

ATTACHMENT B-4

**LRP2008-00010:E
Planning Commission Recommended Draft 8-30-12**

ORDINANCE NO. _____

**AN ORDINANCE AMENDING TITLE 23 OF THE SAN LUIS OBISPO
COUNTY CODE, THE COASTAL ZONE LAND USE ORDINANCE,
RELATING TO AGRICULTURAL LANDS CLUSTERS.**

The Board of Supervisors of the County of San Luis Obispo ordains as follows:

SECTION 1: Chapter 23.04 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by adding new Section 23.04.037 as follows:

23.04.037 – Agricultural Lands Cluster

It is the policy of the Board to assure the preservation of agricultural lands in San Luis Obispo County for the continuing and enhanced production of food and fiber through the use of a variety of policy and regulatory techniques. One technique, provided by this section, is the clustering of existing legal lots of record on small parcels in agricultural areas instead of development of the existing larger parcels.

- a. **Purpose.** The purpose of this section is to provide for the protection of agricultural lands through the clustering, to the maximum extent feasible, of existing legal lots of record and any associated residential development potential as an alternative to development of existing legal lots of record in their current configuration.
- b. **Applicability.**
 - (1) **Lot Line Adjustments.** Lot line adjustments where the lot lines of existing legal lots of record are proposed to be moved, adjusted, deleted, modified, etc and where a greater number of parcels than originally existed is not thereby created, shall be processed pursuant to this section, except where the adjustment as been determined to be "de minimus" pursuant to subsection b(1)(i).
 - (i) **De Minimus Lot-line Adjustment Determination.** Lot-line adjustments proposing minor changes in the location of a lot-line for purposes unrelated to future development proposals and that do not result in a significant change in the underlying lot sizes may be determined to be *de minimus* by the Planning Director. Examples include adjustments to lot-lines to reflect existing improvements such as a fence or road, or a major watercourse or to better situate existing development of the site. *De minimus* adjustments shall not result in an increase in the number of building sites, buildable lots, or density of permitted development.

- (2) **Eligibility of lands under Agricultural Preserve Contract.** Lands in the Agriculture land use category under Williamson Act contract shall not be eligible for clustering.
- c. **Discretionary Approval.** The approval of an agricultural lands cluster is discretionary. The number of parcels shall be based on ensuring agricultural capability and may be less than the number of existing legal lots of record.
- d. **Permit requirement.** Development Plan approval pursuant to Section 23.02.034, shall occur at the same time as approval of a tentative map. Development Plan approval shall include conditions specifying a phasing schedule for the filing of a final tract or parcel map, where applicable, the installation of required improvements and a date for termination of the entitlement in the event the use is not established within the specified schedule.
- e. **Appealability.** Coastal development permits approved for an agricultural lands cluster pursuant to this section shall be appealable to the Coastal Commission.
- f. **Applicable requirements.** Legal lots of record in the Agriculture land use category may be adjusted to sizes smaller than the minimum parcel sizes required by Section 23.04.034 where the proposed project is found to be consistent with all standards and requirements of this section:
- (1) **Areas Excluded:** Properties located in the San Luis Bay Coastal and South County Coastal planning areas and the Hearst Ranch in the North Coast planning area are excluded from subdivision pursuant to this subsection.
- (2) **Legal Lot Certification Required.** Parcels proposed for subdivision under this subsection shall be recognized by Certificates or Conditional Certificates of Compliance issued, where all conditions have been met, in compliance with Title 21 of the County Code. Evidence that each lot proposed for division has been legally certified shall be provided with the application submittal. Where deemed necessary by the Planning Director, applicants proposing to subdivide land pursuant to this section shall provide a complete chain of title and any other relevant information requested by the Planning Director about the lots proposed for subdivision, prior to filing the application.
- (3) **Maximum Density Determination.** The maximum number of residential parcels allowed shall be based on the number of existing legal lots, ownership patterns, and any other factors relevant to allocating entitlements for residential uses on the agricultural lands proposed for subdivision. This number shall not exceed the number of existing legal parcels or lots of record. Design criteria and environmental mitigation may reduce the number of residential cluster parcels allowed.
- (4) **Protection of Agriculture**
- (i) **Clustering Required.** Parcels proposing to cluster in compliance with this section shall be designed to assure the maximum protection of agricultural land.
- (ii) **Minimum Agricultural Area Retained.** One parcel shall be designated as an open space/agricultural parcel encompassing a minimum of 95 percent of the land proposed for the agricultural lands cluster.

