) used an existing agricultural road located not only adjacent to riparian habitat, but partly *within* a wetland area associated with Villa Creek. As acknowledged by the County staff report, the 31 full time employees, daily van trips, and weekly truck trips associated with the project significantly intensified the use of this road. Based on this intensification, and the impacts it posed on the adjacent creek and wetland (e.g., erosion, polluted runoff), alternative routes consistent with setback requirements should have been considered, but were not.

Instead, the County conditioned the project to revegetate and stabilize disturbed areas of the site, including the access road. Recent visits to the region by Commission staff indicate that no such landscaping has been installed in the sensitive areas of this access road, which is clearly visible from Highway One. The local permit also required the project’s impacts on various sensitive habitats occurring on and adjacent to the site, including coastal streams and riparian vegetation, to be reviewed by the Planning Commission within 10 years of approval (i.e., by February 23, 1999). Such a review has not yet been undertaken.

Finally, with respect to water supply projects, the County approved 3 new wells and a water treatment facility within riparian setback areas. None of these permits provided an analysis of their impact on the quality and quantity of stream waters, as required by CZLUO Section 23.07.174b(1). In addition, although not specifically required by the LCP, there was no analysis whether alternative locations outside of the riparian setback areas were feasible. Such an evaluation appears to have been particularly warranted during the processing of a permit for a water treatment facility in Cayucos that was less than 10 feet from the creek bank in some areas, and involved the removal of 300 square feet of riparian vegetation (Minor Use Permit D940208P).

As provided by Section 30236 of the Coastal Act, the alteration of rivers and streams must be limited to necessary water supply projects; an important qualification that is absent from the provisions of CZLUO Section 23.07.174. Consistent with this approach, and the intent of CZLUO Section 23.07.174 to protect the natural hydrological system and ecological function of coastal streams, water supply projects that can feasibly be located outside of stream setbacks should be limited to such areas. Water supply projects that can not meet these setbacks should be limited to those that are essential to protecting and maintaining public drinking water supplies where there is no feasible less environmentally damaging alternative.

As opposed to the specific uses allowed within riparian setback areas discussed above, other permanent structures (e.g., residences, commercial buildings, and public facilities) are not allowed within riparian setbacks unless the setbacks are adjusted according to the specific provisions of CZLUO Section 23.07.174d(2). Yet at least two developments that are not allowed in setback areas were permitted without the granting of an adjustment.

One was for the residence permitted by D950077P, which as discussed above, was within 20 feet of a stream that was not mapped as an SRV Combining Designation. The other involved the demolition of an existing bed and breakfast's laundry facility and manager's unit, and replacing them with a new laundry facility, kitchen, and manager's unit. Portions of these replacement facilities encroached within 12 feet of the Santa Rosa creek bank. No analyses of alternative locations for these facilities outside of the 50 foot riparian setback area was included in the local staff report accompanying the FLAN for this permit. The County did, however, attach conditions to limit the impact of construction of these facilities on riparian resources (e.g., construction fencing, prohibiting the alteration of the stream or riparian vegetation).

**Setback Adjustments:** The consistent implementation of riparian setback requirements is an essential ingredient to protecting stream habitats. Nevertheless, particular instances may arise where setback adjustments are needed to accommodate a reasonable use of private property, and/or to avoid adverse impacts to other important coastal resources that may exist on the property. The LCP addresses this by allowing such adjustments pursuant to Section 23.07.174d of the CZLUO. As provided by this ordinance, riparian setbacks can be reduced to 10 feet from a stream bank, provided that the adjustment is the minimum necessary to accommodate a principally permitted use; that there are no

feasible, less environmentally damaging alternatives available; and that adverse environmental effects are mitigated to the maximum extent feasible.

Of the developments approved by the County between 1988 and 1998 and noticed to the Commission, approximately four were granted an adjustment to setback standards. A review of these adjustments, particularly those that were granted “after-the-fact” to resolve a violation, raises two major concerns. One, that encroachments into riparian setbacks beyond what is necessary to accommodate a principle permitted use are being approved. And, two, that inadequate consideration is being given to alternatives that would allow for a principally permitted use and still achieve compliance with setback requirements.

The two “after the fact” adjustments involved commercial establishments that had expanded into riparian setbacks the proper permits. In Minor Use Permit D960072P, the County approved the construction of a 1,100 square foot deck and patio addition to a restaurant that encroached within the riparian vegetation of Santa Rosa Creek. In Minor Use Permit D910107P, the County allowed the retention of a parking lot within 10 feet of the bank of Santa Rosa Creek. In both these cases, the County required substantial mitigation for the impacts the development had incurred. Nevertheless, the projects remained inconsistent with riparian setback requirements. An approach that would have been more consistent with the LCP would have been to require compliance with setback standards (i.e., remove of all development within 50 feet of the riparian vegetation that existed prior to the violation), as well as mitigation to offset the impacts incurred by the violation.

The two other adjustments involved the development of single family residences on fairly small and constrained lots in the urban area of Cayucos. D950201P permitted the development of a 1490 square foot single family dwelling with a 380 square foot garage 10 feet from the bank of Willow Creek, and D930164P authorized the construction of a 2,448 square foot house and attached garage 10 feet from the bank of Old Creek. The home adjacent to Old Creek necessitated the removal of 4 willow trees, which the County required to be replaced at a 2:1 ratio. The home next to Willow Creek included a deck that cantilevered into the setback area, and required trimming of 250 square feet of the riparian vegetation canopy. The County required the planting of willow trees in this case as well, in an amount that achieved 2:1 replacement. It is unclear how this ratio was to be implemented based on the fact that the project was trimming not removing vegetation, but it is assumed that two trees had to be planted for every willow tree trimmed.

While the above adjustments may have been necessary to accommodate the principally permitted residential use, it is not clear that they represented the minimum adjustment necessary (CZLUO Section 23.07.174d(2)(iv)). The County staff reports for these projects did not include an evaluation of whether a redesign of the project, or a reduction in square footage, would minimize encroachments into riparian habitats and still allow for a reasonable use of the property. Notwithstanding this problem, the County should be credited with requiring appropriate conditions to mitigate for the impacts of the

development, including revegetation monitoring and the implementation of erosion and sedimentation control. An open space easement over the riparian area was also required in D950201P. On this point, it appears that a more specific description of what constitutes the “maximum feasible mitigation” required for adjustments should be provided by the LCP.

*Other Policy Issues:* The Commission staff’s experience indicates that there are other areas where an update to LCP policies may be appropriate. As discussed above, the Coastal Act provides stringent standards regarding the alteration of coastal streams and rivers. This includes limiting such alterations to necessary water supply projects, among other specified uses. In contrast, the LCP does not limit its allowance of water supply projects to those that are necessary (CZLUO Section 23.07.174b(1)). The LCP also exempts stream diversion structures that supply water to agricultural stock ponds of under 10 acre-feet from CZLUO Section 23.07.174c. This important standard requires diversion structures to be designed and located in a manner that avoids impediments to the movement of native fish and reductions in streamflows that would adversely affect fish and other stream organisms. It is questionable whether this exemption carries out the Coastal Act requirement that *all* allowable stream alterations incorporate the best mitigation measures feasible (Section 30235).

Another potential problem of the LCP standards for streambed alterations is that it permits such development for the purpose of maintaining existing flood control channels (CZLUO Section 23.07.174b(4)). While Section 30236 of the Coastal Act allows streambed alterations for flood control projects, such projects are limited to instances where “no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development”. Clearly, the maintenance of existing flood control channels will, in most instances, meet this criteria, and therefore be allowable under Section 23.07.174b(2) of the CZLUO. There is the potential, however, that a project intending to establish a greater flood capacity within a channel supporting important wildlife habitat, could be proposed for purposes other than public safety or the protection of existing development (e.g., to prevent the flooding of agricultural or private undeveloped lands). Due to this potential Coastal Act conflict, and that the ability to implement necessary flood control projects is appropriately addressed by part 2 of CZLUO Section 23/07.174b, elimination of part (4) of this ordinance should be considered.

