APPENDIX E: RIGHT-TO-FARM ORDINANCE

The following right to farm ordinance is contained in chapter 5.16 of the San Luis Obispo County Code.

CHAPTER 5.16

AGRICULTURAL LANDS, OPERATIONS, AND THE RIGHT TO FARM ORDINANCE

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5.16.010. Definitions.

(a) "Agricultural Land" shall mean all real property within the unincorporated boundaries of San Luis Obispo County currently used for Agricultural Operations, or upon which Agricultural Operations may in the future be established.

(b) The term "agricultural activity, operation, or facility, or appurtenances thereof" (herein collectively referred to as "Agricultural Operations") shall include, but not be limited to, the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural commodity including timber, viticulture, apiculture, or horticulture, the raising of livestock, fur bearing animals, fish, or poultry, and any practices performed by a farmer or on a farm as incident to or in conjunction with those farming operations, including preparation for market, delivery to storage or to market, or delivery to carriers for transportation to market.

(c) The term "nuisance" shall have the meaning ascribed to that term in California Civil Code Section 3479. California Civil Code Section 3479 reads, in part, as follows: "Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the use of property, so as to interfere with the comfortable enjoyment of life or property …. is a nuisance."

5.16.020. Findings and Policy:

(a) It is the declared policy of this County to enhance and encourage Agricultural Operations within the County. It is the further intent of this County to provide to the residents of this County proper notification of the County's recognition and support through this ordinance of those persons and/or entities right to farm.

(b) Where non-agricultural land uses occur near agricultural areas, Agricultural Operations frequently become the subjects of nuisance complaints due to lack of information about such operations. As a result, agricultural operators may be forced to cease or curtail their operations. Such actions discourage investments in farm improvements to the detriment of agricultural uses and the viability of the County's agricultural industry as a whole. It is the purpose and intent of this ordinance to reduce the loss to the County of its agricultural resources by clarifying the circumstances under which Agricultural Operations may be considered a nuisance. This ordinance is not to be construed as in any way modifying or abridging state law as set out in the California Civil Code, Health and Safety Code, Fish and Game Code, Food and Agricultural Code, Division 7 of the Water Code, or any other applicable provision of State law relative to nuisances. Instead, it is to be utilized only in the interpretation and enforcement of the provisions of this code and County regulations.

(c) An additional purpose of this ordinance is to promote a good neighbor policy by advising purchasers of residential property, and owners of other property in the County, of the inherent potential problems associated with the purchase of such property. Such concerns may include, but are not limited to, the noises, odors, dust, chemicals, smoke and hours of operation that may accompany Agricultural Operations. It is intended that, through mandatory disclosures, purchasers and users will better understand the impact of living near Agricultural Operations and be prepared to accept attendant conditions as the natural result of living in or near rural areas.

5.16.030. Pre-existing Agricultural Uses Not a Nuisance:

(a) No agricultural activity, operation, or facility, or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, as established and followed by similar Agricultural Operations in the same locality, shall be or become a nuisance, private or public, due to any changed condition in or about the locality, after it has been in operation for more than three years if it was not a nuisance at the time it began.

(b) Subsection (a) of section 15.16.030 shall not apply if the agricultural activity, operation, or facility, or appurtenances thereof, obstruct the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin, or any public park, square, street, or highway.

5.16.040. Disclosure

(a) San Luis Obispo County has determined that the use of real property for Agricultural Operations is a high priority and favored use to the County, and those inconveniences or discomforts arising from legally established agricultural activities or operations, as defined in the San Luis Obispo County Code, or State law, shall not be or become a nuisance.

(b) Disclosure Statement: "The County of San Luis Obispo declares it a policy to protect and encourage Agricultural Operations as defined in Chapter 5.16 of the San Luis Obispo County Code. If your property is located in the unincorporated area of the County, near an Agricultural Operation, you may at sometimes be subject to inconvenience or discomfort arising from Agricultural Operations. If conducted in a manner consistent with State law and County Code, said inconveniences and discomforts shall not be or become a nuisance."