- (iii) **Residential Parcel Sizes.** Proposed residential parcel sizes shall be as small as practicable to maximize preservation of agricultural land, consistent with the following table:

<u>Existing Average Parcel Size</u>	<u>Minimum Parcel Size</u>	<u>Maximum Parcel Size</u>
<u>0 – 125 acres</u>	<u>2.5 acres</u>	<u>2.5 acres</u>
<u>126-250 acres</u>	<u>2.5 acres</u>	<u>5 acres</u>

- (iv) **Urban Services Prohibited.** Residential parcels shall be served by adequate onsite water and wastewater systems that are sized and restricted to serve only the residential density authorized pursuant to this section.
- (v) **Water for Agriculture.** Cluster divisions shall assure adequate water supply for existing and potential agricultural uses, habitat resources and proposed residential development.
- (vi) **Protection of Prime Soils.** The creation of new parcels where the only building site would be on prime agricultural soils shall be prohibited.
- (vii) **Future Subdivision Prohibited.** Future subdivision of the property involved in the subdivision shall be prohibited.
- (viii) **Structural Uses.** The residential parcels and the area proposed for agriculture and/or open space preservation is not to be development with structural uses other than those which meet the following standards:
- (a) One of the allowed residential dwelling units may be located on the agricultural/open space parcel in a building site that is no larger than 10,000 square feet if it is determined that this would result in superior protection of existing and potential agricultural use of the site.
 - (b) One existing residential use may be located on the agricultural/open space parcel in a building site that is no larger than 10,000 square feet. This residential use shall be counted as one of the allowed residential dwelling units.
 - (c) Areas may be set aside for the preservation of historic buildings identified by the Land Use Element/Local Coastal Plan on the agricultural/open space parcel. These areas must be delineated on the recorded map's additional map sheet and cannot exceed an aggregated area of the site larger than 2.5 acres.
 - (d) Agricultural accessory structures or agricultural processing uses essential to the continuing agricultural production of food and fiber in the immediately surrounding area may be located on the agricultural/open space parcel, which may be approved or modified after the initial Development Plan approval through Minor Use Permit, which shall not occupy an aggregate area of the site larger than five acres.

- (e) Development envelopes for residential uses on the residential parcels shall not exceed 10,000 square feet, excluding area necessary for: (1) a driveway or site access; (2) onsite septic system (subsurface); (3) water supply/well; and (4) other incidental residential uses. Development envelopes shall be located on slopes less than 20 percent on areas outside of Environmentally Sensitive Habitat (ESHA). All development shall avoid and buffer adjacent ESHA, including wetlands, riparian areas, and other identified sensitive habitats. These envelopes shall be delineated on the recorded map's additional map sheet.
 - (ix) **Agricultural Management Plan.** Subdivisions shall include a management plan identifying the existing and potential agricultural uses of the agricultural/open space parcel including any necessary management measures to assure protection of environmentally sustainable agriculture, including protection of sensitive habitats such as wetlands and riparian areas, and minimizing erosion.
- (5) **Residential cluster parcels.** The design and development of an agricultural cluster project shall be consistent with the following standards:
- (i) **Parcel size.** A residential cluster parcel shall be 2.5 acres. Larger parcels sizes may be required to accommodate agricultural buffers with a maximum residential cluster parcel size of 5 acres.
 - (ii) **Site design and development standards.** Residential cluster parcels shall be located and clustered to provide the maximum protection of agricultural land located both on and off-site. Project design and development shall be as follows:
 - (a) **Parcel layout.** The residential cluster parcels shall be configured so that property lines are immediately adjacent and physically contiguous to each other and located within a single cluster development area. A maximum of two cluster development areas may be approved only if such a design reduces environmental impacts. Residential parcels shall be located as close as possible to existing access roads and new road or driveway development shall be avoided to the maximum extent feasible.
 - (b) **Allowed development area.** Residential development shall be limited to no more than 5 percent of the project site. Residential development components include but are not limited to residential cluster parcels, roadways and access drives, water and wastewater systems, agricultural buffers, drainage basins, and any other areas of the project site that may be removed from agricultural production to accommodate the proposed residential development. No residential component shall be located on prime agricultural soils.
 - (c) **Limited structural uses allowed.** Each residential cluster parcel shall be limited to one single family residence and residential accessory structures.

