May 13, 2016

Planning Commission
San Luis Obispo County
Department of Planning and Building
976 Los Osos Street, Room 200
San Luis Obispo, CA 93408-2040

**Re: Phillips 66 Rail Spur Extension Project – Environmentally Sensitive Habitat Areas ("ESHA")**

Dear Commissioners,

The following comments are submitted by the Environmental Defense Center ("EDC") on behalf of Sierra Club, Stand, Center for Biological Diversity, San Luis Obispo Surfrider Foundation and EDC, urging the San Luis Obispo County Planning Commission ("Commission") to deny the application for the Phillips 66 Rail Spur Extension Project ("Project"). This letter supplements our earlier comment letters and focuses on the fact that the Project cannot be approved because it violates Coastal Act and San Luis Obispo County Local Coastal Program ("LCP") policies protecting ESHA. Contrary to the presentation on April 15, the Commission does **not** have the discretion to find that ESHA does not exist on-site, or that ESHA exists but is not protected because its presence was not determined when Phillips' application was filed as complete. In fact, the presence of Unmapped ESHA **was** identified before the application was deemed complete and therefore the Project must be denied. Moreover, the "best available information" at the time the application was accepted clearly confirmed the presence of protected ESHA at the Project site.

As noted in the application materials, the County's Initial Study and subsequent environmental review for the Project, the proposed site is unquestionably located in a very sensitive ecological area. Both County and Coastal Commission staff have identified at least twenty acres of sensitive habitat and native vegetation that would be disturbed by the Project, in violation of the Coastal Act and San Luis Obispo County LCP. Accordingly, the County staff's recommendation for denial of the Project must be upheld.

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This letter provides background regarding the California Coastal Act and the requirements imposed through that Act on the County's interpretation and implementation of its LCP. This letter also provides a response to the presentation to the Commission on April 15, at which time the Commission was informed of four possible determinations with respect to ESHA: (1) the Project is not located in Unmapped ESHA; (2) the Project is located in Unmapped ESHA and the County must therefore deny the Project; (3) the Project is located in Unmapped ESHA but an official determination was not made prior to application acceptance (and so the ESHA is not protected); or (4) if the Commission chooses to deny the Project on other grounds, no determination of Unmapped ESHA needs to be made. As explained herein, the **only** option consistent with the Coastal Act and County's LCP is Option 2: the Project is located in Unmapped ESHA and the County must therefore deny the Project.

## I. The Coastal Act Provides Comprehensive and Strong Protection for ESHA.

In 1976 the Legislature enacted the Coastal Act to govern land use planning for the California coast. Pub. Res. Code Sections 30000 *et seq*; *see Yost v. Thomas*, 36 Cal. 3d 561, 565 (1984). Under the Coastal Act the protection of the state's "natural and scenic resources is a paramount concern" and these resources must be protected to prevent further deterioration or destruction. Pub. Res. Code Sections 30001(b), (c). Accordingly, the Coastal Act requires analysis of the impacts of each proposed development or project on coastal environments. *Bolsa Chica Land Trust v. Superior Court*, 71 Cal. App. 4th 493, 506 (1999). Although all environmental impacts are relevant when reviewing a project, the Coastal Act affords enhanced protections to ESHA. *Id*. In fact, as noted during the Coastal Commission's review of the San Luis Obispo County's LCP, "[o]ne of the primary objectives of the California Coastal Act is to preserve, protect, and enhance environmentally sensitive habitat areas."[1]

ESHA is broadly identified 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." Pub. Res. Code Section 30107.5. These areas are "protected against any significant disruption . . . and only uses dependent on those resources shall be allowed within those areas." Pub. Res. Code Section 30240(a); see also *Sierra Club v. California Coastal Com.*, 12 Cal. App. 4th 602, 611 (1993). Additionally, developments adjacent to ESHA are subject to heightened regulation. Pub. Res. Code Section 30240(b).

ESHA must be protected where it exists; it cannot be recreated in another location to allow development. Instead, the Coastal Act's "obvious goal" is to protect ESHA in situ, and the terms of the statute "do not provide that protection by treating those values as intangibles which can be moved from place to place to suit the needs of the development." *Bolsa Chica*, 71 Cal. App. 4th at 507.