Also of concern is one of the standards regarding the alteration of riparian vegetation contained in Section 23.07.174e of the CZLUO. Part (7) of this ordinance permits the cutting or alteration of riparian vegetation “to locate a principally permitted use on an existing lot of record where no feasible alternative exists and the findings of Section 23.07.174b can be made”. The problem is that the referenced section does not specify any required findings.

Preliminary Policy Alternatives:

*Stream Alterations:*

**Preliminary Recommendation 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. A reference to the updated section of the LCP addressing mitigation requirements, as proposed by Preliminary Recommendations 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).

**Preliminary Recommendation 4.18: Delete the exemption for stream diversion structures associated with agricultural stock ponds of under 10 acre feet<sup>44</sup> that may impact stream habitat.**

**Preliminary Recommendation 4.19: Analyze streambed alterations for conformance with CZLUO Section 23.07.174b.**

**Preliminary Recommendation 4.20: Improve coordination with the Department of Fish and Game’s Streambed Alteration process.**

Where possible, streambed alteration agreements should be obtained prior to or concurrent with the County’s review of the permit application, rather than as a condition of approval. This will provide greater opportunity to make adjustment to the project that would better protect the stream habitat.

**Preliminary Recommendation 4.21: Pursue Alternatives to Streambed Alterations.**

Evaluate alternative access routes to avoid development in a stream (e.g., fill with culvert, bridge support).

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<sup>44</sup> CZLUO Section 23.07.174c



*Recommendations to Ensure Adequate Setbacks:*

**Preliminary Recommendation 4.22: Encourage Additional Research Regarding the Effectiveness of Setback Distances<sup>45</sup>**

- Such studies appears to be warranted given the apparent decline in the health of riparian resources such as the Steelhead trout, southwestern pond turtle, red-legged frog, and other rare and endangered species. Incorporation of a program that would encourage such studies, potentially in coordination with local universities and/or resource management agencies and organizations, should therefore be considered.
- Pursue individual watershed management programs for coastal streams. Such program could address appropriate setback distances as well as other important riparian and water quality issues.

**Preliminary Recommendation 4.23: Apply a Minimum Standard Setback of 100' in Urban Areas where Feasible**

- Consider applying a 100' setback, rather than 50' or less, in urban areas where a 100' setback feasible and would achieve better protection of stream resources.

**Preliminary Recommendation 4.24: Improve Implementation of Setback Standards and Adjustments.<sup>46</sup>**

- Explore and require, unless more environmentally damaging, alternative alignments for new or improved roads and other uses allowed in setback areas that conform to standard setback requirements. For example, consider new alignments to existing non-conforming roads where there may be impacts associated with intensified use or fire safety improvements. If realignment is appropriate, abandonment and revegetation of the pre-existing road should also be required.
- In instances where alternative alignments are not feasible or more environmentally damaging, provide more specific guidance on what is required to mitigate adverse effects to the greatest degree feasible (CZLUO Section 23.07.172d(1)(ii), as referenced by 23.07.174d(1)). Please see preliminary recommendations 2l and 2m.
- Critically evaluate “after-the-fact” permit applications where development that has illegally encroached into setback areas. Before off-site mitigation is considered, evaluate all options of restoring and enhancing the pre-existing on-site habitat values. Off-site mitigation should be an additional requirement where necessary to offset the

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<sup>45</sup> 100 feet from the edge of riparian vegetation in rural areas, 50 feet in urban areas, and as further specified by Area Plan

<sup>46</sup> CZLUO Section 23.07.174d

temporary impacts of the violation and address the potential for restoration efforts to fail.

**Preliminary Recommendation 4.25: Consider Limiting Pedestrian and Equestrian Trails within Riparian Setback Areas to Passive Recreation.**

- Where intensive recreational activities may adversely impact ESHA, they should be directed to areas outside of riparian setbacks.
- Where trails are allowed within or adjacent to riparian areas or other ESHA, require the provision of interpretive signing.

*Recommendations to Protect Creek Flows and In-Stream Habitats*

**Preliminary Recommendation 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 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.

**Preliminary Recommendation 4.27: Incorporate Additional Standards for Development In and Adjacent to Streams that Provide Habitat for Steelhead Trout**

- All permitted development in or adjacent to streams that support steelhead should be designed and conditioned to prevent loss or smothering of spawning gravels and rearing habitat through, among other means, controlling erosion, avoiding alteration of natural drainage patterns, eliminating sources of pollution, and maintaining streamside vegetation and stream water temperatures.
- Develop standards for the breaching of beach berms that create coastal lagoons (see Preliminary Recommendation 4.33)

*Other Recommendations*

**Preliminary Recommendation 4.28: Complete the Follow-Up Review on D870182 for the Aquaculture Facility North of Cayucos**

**Preliminary Recommendation 4.29: Miscellaneous Policy Clarifications**

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

**C.4. Wetlands**

Overview: The Environmentally Sensitive Habitat Chapter of the Coastal Plan Policies contains 13 policies specific to Wetlands (Policies 5 – 17). Of these policies, 3 are Programs, 3 are Standards, and the remaining 7 policies are identified as being implemented (and therefore superseded) by Section 23.07.170-178 of the Coastal Zone Land Use Ordinance. The Programs recommended by the LCP:

- Encourage the California Department of Parks and Recreation, the California Department of Fish and Game, and other public and private sources, to acquire or accept dedications of coastal wetlands. The priorities for acquisition are Sweet Springs Marsh, Santa Maria River mouth, Villa Creek Lagoon, and properties surrounding Morro Bay which include wetland habitat. (Policy 7)
- Encourage the continued use of open space easements or Williamson Act contracts to ensure the preservation of wetlands. The County is to develop guidelines to facilitate the use of open space easements, including “requirements for the length of dedication (i.e., perpetuity or 10 years), appropriate management responsibility, etc.” (Policy 8)
- Call for the California Regional Water Quality Control Board to administer programs identified through the “208” nonpoint source studies to ensure protection of coastal wetlands and water quality.

The three wetland Policies that are Standards:

- Regulate the diking, dredging, and filling of wetlands by limiting such activities to those as generally specified by Coastal Act Section 30233(a),<sup>47</sup> and where there is no feasible, less environmentally damaging alternative. Within the wetlands of Morro Bay, these activities are further limited to “very minor incidental public facilities, restorative measures consistent with PRC Section 30411 of the Coastal Act,<sup>48</sup> and nature study” pursuant to Section 30233(c). (Policy 11)
- Require allowable dredging, diking and filing of wetlands to be accompanied by feasible mitigation measures that will minimize adverse environmental impacts, maintain tidal flows, and be consistent with the biological continuance of the wetland habitat. More specifically, the development must avoid breeding and nursery areas during periods of fish migration and spawning; be limited to the smallest area needed to accomplish the project; and, be designed to protect water quality by preventing discharges and using protective measures such as weirs and silt curtains. Dredging and spoils disposal must conform to the provisions of Coastal Act Sections 30233(b) and 30233(d), with the added caveat that dredge spoils may not be deposited in areas where public access or environmental habitats would be significantly or adversely affected. Additional mitigation measures are also required for permitted dredging, filing and diking projects, in accordance with Coastal Act Section 30607.1. (Policy 11)
- Limit mosquito abatement practices to the minimum necessary to protect health and prevent damage to natural resources, and encourage the use of biological control measures. (Policy 12)
- Prohibit vehicle traffic within wetlands, unless necessary to accomplish a permitted use within the wetland. (Policy 13)

**Coastal Zone Land Use Ordinance:** As noted above, the majority of wetland protection policies are implemented by Section 23.07.172 of the Coastal Land Use Ordinance, which, in addition to Policy 11, provides the primary mechanism for regulating development within and adjacent to wetlands. Other ordinances applicable to wetland protection include Sections 23.05.020 – 039 regulating grading (see section on coastal streams), as well as sections 23.05.040 - 050 and 23.06.100 – 102 regarding drainage and water quality (please see Water Quality Chapter).

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<sup>47</sup> The LCP Policy can be interpreted as being more restrictive than Coastal Act Section 30233 in that it does not specifically permit the placement of structural pilings for public recreational piers in open coastal waters other than wetlands. However, it is more lenient in that it allows the diking, filing, and dredging of wetlands to maintain flood control facilities, and activity that is not permitted by Section 30233(a) of the Coastal Act.