- (d) **Agricultural buffers.** Residential building sites and access drives shall be located within the boundaries of the overall ownership. Residential building sites and access drive shall also maintain sufficient separation from on-site agricultural resources and exterior property lines, in order for the Review Authority to make the finding specified in Subsection J.3. The agricultural buffers shall be for both existing and potential agricultural uses, consistent with agricultural buffer policies adopted by the Board. All agricultural buffers shall be located within the residential development area of the project.
 - (e) **Water and wastewater systems.** Each proposed residential cluster parcel shall be designed and developed to provide for individual on-site water and wastewater systems.
 - (f) **Habitat protection.** Residential development shall be located to ensure maximum protection of sensitive habitats and minimize erosion.
- (6) **Visual Resources.** Clustered lots and related infrastructure proposed in compliance with this section shall comply with applicable Coastal Plan Policies and the following:
- (i) Roads and building sites shall be located so that they are not visible from public roads and other public viewing locations unless allowing such a design would result in better protection of agricultural resources and/or ESHA.
 - (ii) Driveways and connecting roads visible from public viewing areas shall be avoided to the maximum degree feasible. Any unavoidably visible driveways and connecting roads shall be sited and designed, including screening (e.g., landscaping, etc.), in such a way as limit reduce visibility and visual impacts of said driveways/roads to the maximum degree feasible.
 - (iii) Where permitted, new development shall avoid impacts on public views from public roads, trails, and other recreational areas. Access road development shall minimize site disturbance and be the minimum necessary to provide safe access to the site.
 - (iv) New development visible to the public shall provide for protection of rural agricultural design/character for buildings.
 - (v) Any necessary road development in the public viewshed seaward of Highway One shall be mitigated through the provision of public viewing areas such as lateral accessways or other publically available viewing areas.
- (7) **Site Access.** Subdivisions shall be allowed only on land with access to an existing paved, county or state maintained road.
- (i) **Ownership and maintenance of roads.** Unless otherwise required by the Review Authority, all interior roads and utilities shall be privately-owned and maintained and the applicant shall demonstrate through conditions, covenants and restrictions or other means that the current and/or future property owners shall maintain all private roads and utilities for the life of the project.