Moreover, the Coastal Act does not allow for the restrictions to be ignored or altered based on the status of the ESHA. Threatened or deteriorating ESHA receives no less protection

[1] California Coastal Commission, *Preliminary Report on the Periodic Review of the San Luis Obispo County LCP*, February 2, 2001, p. 101. (Excerpt attached hereto as Exhibit A.)

due to its degraded state. *Id.* at 507–08; *Kirkorowicz v. California Coastal Com.*, 83 Cal. App. 4th 980, 994–95 (2000). Overall, the Coastal Act reflects the idea that "the public has a vital interest in the protection and preservation of the California coast." *Feduniak v. California Coastal Comm'n*, 148 Cal. App. 4th 1346, 1377 (2007).

## II. The San Luis Obispo County LCP Must Adhere to the Requirements of the Coastal Act.

The Coastal Act's strict level of coastal habitat protection must be reflected in the LCPs created by each coastal community as well. Pub. Res. Code Section 30500(a) ("Each local government lying, in whole or in part, within the coastal zone shall prepare a local coastal program for that portion of the coastal zone within its jurisdiction."). These LCPs must be submitted to the Coastal Commission for approval. Pub. Res. Code Section 30512(a). The Commission may certify the LCP "only if it meets the requirements of and is in conformity with the policies of the Coastal Act." Pub. Res Code Section 30512(c); *Charles A. Pratt Const. Co. v. California Coastal Comm'n*, 162 Cal. App. 4th 1068, 1075 (2008).

In 2007, the Coastal Commission provided guidance to local agencies regarding the need to update their LCPs to address significant changes to the state's coast.[2] Section 4 of the Guide addressed Environmentally Sensitive Habitats and Other Natural Resources. According to the Guide, each LCP must contain, among other things,

- A definition of ESHA that is consistent with the Coastal Act § 30107.5.
  …
- An updated map and description of existing, known habitats, with strengthened requirements for conducting site specific biological evaluations and field observations to identify ESHA and other sensitive resources at the time of proposed development or plan amendments.
- Clear policies stating that the identification of ESHA, wetlands, etc. will be determined in part through an evaluation of existing known resources at the time of proposed development or plan amendment.
- Review of areas adjacent to environmentally sensitive habitat areas and parks and recreation areas to ensure land use designations and development standards that are compatible with the protection of the resources.
  …[3]

The Guide cited to the *Bolsa Chica* decision and emphasized "that the Coastal Act requires that ESHA be avoided and buffered from development impacts and that providing mitigation is not sufficient justification for allowing development with avoidable impacts to

[2] California Coastal Commission, *Updating the LCP – A Place to Start*, March 30, 2007. (Excerpt attached hereto as Exhibit B.) The Guide was updated in 2013; see California Coastal Commission, *Local Coastal Program (LCP) Update Guide*, July 31, 2013.
[3] *Id.* at Section 4, page 1.

ESHA. LCPs should clearly state that only 'resource dependent' development, such as restoration or nature study, is allowed in ESHA, consistent with Coastal Act § 30240."[4]

The Guide noted that many LCPs contained outdated maps that no longer "adequately illustrate the potential presence of ESHAs given new scientific information and changes in the natural environment."[5] While maps can be a useful tool, "LCPs must be updated to ensure that ESHA and wetland determinations are based on site specific biological surveys at the time of proposed development or plan amendment, and that any area that actually meets the definitions of either must be given all the protection provided for in the Coastal Act, *regardless of its prior identification on a resource map*."[6] The Guide directed local agencies to "[b]e sure your LCP policies and filing requirements ensure that a thorough site-specific assessment of habitat and resources is undertaken as part of the development review process in order to identify any such resources."[7]

To ensure proper identification of ESHA, the Guide provides a litany of resources that are available and should be used to help identify ESHA, including: species that are listed under the California or Federal Endangered Species Act; the California Department of Fish and Game's *List of California Terrestrial Natural Communities Recognized by the California Natural Diversity Database*; the California Native Plant Society's "1b" or "2" list of species; and other references.[8]

## III. The County's LCP was Amended in 2008 to Ensure Protection of ESHA.

The Coastal Commission's LCP Update Guide was consistent with direction given during the Coastal Commission's Periodic Review of the County's LCP.[9] These regular reviews assure that every LCP is implemented in conformance with the policies of the Coastal Act.[10] The Coastal Commission reviews an LCP and if the plan deviates from the Act's requirements, corrective actions will be suggested and the LCP must be amended.[11]