<sup>48</sup> The purpose of the reference to Section of 30411 of the Coastal Act is unclear, since that section does not specifically address restoration.

## LCP Implementation

### Approved Development and Related Issues

Of the permits approved by the County and reported to the Commission between 1988 and 1998, approximately 23 identified that development would take place in or adjacent to a Wetland Combining Designation.<sup>49</sup> As previously described, the presence of an ESHA Combining Designation on or adjacent to a development site is the primary means under which LCP habitat protection standards are applied. However, a review of a wider range of local permits reported to the Commission between 1988 and 1998 indicates that an estimated 16 additional permits where the presence of a Wetland Combining Designation was not also identified involved wetland issues.

Of the 23 County permits that authorized development on sites with a Wetland Combining Designation, 7 involved new residential development,<sup>50</sup> 5 involved improvements to existing residences,<sup>51</sup> 1 involved new commercial development,<sup>52</sup> 2 involved improvements to an existing road,<sup>53</sup> 3 involved new wells,<sup>54</sup> 1 involved a lot line adjustment,<sup>55</sup> 2 involved improvements to public facilities,<sup>56</sup> 1 involved the construction of flood protection/erosion control structure,<sup>57</sup> and 1 involved a demolition of a boathouse.<sup>58</sup> The Commission staff's review of these permits has identified the following issues regarding the County's implementation of the LCP's wetland protection standards.

### Allowable Uses in and Adjacent to Wetlands

One of the primary ways in which the LCP protects wetland resources is limiting the allowable uses within wetlands and prescribed setback areas (e.g., Environmental Sensitive Habitat Policy 11, CZLUO Section 23.07.172, and various Area Plan Standards). Of the 23 permits described above, approximately 7 allowed development directly within a mapped wetland area, and 3 authorized development within the wetland setback area established by the LCP (not counting the 7 development projects within wetlands, which also involved development in the setback area). 8 of these permits did not identify the distance of the development from the wetland; 2 of these permits appear to have involved development within the required setback.

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<sup>49</sup> Six of these permits (D950007P, D940148P, D940280P, D940220P, D890440P, and D880273P) involved development in the Coastal Commission's original jurisdiction and therefore also required a permit from the Coastal Commission.

<sup>50</sup> D960014P, D940148P, D930164P, D920144P, D890409P, D8880195D, and D880388D

<sup>51</sup> D910260P, D940280P, D940126P, D970231P, D890409P

<sup>52</sup> Development Plan D890631D for a 3 story 100 room hotel in Oceano

<sup>53</sup> D870182D and D90210P

<sup>54</sup> D910210P, D940037P, and D940116P

<sup>55</sup> COAL 93-49

<sup>56</sup> D940220P and D890386P

<sup>57</sup> D950007P

<sup>58</sup> D880273P

For those 7 permits that appear to have permitted development directly within a Wetland Combining Designation, 2 involved new residential development, 2 involved roadway improvements, one involved the installation of a flood protection/erosion control structure, one involved the construction of a new hotel, and one involved the demolition of a boathouse. None of these uses are allowed within a wetland pursuant to ESH Policy 11 and Section 23.07.172b of the CZLUO.

Uses approved within the wetland setback included salt-water monitoring and test wells, new residential development, and improvements to existing residential development. Again, none of these uses are permitted within wetland setbacks under Section 23.07.172d(1) of the CZLUO.

In addition to these permits, a 1999 permit authorized a roadway project and lot line adjustment that involved construction of new roadways within wetland setbacks, and potentially within the wetland resource. As detailed below, the apparent reasons for these inconsistencies include:

- Failure to Identify Wetland Resources
- Inaccurate Delineation of Wetland Habitats
- Inadequate Consideration of Project Alternatives
- Accommodating Expansions or Improvements to Existing Non-Conforming Uses
- Desire to Accommodate Coastal Dependent Uses and Development Beneficial to Coastal Resources

a. Failure to Identify Wetland Resources

One of the more significant issues, discussed in detail in section C.1 of this chapter, is the concern that the LCP can be interpreted in a manner that would afford protection of only those wetlands that have been mapped as such by the LCP Combining Designation maps. A comprehensive review of the FLANs received by Commission staff between 1988 and 1998 identified 16 permits that raised wetland issues in areas that were not identified as having a Wetland Combining Designation. This may be a result of either the Combining Designation maps not being inclusive of all wetland habitats, and/or an oversight of Wetland Combining Designation Standards during the local review process.

The apparent lack of a complete delineation of all wetlands in the County's coastal zone by the LCP maps is certainly understandable given the dynamic and seasonal nature of different types of wetlands. For example, vernal pools may be clearly evident in the rainy season of wet years, but very difficult to detect in the summer or during droughts. Similarly, the size and specific location of lagoons and estuaries may change from season to season and year to year, based on numerous factors including stream flows, stream alignments, ocean waves, and groundwater levels.

The lot line adjustment and roadway development authorized by COAL 94-130 and D970195D,<sup>59</sup> involved nearly 5 miles of new and improved roadways on a sensitive 746 acre site west of Highway One between Cayucos and Cambria. This scenic open space stretch of coast is commonly referred to as the “Harmony Coast”.

The LCP Combining Designation map identifies one wetland (a stock pond) as existing on this site. An environmental constraints map completed as part of the local review identified an additional wetland (also a stock pond) of significant size and biological value not shown by the Combining Designation map. These were the wetlands addressed during the County’s review of the project. However, upon visiting the site, Commission staff observed the presence of additional wetland areas.

On one hand, the County should be credited for analyzing conformance with wetland standards for the portion of the roadway improvements that came in close proximity to a wetland that was not mapped by the LCP.<sup>60</sup> On the other hand, it appears that the full range of wetland areas on the site was not identified during the local review. To correct this problem, the Commission required the applicant to provide evidence of approval by the Department of Fish and Game and the U.S. Army Corps Engineers prior to the commencement of roadway construction. If additional wetlands were confirmed to be present on the site during the review by these agencies, revised roadway plans conforming to wetland setback requirements must be submitted.

While this may have been an appropriate “fix” in this instance, it is probably not the best means of implementing LCP wetland protection provisions over the long-term. Rather, it is critically important that all wetland resources be identified before development is approved, so that a comprehensive assessment of the full range of potential impacts to sensitive habitats can be considered, and an accurate assessment of LCP conformance can be completed. Therefore, in addition to pursuing an alternative to the LCP’s current map based system for protecting wetlands and other environmentally sensitive habitats, new standards that facilitate a complete and accurate delineation of all wetlands during the local review process should be incorporated into the LCP. (Please see Recommendations in sections C.1. and C.2.)

#### b. Inaccurate Delineation of Wetland Habitat

In the case of the new hotel in Oceano permitted under Development Plan D890631D, the information accompanying the FLAN contains conflicting information. In one section, the staff report indicates that the project is consistent with the 25 foot wetland setback established by the San Luis Bay Area Plan (Standard 4 for SRA Combining Designations). This setback was measured from the edge of an existing stand of willows

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<sup>59</sup> Appealed to the Commission as A-3-SLO-99-014 and A-3-SLO-99-32 and known as the “Morro Bay Limited” project based on the name of the applicant.

<sup>60</sup> Notwithstanding the fact that the County undertook this analysis, the Commission found it necessary to attach additional conditions to the project in order to achieve consistency with the applicable wetland setback provisions.

that were identified as being the limit of wetland vegetation by the biological report completed for the project.

However, another section of the staff report indicates that the site is “covered by native salt rush plant that Fish and Game considers an important species due to its indication of wetland habitat”. Thus, the upland limit of the wetland used to determine the setback for this development (the edge of the willows per the biological report) was in conflict with the definition of the “Upland Limit if a Wetland” provided by the Coastal Plan Policies Document.<sup>61</sup> As a result of incorrectly identifying the limit of the wetland, this permit appears to have authorized a commercial use directly within a wetland, inconsistent with the provisions of ESH Policy 11 and Section 23.07.172 of the CZLUO.<sup>62</sup> This provides another basis for incorporating new standards into the LCP that will improve upon the accuracy of the wetland delineations that are so crucial to achieving consistency with LCP and Coastal Act wetland protection provisions.

c. Inadequate Consideration of Project Alternatives

Even where the presence and extent of wetlands are accurately delineated, there may be particular circumstances under which exceptions to wetland protection standards may need to be considered. One such circumstance is where the application of these standards would preclude a reasonable economic use of private property. Another circumstance may be where exceptions to such standards are needed to achieve a final result that is, on balance, the most protective of coastal resources. In either of these cases, it is essential that the full range of project alternatives that would best achieve consistency with wetland and other resource protection standards be considered.