- (a) Access intersections with off-site roads shall be minimized.
- (8) Hazards. Subdivision design shall minimize risks to life and property due to geologic, flood, and fire hazard and soil erosion.
- g. Application Requirements. In addition to any other application requirements of this Title, applications for an agricultural lands cluster pursuant to this section shall include the following:
 - (1) Purpose Statement. A statement of the purpose for the subdivision, including a description of future proposed land uses on each resulting parcel.
 - (2) Project Compliance. A written explanation of how the proposed project will satisfy all of the findings, standards and requirements of this section.
 - (3) Site Plan. A site plan illustrating existing and proposed: development envelopes, development, land uses, access roads, utilities, water wells, and any easements or other land use restrictions.
 - (4) Viability Report. A report evaluating the agricultural viability of the land and area proposed for subdivision in compliance ~~consistent~~ with the definition of agriculture viability report in Chapter 11.
 - (5) Additional Information. Any information necessary and sufficient to address the standards and required findings specified in the following subsections.
- h. Environmental review. After acceptance of an application for cluster development pursuant to Section 23.02.022, an initial study on the project shall be prepared in compliance with the California Environmental Quality Act (CEQA), Environmental Review Process Guidelines, and Mitigation Monitoring Plan for the Agricultural Cluster Subdivision Program Environmental Impact Report (EIR). The initial study shall closely examine the potential impacts on the long-term protection of the agricultural, environmental and biological resources, as well as the availability of, and potential impacts on, resources such as water, traffic, air quality, schools and other public services and facilities. Whether or not an Environmental Impact Report must be prepared will be determined by the initial study.
- i. Required Findings. Approval of a subdivision under this section shall not occur unless the Review Authority makes all findings required by Section 23.02.034c(4) of this title and also finds that:
 - (1) The proposed project will result in the continuation, enhancement and long-term preservation of agricultural resources and operations consisting of the production of food and fiber on the subject site and in the surrounding area.
 - (2) The proposed project has been designed in conformance with this section.
 - (3) The minimum parcel size and design of proposed agricultural lands cluster-ensures the maximum long term protection of agricultural resources.

- (4) Non-agricultural (i.e. residential) parcels created are as small as practicable, and designed and clustered to assure the maximum protection of agricultural land.
- (5) The proposed project will not result in any significant land use compatibility impacts affecting on-site or off-site agricultural operations, including but not limited to trespass, vandalism, and complaints about agricultural practices.
- (6) The clustered development will not result in adverse impacts on off-site agricultural operations in the site vicinity

SECTION 2: Chapter 23.11.030 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by adding a new definition as follows:

Agricultural Viability Study. A study that assesses the existing and future viability of existing and proposed parcels as agricultural units given existing conditions and proposed or potential development. The report should analyze both the site and the larger area's current and past productivity as an agricultural unit for at least the preceding five (5) years and shall evaluate the factors below as applicable. For purposes of this definition "area" means a geographic area of the County of sufficient size to provide an accurate evaluation of the economic feasibility of agricultural uses.

- a. **Mapping.** Maps, photos and aerial photography adequate to identify the parent parcel, the proposed parcels, easements, restrictions, existing development and uses, wells and/or any other water supply lines, NRCS soils classifications, slopes, roads and any other relevant physical features.
- b. **Soils**
 - (1) The identification of all soil types that are found in the area (as stated in the most recent information published by the NRCS, United States Department of Agriculture);
 - (2) Storie index and Capability Classification or equivalent ratings of all identified soil types (as published by the NRCS, United States Department of Agriculture);
 - (3) The expected animal unit month (AUM) yield for each identified soil type (NRCS);
 - (4) The expected net dollar return for crops that are currently cultivated on each soil type;
 - (5) An identification of crop types that could be potentially grown on each identified soil type, and also the expected net dollar return for such crops;
 - (6) An identification of soil types used exclusively for grazing;
 - (7) An identification of agricultural uses in the area that are not dependent upon the soil (e.g., greenhouses), and where identified, a description of their location and nature of operation(s).
- c. **Geographic.**
 - (1) Existing land uses on the site;

- (2) Potential effects of the proposed land division or development on agricultural food production, both short-term and long-term; and recommendations and conclusions of the developments effect on agricultural production;
- (3) The description of factors such as slope, temperature, adequate sunlight, length of growing season, precipitation, soil quality (depth, drainage, capability classification rating, storic index rating, texture, development, unique qualities) affecting agricultural operations in the area;
- (4) The description of management techniques that are currently used, or could be used, in order to improve soil quality for agricultural operations;
- (5) An identification of agricultural operations that use more than one parcel for production in the area, and where identified, a description of their current practice and average acreage for each individual operation;
- (6) A description of the relationship or proximity of agricultural and urban land uses.

d. Water.