(c) The Disclosure Statement is given for informational purposes only and nothing in this Ordinance, or in the Disclosure Statement, shall prevent anyone from complaining to any appropriate agency, or taking any other available remedy, concerning any unlawful or improper agricultural practice.

(d) The Disclosure Statement set forth above shall be used as described in sections 5.16.050, 5.16.060, and 5.16.070.

5.16.050. Property Tax Bill Disclosure

(1) The County of San Luis Obispo may mail a copy of the disclosure set out at 5.16.040 (b) to all owners of real property in San Luis Obispo County with the annual tax bill.

5.16.060. Disclosure Upon Transfer of Residential Property

(1) Upon any transfer of real property located in the unincorporated area of the County by sale, exchange, installment land sale contract (as defined in Civil Code Section 2985), lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, or residential stock cooperative, improved with or consisting of not less than one nor more than four dwelling units, the transferor shall deliver to the prospective transferee the written Disclosure Statement required by this ordinance. The Disclosure Statement shall be delivered in the manner set forth in Civil Code Sections 1102.2 and 1102.10. Exceptions to the applicability of this Section 15.16.060 are set forth in Civil Code Section 1102.1. The written disclosure shall be set forth in, and shall be made on a copy of, the following disclosure form:

LOCAL OPTION
REAL ESTATE TRANSFER
DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE UNINCORPORATED AREA OF THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, DESCRIBED AS _____. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH CHAPTER 5.16 OF THE SAN LUIS OBISPO COUNTY CODE AS OF _____, 19 ___.
IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I
SELLERS INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AS REQUIRED BY THE COUNTY OF SAN LUIS OBISPO, AND ARE NOT THE REPRESENTATIONS OF THE AGENTS(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

"The County of San Luis Obispo declares it a policy to protect and encourage Agricultural Operations as defined in Chapter 5.16 of the San Luis Obispo County Code. If your property is located in the unincorporated area of the County, near an Agricultural Operation, you may at sometimes be subject to inconvenience or discomfort arising from Agricultural Operations. If conducted in a manner consistent with State law and County Code, said inconveniences and discomforts shall not be or become a nuisance."

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller _____ Date _____
Seller _____ Date _____

II

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/ INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date _____ Buyer _____ Date _____
_____
Seller _____ Date _____ Buyer _____ Date _____
_____

Agent (Broker
Representing Seller) _____ By _____
(Associate Licensee
or
Broker-Signature)

Date _____

Agent (Broker
obtaining the Offer) _____ By _____
(Associate Licensee
or
Broker-Signature)

Date _____

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

5.16.070 Discretionary Land Use Permit Disclosure

The County of San Luis Obispo shall include the Disclosure Statement described in Section 5.16.040(b) above on all discretionary land use permit applications administered by the County Department of Planning and Building. These shall include, but not be limited to, applications for the approval of land divisions pursuant to Title 21 of the San Luis Obispo County Code, applications for the approval of discretionary land use permits pursuant to Title 22 of the San Luis Obispo County Code, and applications for the approval of discretionary land use permits pursuant to Title 23 of San Luis Obispo County Code.

5.16.080 Penalty for Violation

Any violation of any of the requirements of this chapter shall be handled as a civil matter between the parties affected and shall not be a misdemeanor or infraction.

5.16.090. Resolution of Disputes.

Should any controversy arise regarding any inconvenience or discomfort occasioned by Agricultural Operations (described in Section 15.16.010 (b) above) conducted in accordance with existing laws, ordinances and regulations, then the parties may notify the County Agricultural Commissioner as set forth below in an attempt to resolve the matter:

(a) The aggrieved party may notify the Agricultural Commissioner within 30 days of the occurrence of the Agricultural Operation giving rise to the controversy.

(b) Within 15 days after receiving the complaint, the Agricultural Commissioner shall set a meeting with the affected parties and shall attempt to mediate the dispute.

(c) If the dispute cannot be successfully mediated by the Agricultural Commissioner, then both parties may agree to present the controversy to a professional mediator. The expense of such mediation shall be the responsibility of the effected parties.

5.16.100 Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or the constitutionality of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.