Both these circumstances came to play in local permits D880295D and D880388D, which authorized two new residences to encroach a maximum of 1,500 square feet into the wetlands of Morro Bay.<sup>63</sup> In approving these projects, the County Board of

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<sup>61</sup> This definition provides that “the upland limit of a wetland is designated as: 1) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover; 2) the boundary between soil that is predominantly hydric and soil that is predominantly non-hydric; or 3) in the case of wetlands without vegetation or soil, the boundary between land that is flooded or saturated at some time each year and land that is not.

<sup>62</sup> This permit was appealed by two Commissioners (A-4-SLO-91-36), and subsequently approved by the Commission with conditions intended to address setback requirements. However, the permit was never exercised. Since that time, a 56-unit condominium hotel that also involved removal of salt rush vegetation was approved by both the County and the Commission (Development Plan D940151D, CDP 3-95-48) and has been constructed on the site.

<sup>63</sup> An appeal of these projects is currently pending with the Coastal Commission (A-3-SLO--98-061, Farbstein). After determining Substantial Issue in March 1999, the De Novo hearing was continued to provide the applicant the opportunity to address, among other things, issues regarding water supply, wastewater treatment, and endangered species. To date, this information has not been provided. It is anticipated that the De Novo hearing will be rescheduled for Commission hearing in the spring or summer of 2001.



Supervisors overruled the Planning Commission's conditional approval that restricted the development to an area outside of the wetland. In justifying this action, which included the granting of a variance to wetland setback requirements, the Board found that the authorized wetland encroachment was the minimum necessary to avoid the removal of pygmy oak, another type of sensitive habitat found on the property. Contrary to this conclusion, the findings approved by the Planning Commission indicated that it was possible to accommodate development within a 3,000 square foot development envelope was both outside of wetland and pygmy oak habitat. Thus, although not specifically stated in the Board's findings, it can be assumed that the permitted wetland encroachment was also intended to provide the applicant with what, in the Board's opinion, was a reasonable economic use.

A significant problem with the information and analysis that accompanied the Board of Supervisor's action was that it failed to adequately address the full range of project alternatives that would achieve maximum consistency with LCP ESHA provisions and still provide a reasonable economic use of the property (e.g., the alternative approved by the Planning Commission). Recommendations on how this problem can be solved are provided in the section of this chapter regarding the Avoidance of ESHA.

D90210P involved similar circumstances, in that it authorized a use that is not allowed in wetlands in order to accommodate a principally permitted use and avoid impacts to other habitat areas on the site. Specifically, it involved the construction of a new road with a culvert to cross a wetland in order to provide an access to a proposed residential estate. An alternative access route that would not require the wetland crossing and was identified as the less environmentally damaging alternative. However, in the County's final action on the project, the applicant was given the option of constructing either of these access routes. Thus, implementation of the least environmentally damaging alternative was not required.

#### *Addressing Different Types of Wetlands*

An interesting issue raised by recent appeals is the consideration of stock ponds created to provide a water source for cattle through the installation of dams or the construction of berms as wetlands. In many instances, these ponds have become valuable biological habitats, supporting habitat for rare and endangered species such as the red-legged frog and the western pond turtle, as well as for numerous species of birds and amphibians. Based on these significant habitat values, it is clear that such areas must be afforded the greatest degree of habitat protection available under the Coastal Act and LCP.

There may be other cases, however, where a man made stock ponds, or other human induced wet lands, may be so small in size, disconnected from other natural habitats, and/or heavily used for a particular purpose (e.g., watering cattle, detaining sediments in runoff), that they offer little to no habitat value. Applying the same stringent standards to these areas as those applied to biologically significant wetlands may not only be of questionable resource benefit, but may diminish the range of alternatives that should be

considered when siting new development on highly constrained agricultural properties. For example, where necessary to avoid development on a highly visible or otherwise environmentally significant area of coast, exceptions to a 100-foot setback from a stock pond of negligibly biological value should be considered.

To respond to these various circumstances, it may be appropriate to incorporate provisions into the LCP that will allow for greater consideration of the biological significance of man made wetlands, and other competing resource protection interests, in determining appropriate setbacks from such areas.

### *Use of Variances*

While one might be inclined to apply the variance provisions of the LCP (CZLUO Section 23.01.045) to waive wetland setback requirements and resolve the hypothetical situation described above, there are significant concerns regarding the overall use of variances. Namely, the use of variances can result in unnecessary, resource damaging exceptions to important LCP resource protection provisions.

One example of where inappropriate exceptions to wetland standards may have been granted by the County is the variances approved for the development of two single-family residences within the wetlands of Morro Bay (D960345V and D960246V).<sup>64</sup> As approved by the Board of Supervisors on appeal by the applicant, these variances authorized the development to encroach into 1,500 square feet of wetland habitat, even though the Planning Commission had identified and approved an alternative that would have avoided such impacts. This decision, and other problematic variances identified throughout this report, indicate the need to consider changes to the variance provisions of the LCP that would prohibit the approval of such exceptions where adverse impacts to wetlands, sensitive habitats, or other significant coastal resources would result.

### *Flood Protection and Erosion Control*

The limitation on uses allowed in wetlands established by LCP Policy 11 for Environmentally sensitive Habitats is generally consistent with the provisions of Coastal Act Section 30233. The only significant difference is that the LCP allows the diking, filling, and dredging of wetlands to maintain flood control facilities, an activity that is not permitted by Section 30233(a) of the Coastal Act. Removal of this provision should be evaluated in order to achieve Coastal Act consistency. It is noted that a review of the permits approved by the County and noticed to the Commission for projects within the wetland Combining Designation between 1988 and 1998 did not identify any situation where the diking, dredging, or filling of wetlands was necessary for flood control.

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<sup>64</sup> These variances, and associated development permits are currently pending on appeal to the Coastal Commission (Farbstein, A-3-SLO-98-061). After determining Substantial Issue in March 1999, the De Novo hearing was continued to provide the applicant the opportunity to address, among other things, issues regarding water supply, wastewater treatment, and endangered species. It is anticipated that the De Novo hearing will be rescheduled for Commission hearing in the spring or summer of 2001.

What has been asserted as being necessary for flood control and has direct impacts on wetland resources is the breaching of sandbars at the mouth of coastal lagoons and estuaries. In the mid to late summer, when beaches are at their widest and stream flows are at their lowest, a sand bar can form that prevents coastal streams from draining to the ocean and forms a coastal lagoon. These lagoons can provide important habitat values, such as for juvenile steelhead trout in Santa Rosa Creek, as it provides a place for this fish to feed, grow, and adapt to salt water before entering the ocean when the rains come. Yet, where development has encroached within close proximity to the lagoon and flood plain, these elevated water levels can raise flooding concerns. Such concerns have been raised regarding Oso Flaco Lake in the San Luis Bay planning area, and at the Santa Rosa Creek Lagoon in the North Coast Planning Area.

In most instances, the grading necessary to breach coastal lagoons will involve development within the Coastal Commission's original jurisdiction, and therefore require a Coastal development Permit from the Coastal Commission. However, there is a high likelihood that such activities will also take place within areas of the County's jurisdiction, and would need to comply with the specific requirements of the LCP. It is questionable whether such activities could be considered an allowable use under the provisions of Section 23.07.172 regarding development in or adjacent to wetlands, and Section 23.05.034c regulating grading adjacent to sensitive habitats. Moreover, the LCP clearly lacks the protocols necessary to ensure the protection of wetland resources if and when lagoon breaching becomes a necessity. Revisions to the LCP that would clarify the limited circumstances under which lagoon breaching is allowed, accompanied by the incorporation of appropriate standards to ensure that such activities are carried out in a manner that is the most protective of wetland resources, should therefore be considered.