- (1) The availability of water in the area;
- (2) An identification of the water source for any existing agricultural uses;
- (3) An identification of whether poor water quality impacts agricultural operations in the area;
- (4) The current cost of water, if water is acquired by means other than groundwater extraction.

e. Access.

- (1) Description of whether adequate access to agricultural operations in the area currently exists.

f. History.

- (1) An identification of the types of agricultural operations that have taken place in the area in the past and where have they occurred;
- (2) An identification of how long agricultural operations have been conducted in the area;
- (3) An identification of those parcels that have been used for agricultural operations in the area consistently in past, and where applicable an identification of such time periods.

g. Risk factors.

- (1) An identification of whether drought years affect agricultural operations in the area and, if so, what the cost of water is during these periods;

- (2) An identification of whether the costs of production and labor are unpredictable for agricultural operations in the area;
- (3) An identification of whether commodity prices are consistent or inconsistent from year to year for crops grown in the area;
- (4) An identification of whether salt water intrusion into well water supply is an issue, and if so, how it affects agricultural operations in the area;
- (5) An identification of whether there is a problem with crop quality in the area;
- (6) An identification of whether the agricultural market is volatile for crops grown in the area.

h. Economics.

- (1) The expected net dollar return for crops that are currently cultivated on each soil type;
- (2) Present annual income derived from agricultural operations and other income-generating operations on the site;
- (3) An analysis of the gross revenue from the agricultural products grown in the area for the five (5) years immediately preceding the date of the filing of the application for coastal development;
- (4) An analysis of the operational expenses excluding the cost of land, associated with the production of the agricultural products grown in the area for the five (5) years immediately preceding the date of the filing of the application for coastal development;
- (5) Cost shall be determined by, and consist of, the following variables:
 - (i) Fixed costs for any given crop are assumed to be constant, regardless of the annual yield. Fixed costs shall include only current costs and shall not speculate on potential future circumstances;
 - (ii) Land cost (i.e. rent, lease, property tax, etc.) shall not be included into the cost analysis (See Coastal Act Section 30241.5);
 - (iii) Capital costs including: (1) land improvements (i.e., fences, roads, clearing, leveling, wells and pumps, etc.); (2) equipment (i.e., trucks, tractors, buildings, special equipment (e.g. irrigation), etc.); (3) herd expenses (i.e., payment for bulls and heifers); and (4) miscellaneous expenses. Cost determination must also include depreciation and interest expenses;
 - (iv) Cultivating cost including operating costs for: (1) labor (i.e., the amount of hours necessary for planting and the rate of pay per hour including benefits); (2) materials (i.e., water, seed, feed supplements, salt, fertilizer, and pesticides); (3) machinery; (4) fuel and repair; and (5) outside consultants (i.e., veterinary and management);