#### *Monitoring and Restoration*

In accordance with the Coastal Act, habitat restoration is one of the limited uses allowed by the LCP to involve the diking, filling, or dredging of wetlands. However, the LCP does not specifically allow restoration activities, or associated environmental monitoring, in or adjacent to wetlands if it does not involve diking, filling, or dredging. A literal reading of CZLUO Sections 23.07.172 and 25.03.034 indicates that restoration activities that constitute development (e.g., grading to removal fill and restore natural contours and tidal influence) are prohibited in wetland and wetland setback areas. Similarly, the installation of monitoring wells that provide important data regarding groundwater levels needed to sustain wetland habitats are arguably prohibited within wetland setbacks under CZLUO Section 23.07.172d.

That is not to say that the County has not allowed such restoration activities. In fact, a review of the permits approved by the County and reported to the Commission between 1988 and 1998 indicates that the County has been appropriately flexible in their interpretation of LCP provisions in order to allow for projects that would benefit wetland

resources. Nevertheless, correcting the LCP so that there are no questions regarding the allowance of restoration activities would benefit all parties involved.

For example, Minor Use Permit D880273P<sup>65</sup> involved a proposal to remove a boathouse and replace it with fill in what appears to be a historic tidal area of Morro Bay. From a resource protection standpoint, the County appropriately conditioned the project in a manner that prohibited new fill, required that the natural contours of the site be restored and planted with native wetland and upland transition vegetation. An erosion control plan was also required to protect water quality. Although it did not occur in this case, a strict reading of LCP provisions prohibiting grading adjacent to sensitive habitats, and limiting uses within wetland setbacks, could preclude restoration activities such as these. In another situation, the County approved the installation of two salt water monitoring wells in Cayucos, within the 50 foot setback area for the Old Creek lagoon established by the Estero Area Plan (Minor Use Permit D940037P). The purpose of these wells were to ensure that adequate amounts of water are released from Whale Rock reservoir to maintain groundwater and surface water levels and prevent saltwater intrusion. To accomplish these important resource protection objectives, the wells were dependent upon a location adjacent to the wetland habitat at the confluence of Old Creek and the Pacific Ocean. According to the County staff report, installation of the monitoring wells would not disrupt ESHA, and the project was conditioned to minimize ground disturbance and avoid the removal of trees. This represents another example of a project that, as conditioned by the County, could be considered an appropriate use under the Coastal Act, but is technically inconsistent with the limited uses allowed in wetland setback areas by CZLUO Section 23.07.172d. Therefore, to facilitate monitoring and restoration of wetland resources, and ensure that such activities are carried out in a manner that will not harm wetland resources, changes to the LCP, particularly to Sections 23.07.172 and 23.05.034 of the CZLUO, should be considered.

### Preliminary Policy Alternatives

#### **Preliminary 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. A potential location for these standards would be within the updated biological report requirements (see Preliminary Recommendation 4.7).

#### **Preliminary Recommendation 4.31: Evaluate Biological Significance of Manmade Wetlands**

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<sup>65</sup> This project was within the Coastal Commission's original jurisdiction, and therefore also required a coastal development permit from the Commission.

Where necessary to address competing resource protection interests, consider the biological significance of man made wetlands. Allow adjustments to standard wetland setbacks from biologically insignificant manmade wetlands where the lesser setback will not disrupt sensitive habitats and is needed to achieve a more important resource protection objective.

**Preliminary Recommendation 4.32: Prohibit Variances to Wetland and Other ESHA Protection Standards**

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.

**Preliminary Recommendation 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. Incorporate standards to ensure that where allowed, lagoon breaching 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 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.

**Preliminary Recommendation 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.

**Preliminary Recommendation 4.35: Review Mosquito Abatement Activities**

Investigate whether mosquito abatement practices are being reviewed and permitted in conformance with ESHA Policy 12 and San Luis Bay SRA Program 8.

**Preliminary Recommendation 4.36: Coordinate the Management and Protection of Open Space Easements Obtained to Protect Wetlands and other ESHA**

Evaluate ways to better obtain and protect open space easements over sensitive portions of bayfront property per Morro Bay SRA Program 23. This could include partnering with the Morro Bay National Estuary Program, and other qualified agencies and organizations. Similar efforts should be made to ensure that other open space easements obtained to protect ESHA are being effectively managed.

**C.5. TERRESTRIAL HABITATS**

Overview: Of all the Combining Designations used to delineate the Environmentally Sensitive Habitat Areas of the San Luis Obispo County coastal zone, the Terrestrial Habitat (TH) designation is the most diverse and wide spread. From the Monterey pine forests of the North Coast to the dune habitats of Estero and South County, these land-based habitats represent some of the most important, and most endangered, stands of the central coast's dwindling native environs. A significant amount of the San Luis Obispo County coastal zone is currently mapped by the LCP under the TH designation. As detailed in the section of this chapter regarding the identification of ESHA, a much greater are of terrestrial habitat that meets the Coastal Act definition of ESHA, but is not currently mapped by the LCP, exists throughout the County's coastal zone.

**A. Monterey Pine Forest:** As described by the Combining Designation Chapter of the North Coast Area Plan:

*Native Monterey pines occur in only a few areas along the California coast from north of Santa Cruz to Cambria and on one of the Channel Islands off the Santa Barbara County coast. While widely grown in the Southern Hemisphere as a commercial timber, the Monterey Pine occurs in only three areas of its native California. The southernmost stand in California is the 2,500 acres surrounding Cambria with another isolated 500 acres at Pico Creek. These stands are extremely important as a "gene pool" due to genetic variations found there. Relatively undisturbed stands occur on the Cambria fringe area and in isolated pockets to the north. Monterey pine forests cover most of the Cambria urban area. The larger remaining stands in undeveloped area should be retained intact as much as possible by use of cluster development in open areas of sparse tree cover and preservation of finer specimen stands through open space easements.*

While the above description provides a good overview of the status and management principals available for this habitat type at the time of LCP certification, much new information has been gained. First, the advent of the pitch canker epidemic has placed new and greater threats on the survival of the remaining pine forests. Scientific knowledge of the effects of this disease, and the ways in which it can be controlled, is constantly evolving. New and adaptable management tools, planning initiatives, and development regulations are needed to respond to this problem.

Second, scientists and resource managers have gained a much greater understanding of the forest as an ecosystem, recognizing that the forest habitat is defined not by trees alone. A diverse assemblage of plants, lichens, insects, and other living things that exist various layers, from soil to forest canopy, all play an important role in the health and biological productivity of the Monterey pine habitat. Protecting this habitat therefore demands a more comprehensive approach that extends beyond the conservation of individual trees.

Third, the significant role that genetics play in a species ability to adapt to threats such as the pitch canker epidemic has placed a greater emphasis on preserving a diverse and healthy genetic stock. As a result, it is critical to protect not only the mature trees that display a resistance to the disease, but their seeds and seedlings as well. Where the protection of the “larger remaining” and “finer specimen stands” of trees may have been the focus of original LCP efforts to protect this habitat, a new approach that places equal or greater emphasis on the protection of younger trees, and the open space meadows that support their growth, must be considered.

Finally, it is clear that scientific knowledge regarding pitch canker and forest health continues to change and grow. Up until very recently, it was thought that once a tree had been infected by pitch canker, it had a very limited remaining lifespan. However, new scientific opinions indicate that some trees may recover from the disease, and perhaps provide the genetic material that will be essential for Monterey Pines to adapt to and survive this epidemic. The implications of this are twofold. First, planning policy and development regulation must be able to incorporate new scientific information as it develops. Second, a more considered look at whether a tree should be allowed to be removed just because it is infected by pitch canker, or may show signs of such an infection, should be undertaken.

### **LCP Provisions:**

The North Coast Area Plan (NCAP) provides the most specific standards and programs aimed at protecting pine forest habitat, supplementing the general TH provisions discussed above.

**North Coast Area Plan Programs:** SRA Program 4 states that the County will work with the Coastal Conservancy to complete a study for the preservation of the most heavily forested and steep slope areas of Lodge Hill. In addition to designating wildlife corridors, the program is to evaluate the feasibility of implementing lot consolidation and

Transfer of Development Rights programs. The program is also to produce a manual that addresses particular issues relevant to the pine forest such as erosion control, landscaping, and other important development regulations. This manual, along with a more detailed erosion control program for Lodge Hill, are called for being prepared as part of “Phase IV of Local Coastal Plan Development”.

Another Phase IV action is the preparation of a Specific Plan for Lodge Hill (SRA Program 5). Applying the results of Program 4, the Specific Plan is to evaluate opportunities to cluster development in particular areas (blocks) with steep slopes, heavy tree cover, and low levels of development.

Lot consolidation, as a means to combine small lots that do not meet current standards and reduce the overall amount and intensity of development within the pine forest, is an additional program established by the NCAP. Pursuant the SRA Program 6, the County is to review its current procedures and mechanisms for lot consolidations, and if necessary, suggest legislative changes that would facilitate this objective.

Perhaps the most commonly implemented program for tree protection is the Transfer of Development Credit (TDC) Program designed to accomplish the following objectives: a reduction in the build-out in the Cambria area, especially in Lodge Hill, to be within the public service capacity of the area;<sup>66</sup> and, transferring development out of the most environmentally sensitive areas. The details of this program can be found on pages 52 – 54 of the NCAP. It is implemented under Section 23.04.440 of the CZLUO.

**NCAP Pine Forest Standards for Rural Areas:** SRA Standard 4 requires the clustering of new subdivisions and large scale developments within forested areas. It also calls for new development to be restricted to slopes less than 20%. Where development requires removal of Monterey Pines greater than six inches in diameter, SRA Standard 5 requires their replacement with native stock.

Public Facility Standard 2 regarding the Cambria Cemetery (APN 013-111-006) requires tree trimming and removal to be minimized, and preparation of a Forest Management Plan with specific criteria.

**Standards for the Hearst Ranch:** Recreation Standard 12 requires that the development of the “San Simeon Point”<sup>67</sup> and “Pine Resort”<sup>68</sup> projects to be located in building envelopes of the “least biological significance”. These building envelopes are to be reviewed by a biologist selected by the County in consultation with the Department of Fish and Game.

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<sup>66</sup> See Development Chapter

<sup>67</sup> The development of San Simeon Point is further regulated by Recreation. Standards 13 and 20, and it’s “principle building envelopes” are shown by Figure 1 of the North Coast Area Plan

<sup>68</sup> Recreation Standards 22 and 23 provide additional requirements for the development of the Pine Resort.



Recreation Standard 19 establishes general tree protection requirements for all portions of the Hearst Ranch within the Recreation land use category.

**Standards for Rural Lands Land Use Category:** For the Rural Lands adjacent to Cambria, new land divisions must be restricted to a density of one dwelling unit per 80 acres or lower, and clustered (per the specific provisions of CZLUO Section 23.23.04.036) against either the Urban Reserve Line or “semi-open areas to minimize tree removal”. No structural development is allowed on slopes steeper than 20%, and any Monterey Pines removed during construction must be replaced. (Rural Lands Standard 2)

**NCAP Pine Forest Standards for the Cambria Urban Area:** On small residential lot tracts in Lodge Hill, setbacks are allowed to be averaged and adjusted<sup>69</sup> to avoid the need for tree removal. (Community Wide Standard 5)

Development of “the Ranch” requires the retirement of water and sewer permits from steep and heavily forested 25-foot wide lots in lodge hill pursuant to Community Wide Standard 9d. A Development Plan for the residentially designated area of the Ranch, detailing measures to preserve larger stands of Monterey Pines is require by Residential Single Family Standard 5.

The development of 25 foot wide lots under single ownership is subject to the lot consolidation provisions of CZLUO Section 23.04.048. As required by Residential Single Family Standards 6 and 7, construction on 25’ lots, and all residential lots within Lodge Hill, must preserve the pine forest by:

- limiting tree removal to those that are in the structural line of approved development, or have been determined to be diseased by the County or approved consultant;
- replacing trees with 8 inch or greater diameter removed by development on a two to one basis. Replacement trees must be five gallon Monterey pines grown from seeds obtained from the Cambria stand “if available”;
- implementing construction practices to protect Monterey Pines from disturbance (e.g., protecting tree trunks and root systems, careful use and storage of construction equipment); and,
- maintaining the undeveloped areas of each building site in native vegetation and natural cover.

As incentive to preserve trees, RSF Standard 9 allows the Planning Director to grant a 10% increase in the allowable gross structural area where an applicant can “clearly

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<sup>69</sup> Zero side yard setbacks, and two feet rear setbacks are permitted

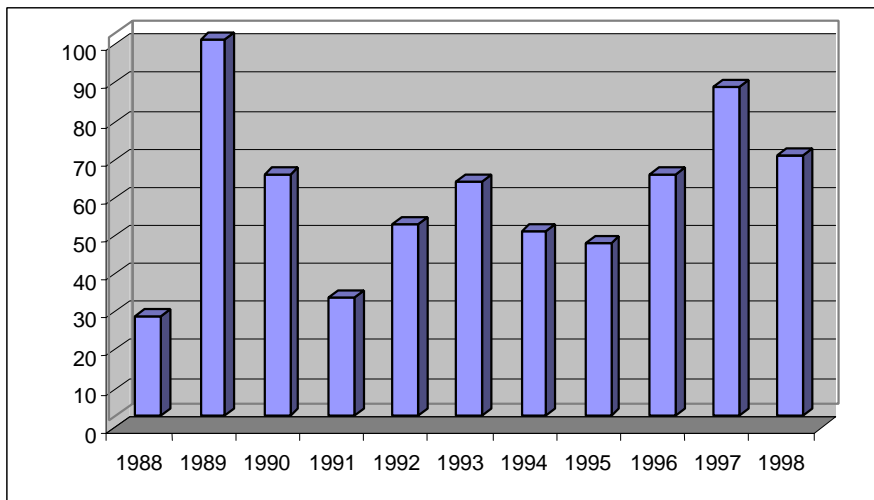
demonstrate that design and layout concessions have been made in order to save healthy trees” or achieve other resource protection objectives.

RSF Standard 13 establishes two areas of Lodge Hill as Special Project areas due to the presence of pine forest, steep slopes, and small lots. For Special Project Area #2, which is highly visible from Highway One, a minimum of two Monterey or Cambria pines are required to be planted and maintained. In the Residential Suburban area of West Lodge Hill, new land divisions must cluster residential units to preserve pine trees. (RS Standard 2)

### LCP Implementation

Overview of Development Approved in Forested Areas: Between the period of 1988 and 1998, the Commission was sent notice of approximately 639 coastal development permits approved by the County in the Terrestrial Habitat areas in and near Cambria. (See Figure 4-3).

**Figure 4-3 Annual Permits Approved in TH Designation in/near Cambria**



Of these permits, the large majority (448, or 70%) was for the development of single-family residences, mostly within the Lodge Hill area. An additional 178 permits (28% of the 639 permits) were for additions to existing single-family residences.

In terms of the overall numbers of trees impacted by this development, 230 of the 639 permits (36%) reported in this area identified the number of trees removed, and an even smaller number reporting the number of trees to be replaced. 171 (74%) of the 230 permits identified the removal of Monterey Pine (as well as other trees), and 49 (21%) of the 230 permits identified the removal of Oak trees. This data is shown by Table 4-4.