- (v) Variable costs are the harvest costs and are based on the amount of yield only. Depending on the crop yield, variable costs fluctuate for any given year. In most cases, this is expressed as the cost per unit of yield (tons, 100 weight, or pounds).
- (6) Gross Revenue shall be determined by and consists of the following variables:
 - (i) Gross returns for each crop type as detailed in the annual crop report issued by the County Agriculture Commissioner;
 - (ii) Past return figures should factor in the appropriate Producer Price Index (PPI) figure in order to account to inflation over time.
- (7) Evaluative methods to incorporate the above cost and revenue figures shall include:
 - (i) Determination of the net economic impact on private and public sectors and, second, a test for agricultural viability. Net economic impact refers to change in dollar flow within the community brought about by a given change in land use. "Net economic impact" equals total public revenues minus total public costs, plus private sector income. This should be computed according to the existing land use, the proposed development, and any viable project alternatives. This may be accomplished through the following process:
 - (a) Cost/Revenue analysis that determines public costs associated with conversion of agricultural land and also revenues generated by increases in property tax within the project site. Public service marginal costs should compute the new and/or incremental costs of adding development to the public service system, which includes the cost of capital improvements necessary to accommodate such development. This should also state, and if possible quantify, those costs or externalities not easily accounted for in cost computations. One externality could include the probable change in assessed value of parcels adjacent to the development. Public service revenues are generated by increases in property tax within the project site; and
 - (b) Input/Output analysis that looks at the private sector of the areas economy in terms of its purchases and sales to other sector both locally and from outside the area. From this information, multipliers for each sector should be developed. Determination of the input figures will reveal the affect of removing the subject number of acres, for the subject crop, from agricultural production. This will reveal the effect to the private sector economy.
 - (c) Determination of the minimum acreage for a viable agricultural operation (farm family approach). In order to determine net income, production costs by crop should be computed on a per acre basis and subtracted from gross market receipts expected from that crop, as detailed in the County Agricultural Commissioner's annual crop report. The resulting figure represents the farmer's income per acre of productive land. The per acre income figure should then be divided into the County's Median Income figure to compute the number of acres required to support a farm family.

- (d) Determination of net return per acre, per crop type, for the area only. By crop type, determine gross revenue per acre for subject crop types as listed in the County Agricultural Commissioner's annual crop report. Then subtract from gross revenue figures the cost per acre associated with each crop type.

i. Prime agricultural land determination.

- (1) All agricultural land proposed for conversion to nonagricultural use shall be evaluated for a determination of whether it should be categorized as prime or nonprime agricultural land. As defined in the Coastal Act, "prime agricultural land" is "those lands defined in paragraph (1), (2), (3), or (4) of subsection (c) of Section 51201 of the Government Code" (Coastal Act Section 30113). Government Code Sections 51200 through 51296, also known as the Williamson Act, lists the following definitions of prime agricultural land under the applicable four subsections of Section 51201(c):
 - (i) All land that qualifies for rating as Class I or Class II in the Natural Resource Conservation Service land use capability classifications;
 - (ii) Land which qualifies for rating eighty (80) through 100 in the Storie Index Rating;
 - (iii) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture;
 - (iv) Land planted with fruit or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five (5) years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than Two Hundred and no/100ths (\$200.00) Dollars per acre.

SECTION 3. The Board of Supervisors hereby certifies that the FEIR has been prepared and completed in compliance with the California Environmental Quality Act, California Public Resources Code Section 21000 et seq. and the Board of Supervisors reviewed and considered the information contained in the FEIR prior to approving the amendments and that the FEIR reflects the lead agency's independent judgement and analysis. Further, the Board of Supervisors hereby adopts the recommended findings of the County Environmental Coordinator which are attached hereto and incorporated herein as though fully set forth.

SECTION 4. If any section, subsection, clause, phrase or portion 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 constitutionality of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 5. This ordinance shall become operative only upon approval by the California Coastal Commission and upon acknowledgment by the San Luis Obispo County Board of Supervisors of receipt of the Commission's resolution of certification.

SECTION 6: This ordinance shall take effect and be in full force on and after 30 days from the date of its passage hereof. Before the expiration of 15 days after the adoption of this ordinance, it shall be published once in a newspaper of general circulation published in the County of San Luis Obispo, State of California, together with the names of the members of the Board of Supervisors voting for and against the ordinance.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the _____ day of _____, 20____, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

Chairman of the Board of Supervisors,
County of San Luis Obispo,
State of California

ATTEST:

County Clerk and Ex-Officio Clerk
of the Board of Supervisors
County of San Luis Obispo, State of California

[SEAL]

ORDINANCE CODE PROVISIONS APPROVED
AS TO FORM AND CODIFICATION:

RITA L. NEAL
County Counsel

By: _____
Deputy County Counsel

Dated: _____