**Table 4-4: Tree Removal and Replacement within the TH areas in and around Cambria**

| <b>Year</b>                                      | <b>Monterey Pines Removed</b> | <b>Monterey Pines Replaced</b> | <b>Mitigation Ratio</b> | <b>Oak Trees Removed</b> | <b>Oak Trees Replaced</b> | <b>Mitigation Ratio</b> |
|--|-------------------------------|--------------------------------|-------------------------|--------------------------|---------------------------|-------------------------|
| 1988   | 40                            | 88                             | 2.2                     | 5                        | 10                        | 2.0                     |
| 1989   | 143                           | 271                            | 1.9                     | 23                       | 49                        | 2.1                     |
| 1990   | 22                            | 64                             | 2.9                     | ?                        | ?                         | ?                       |
| 1991   | 26                            | 60                             | 2.3                     | 1                        | 4                         | 4.0                     |
| 1992   | 60                            | 175                            | 2.9                     | ?                        | 5                         | ?                       |
| 1993   | 79                            | 162                            | 2.1                     | 42                       | 143                       | 3.4                     |
| 1994   | 42                            | ?                              | ?                       | 2                        | ?                         | ?                       |
| 1995   | 78                            | ?                              | ?                       | 29                       | ?                         | ?                       |
| 1996   | 10                            | 20                             | 2.0                     | ?                        | ?                         | ?                       |
| 1997   | 317                           | 624                            | 2.0                     | 77                       | 334                       | 4.3                     |
| 1998   | 165                           | 332                            | 2.0                     | 53                       | 224                       | 4.2                     |
| <b>TOTAL REPORTED BY 230 PERMITS</b>             | <b>982</b>                    | <b>1796</b>                    | <b>1.8</b>              | <b>232</b>               | <b>769</b>                | <b>3.3</b>              |
| <b>AVERAGE PER PROJECT<sup>70</sup></b>          | <b>5.74</b>                   | <b>10.44</b>                   | <b>1.8</b>              | <b>4.73</b>              | <b>15.08</b>              | <b>3.2</b>              |
| <b>ASSUMED TOTAL OF 639 PERMITS<sup>71</sup></b> | <b>2715</b>                   | <b>4938</b>                    | <b>1.8</b>              | <b>634</b>               | <b>2021</b>               | <b>3.2</b>              |

The figures presented by Table 4-4 are considered to be highly conservative based on the fact that they do not include the tree removal that occurred outside the mapped TH Combining Designations in and around Cambria. Nor do they include the tree removal associated with development that was not reported to the Commission.

The impact of development on pine forest habitat is not limited to the removal of trees. The construction of new roads and homes increase the amount of impervious surface,

<sup>70</sup> The average number of Monterey Pines removed per project was determined by dividing the total number reported by 171 (the number of reported permits identifying the removal of Monterey pine). For oaks, the total was divided by 49 (the number of reported permits identifying oak removal).

<sup>71</sup> Assumed totals were estimated by multiplying the average number of trees removed by a proportion of the 639 permits reported in the TH designation between 1988 and 1998. These proportions are equivalent to the percentages of the 230 permits reporting the removal of Monterey Pine and Oaks. (74% of the 230 permits involved the removal of Monterey Pine; thus, 473 of the 639 permits were assumed to have involved Monterey Pine removal. 21% of the 230 permits involved oak removal; thus, 134 of the 639 permits are assumed to have involved oak removal.)

which can lead to increased erosion in adjacent forest habitats. Moreover, development can lead to the fragmentation of previously connected habitat, and introduces light, noise, domestic pets, and other human influences that can reduce the health and biological productivity of surrounding habitats.

In a 1999 erosion study completed by San Luis Obispo County for a 800 acre area of Lodge Hill, it is estimated that 1200 new homes, and 18 miles of new roads have been constructed in the last 50 years. Acknowledging that the impacts of such development extend beyond its footprint, the report states that the 18 miles of new roads have impacted about 44 acres of forest. An additional 33 acres were impacted by the construction of the new residences, which were calculated as having an average size of 1200 square feet.

### Consistency Analysis

*Tree Removal and Replacement:* The numbers presented in Table 4-4 are certainly rough estimates. Nevertheless, they provide a reasonable picture of the cumulative numbers of trees being removed and planted by development in and around Cambria. A number of important resource management and LCP implementation questions are raised by the significant amount of tree removal taking place.

#### *Avoiding and Minimizing Tree Removal*

The LCP appropriately calls for new development to avoid the removal of Monterey Pines, among other means by restricting the removal of trees to the structural footprint of the development; providing flexible setback standards to facilitate tree preservation<sup>72</sup>; offering square footage bonuses for designs that maximize tree preservation; and, requiring subdivisions to be clustered. Yet, a review of the information contained in the FLANs for development involving tree removal does not provide adequate evidence to assume that these tools and development standards are being stringently applied.

A typical evaluation of a single family residence in Lodge Hill consists of a table comparing the size of the proposed project with the square footage allowed by Table G of the North Coast Area Plan. There is very little, if any discussion of opportunities to avoid or minimize tree removal through alternative siting and design. Also typically missing is an analysis of whether the trees proposed for removal are limited to the footprint of the proposed structure.

Even if such an analyses were provided, the LCP's focus on preserving trees with a diameter over 6 and 8 inches overlooks the important role that young saplings and open space meadows play in the ongoing health and evolution of the forest ecosystem. It appears that an approach that protects all native trees, irrespective of size, and minimizes

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<sup>72</sup> Such setback adjustments are currently limited to Lodge Hill, but could have useful application throughout the pine forest.

the overall disturbance to the forest habitat, including its understory and open space meadows, is needed to effectively protect this unique and sensitive habitat type.

#### *Effectiveness of Mitigation*

The two common methods for mitigating the impact of development on the pine forest is to require the developer to plant more trees than are being removed, and/or to require participation in the Transfer of Development Credit (TDC) program.

With respect to tree replacement, it appears that the County is fairly consistent in implementing the criteria established by the North Coast Area Plan (generally 2 Monterey pines must be planted for one removed in urban areas, while one pine must be planted for every one removed in rural areas). Looking at numbers of trees alone, this might seem adequate. Certainly, tree replacement has helped preserve the forested character of the area. Ecologically, however, tree replacement may be of limited value, for the following reasons:

- The location and densities of the replacement trees may not be optimum. The ability to replace trees on the same site where development occurs is often constrained by a small lot size and the extent of existing tree cover. Thus, the required replacement trees may too close to other replacement trees, or existing trees, to grow to their full potential and provide habitat values equivalent to the trees removed. In situations where this is identified as a problem during development review, the county may allow replacement trees to be planted off-site. However, the up-front planning needed to guide off-site mitigation to ensure that achieves equal or better habitat than that removed by development has not been undertaken.
- The type of habitat is different. Irrespective of the fact that the overall number of trees may be maintained, or even increased, the overall habitat type is changed by the introduction of residential development and human activity. Indeed, the urbanized forest is much different, and arguably less biologically productive, than undeveloped areas of the forest.

Implementation of the TDC program has, however, provided a form of mitigation that preserves more contiguous areas of undeveloped forest habitat. Significant areas of pine forest habitat, primarily within the Fern Canyon area of Cambria, has been acquired for open space preservation since 1988 (See Chapter 2 for detail).

Notwithstanding the relative success of this program to date, the following observations point to the need to re-evaluate and update the specific provisions of this program:

- Density bonuses may increase the number of trees removed on receiver sites. In order to provide an incentive for the transfer of development credits, receiver sites are provided with an opportunity to exceed the square footage otherwise allowed on the site. The resulting enlargement may increase the number of trees removed. Of the

230 reported permits indicating tree removal, 94 (41%) involved the transfer of development credits.

- The cumulative area of forest habitat lost as a result of density bonuses may exceed the amount being preserved. As currently implemented by the County, the TDC program allows an increase in square footage equivalent to the amount of area transferred. For example, a 500 square foot density bonus can be obtained by making a financial contribution equivalent to the cost of acquiring 500 square feet of a parcel in the Special Project Areas. This does not take into account the fact that existing LCP standards place stringent limitations on the extent of development allowed within the Special Project Areas. As a result, density bonuses may be granted for “preserving” forested areas that could not be developed under current LCP standards.
- New sending sites must be identified. The TDC Program may be reaching the limit of available sending sites in Special Project Area 1, also known as Fern Canyon. It appears that a limited number of additional parcels are available for acquisition, some of which may be owned by unwilling sellers. The identification of new sending sites is therefore needed.

Lot Consolidation: Another tool that has been successfully used to minimize the intensity of development in the forest is lot consolidation. Applying the provisions of the North Coast Area Plan and CZLUO Section 23.04.048, the County has been able to combine substandard lots under common ownership, and thereby reduce the overall amount of development that might otherwise be pursued.

Lot line adjustments, however, pose a risk to the ability to implement lot consolidation requirements. Such was the case in COAL 99-007 where the County allowed three sub-standard lots that comprised a single development site under the lot consolidation ordinance to be adjusted with one large lot. The result was three rather than two building envelopes. In addition to increasing development intensity, this adjustment had the affect of extending the development further into more undisturbed areas of pine forest, contrary to the clustering provision of the LCP discussed below. On appeal to the Coastal Commission, development was limited to two building envelopes located in the most disturbed area of the site.

Clustering of Development: The LCP requirement to cluster new land divisions and large scale developments is yet another method under which sensitive pine forest habitat is to be protected. In principle, the intent is well founded; consolidate development in a manner that will minimize its encroachment into forest habitat. But in practice, there are significant problems with both the structure and the implementation of these provisions.

In terms of structure, there is a fundamental contradiction between the directive to cluster new subdivisions and LCP ESHA Policy 4/CZLUO Section 23.07.170 prohibiting new land divisions in ESHA. Since the pine forest is appropriately classified as ESHA by the LCP, new land divisions that would create new development envelopes in pine forest habitat should be specifically prohibited.

**Comprehensive Forest Management and Protection:** Addressing the cumulative buildout of Cambria and the surrounding rural areas is a critical component to effective forest protection. This not only includes a reduction of overall buildout levels, but also necessitates a systematic approach for directing buildout to the less sensitive areas, and maximizing the preservation of the most biologically productive and sensitive forest habitats.

As noted above, and as discussed in Chapter 2, the TDC program has provided a significant contribution towards achieving this objective, but appears to be approaching a point where new sending sites need to be identified. In addition, tree replacement requirements, and other previously discussed options for mitigating the cumulative impacts of buildout on forest resources, would benefit from a comprehensive plan that directs such mitigation to areas that offer the best opportunities for protecting the pine forest ecosystem.

Therefore, the LCP would greatly benefit from the incorporation of a comprehensive forest management and protection plan. Similar to Los Osos habitat conservation planning efforts, but without as many Endangered Species Act issues, the incorporation of such a program into the LCP could significantly enhance the LCP's ability to manage the significant buildout potential of Cambria in a way that maximizes ESHA protection. Additionally, a comprehensive forest management and protection plan could resolve the complex regulatory issues associated with non-resource development in ESHA in an LCP planning context, rather than case-by-case. As the Los Osos habitat conservation effort has built upon greenbelt planning originating at the grassroots level, there may be opportunities to build upon the current forest management efforts being developed by the Cambria CSD.

#### Preliminary Policy Alternatives

#### **Preliminary Recommendation 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 guide and regulate buildout so that the long-term conservation of the Cambria pine forest ecosystem can be ensured and enhanced. Elements of this program should 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.

#### **Preliminary Recommendation 4.38: Aggressively Pursue Project Alternatives That Avoid Tree Removal**

- Require development to be sited and designed in a manner that that first avoids, then minimizes, removal of Monterey Pine. Make full use of flexible setbacks, and allow such flexibility in all areas of the pine forest, not just Lodge Hill.
- Apply an updated version of Pine Forest Preservation Standard 6c for the Cambria Urban Area to all areas with pine forest habitat.

**Preliminary Recommendation 4.39: Increase Tree Replacement Requirements Where Avoidance is not Possible**

- Protect all native Monterey Pines, not just mature trees, by requiring replacement of all trees required to be removed, including saplings. Where feasible, replant saplings.
- Analyze the location and biological viability of locations and densities of replacement trees during development review.
- For situations where on-site replacement is not possible, develop and implement a framework for off-site replacement that maximizes long-term habitat protection and enhancement.
- Require that all replacement trees be from disease-free local Cambria stock only, and that invasive exotic species be avoided in landscaping.

**Preliminary Recommendation 4.40: Incorporate Programs and Standards Necessary to Respond to the Threats Posed by Pitch Canker**

- Prohibit the removal of 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 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: 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.
- 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.

**Preliminary Recommendation 4.42: Develop Additional Methods for Lot Retirement**

- Recognizing that new development within the forest has both direct and cumulative impacts on forest resources, 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.

**Preliminary Recommendation 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 prohibit any adjustments that would result in greater development intensity within forest habitat as compared to the development that would be possible under the existing configuration.

As proposed in the North Coast Area Plan Project Description, eliminate the potential for future development of the Pine Resort from the North Coast Area Plan.

## **B. Coastal Dunes, Coastal Scrub and Maritime Chaparral Habitats**

The sandy soils typical of many coastal areas of San Luis Obispo County also provide important habitat for a wide variety of rare plants and animals. Among these habitat types are the open dune areas that support species including the federally threatened Western snowy plover, the federally endangered California least tern, and the federally threatened Monterey spignflower; coastal scrub habitat that supports the federally endangered Morro shoulderband snail and Morro Bay Kangaroo rat; and maritime chaparral habitat, composed of rare species such as the federally threatened Morro manzanita and federally endangered Indian Knob mountain balm.

There are various classifications and plant series contained within each of these habitats. For example, coastal scrub habitat includes central dune scrub, coastal sage scrub, and Coyote bush scrub plant communities, each of which can support a variety of plant series (e.g., the California sagebrush/black sage series and the dune lupine/goldenbush series typical of Los Osos coastal scrub habitats). In general, coastal scrub habitat represents an early successional stage of dune habitat that can be found in both young sand dunes and disturbed ancient dunes.

Maritime chaparral is typically found in older sand dunes, and comprised of shrub species such as manzanita, ceanothus, and coast live oak. Plant series that can be found in the maritime chaparral habitats of San Luis Obispo, particularly in the Los Osos area, include the Morro Mazanita series, the Morro manzanita/wedgeleaf ceanothus series, and the Morro manzanita/coast live oak series.

Open dune areas include sandy beaches and nearby areas that are sparsely to heavily vegetated with annual and perennial plant species that are adapted to the harsh growing environment typical of such areas.

### Preliminary Policy Alternatives:

#### Los Osos Habitats

**Preliminary Recommendation 4.44:** Identify all habitat areas within the urban area that represent Ecologically Significant Units and vigorously apply ESHA protection standards to such areas.

**Preliminary Recommendation 4.45:** For those urban areas that do not represent viable habitat due to fragmentation, small size, surrounding uses, etc., allow development

to occur in exchange for participation in a comprehensive area wide off-site mitigation program to be incorporated in the LCP.

**Preliminary Recommendation 4.46:** To the degree feasible, coordinate the above with the Los Osos Sewer Project and an area wide HCP.

**Preliminary Recommendation 4.47:** Continue to pursue incorporation of a TDC program as part of the Estero Area Plan Update, with the changes recently proposed in response to comments of Commission staff and further coordination.

#### Oceano Habitats

**Preliminary Recommendation 4.48:** Continue to work with beachfront homeowners and State Parks towards the development of a stand stabilization program that will address concerns regarding blowing sand and provide habitat restoration/enhancement.

#### South County Habitats

**Preliminary Recommendation 4.49:** Refer to current staff report on Oceano Dunes OHVRA regarding vehicles in dunes.

**Preliminary Recommendation 4.50:** 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.

**Preliminary Recommendation 4.51:** Re-evaluate existing and proposed land use designations in South County dune habitats (i.e., RS and Industrial designations over the undeveloped land of the Callendar-Garret Village area south and west of Hwy 1; proposed redesignation of RL land use category to Recreation after termination of oil extraction activities).

**Preliminary Recommendation 4.52:** Resolve lot history and any potentially illegal subdivisions in the Callendar-Garret area if threatened by development, particularly in areas known to support rare and endangered plant species. Designate and protect such areas as ESHA.

#### Western Snowy Plover and Least Tern Habitat

**Preliminary 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.

Elephant Seal Colonies

**Preliminary Recommendation 4.54:** Identify beaches used by Northern Elephant Seals as ESHA.

**Preliminary Recommendation 4.55:** Establish standards and programs to manage human visitation and observation of such areas.

**Preliminary Recommendation 4.56:** Prohibit the installation of new revetments and outfalls on beaches used by Elephant Seals wherever it can be avoided.