The topic of ESHA protection was a significant focus of the Periodic Review of San Luis Obispo County's LCP, in large part because the Coastal Commission determined that the County was not adequately identifying ESHA as part of its development review process. Prior to updating the LCP, the County relied on a faulty definition of ESHA that was constrained by incomplete and outdated maps to identify and protect sensitive habitats.[12] To address these concerns, the Commission directed the County to correct its definition of ESHA to ensure that

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[4] *Id.*, Section 4, p. 2.
[5] *Id.*, Section 4, p. 3.
[6] *Id., emphasis added.*
[7] *Id.*
[8] *Id.*
[9] Periodic Review is required by Pub. Res. Code § 30519.5.
[10] California Coastal Commission, *Adopted Report: San Luis Obispo County LCP Periodic Review*, July 12, 2001 (Revised August 24, 2001), p. 1.
[11] *Id.*
[12] *Id.* at p. EX. 14.

protections would not be limited solely to areas mapped as ESHA in the LCP.[13] The history of the Periodic Review and LCP Amendment process, explained herein, confirms that the County must apply its LCP in accordance with the Coastal Act and must protect ESHA whether or not the area is mapped in the LCP.

### A. February 2, 2001 Coastal Commission Preliminary Report

On February 2, 2001, the Coastal Commission issued a "Preliminary Report on the Periodic Review of the San Luis Obispo County LCP."[14] One of the main findings of the Periodic Review was that the County was failing to comply with Coastal Act protections for ESHA. In fact, an entire section of the Preliminary Report addressed the determination that "Policy implementation refinements and new and updated LCP standards are needed to assure adequate identification and protection of sensitive habitats."[15] The Report noted that "[i]ncomplete maps of sensitive habitats have been relied upon to identify and protect ESHA;" as such, the County needed to expand its definition of ESHA "so it conforms to the Coastal Act and is not limited to areas mapped by the LCP."[16] Specifically, the Coastal Commission directed the County to supplement its use of LCP ESHA maps "with site specific evaluations and other available information to determine the presence of ESHA" when conducting project reviews.[17]

In order to ensure implementation of the LCP that conforms to the requirements of the Coastal Act, the Coastal Commission noted that "protection standards should be applied to any area that supports sensitive habitat resources, whether or not it is mapped as such by the LCP."[18] The Coastal Commission noted that while the maps may provide "a useful tool for identifying particular areas known to support sensitive habitats," such maps "need to be supplemented with additional information and analysis to ensure that the protection of ESHA is not overlooked."[19]

In closing, the Preliminary Report recommended several revisions to the LCP to ensure adequate protection of ESHA, including: revising the definition of ESHA to clarify that ESHA is

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[13] *Id.* at p. EX. 15.
[14] *Preliminary Report*.
[15] *Id.*, p. EX-14.
[16] *Id.*, pp. EX-14, 15; see also p. 103: "[T]he LCP's Combining Designations do not map *all* of the habitats that constitute ESHA under the Coastal Act and CP. 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." (Emphasis in original.); p. 106: "where the LCP maps are outdated or inaccurate, the presence of 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."; p. 108: "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."; p. 113: "it is essential to obtain the site-specific information that identifies if ESHA exists on or adjacent to a proposed development site."; p. 114: the County must determine whether ESHA exists by "[o]btaining site specific information regarding the potential presence of biological resources on or near proposed development as part of coastal development permit applications"; p. 116: "biological evaluations to determine the potential presence of ESHA are needed outside of the mapped areas."
[17] *Id.*, p. EX-15.
[18] *Id.*, p. 111.
[19] *Id.*, p. 112.

not limited to mapped areas; requiring that the County determine the presence of ESHA "based on the best available information, including current field observations, biological reports, the National Diversity Database, and US Fish and Wildlife Critical Habitat Designations and Recovery Programs;" ensuring that reliance on maps is supplemented with field studies to determine the actual presence and extent of ESHA; requiring a habitat and biological inventory prepared by a qualified biologist as part of development permit applications; requiring a full biological report where the inventory identifies the potential presence of ESHA; and requiring submission of such biological reports to the California Department of Fish and Game, U.S. Fish and Wildlife Service, and Coastal Commission before applications are deemed complete."[20] Preliminary Recommendation 4.2 stated that although maps provide a benefit, the actual presence of ESHA should be determined through field observations.[21]

The main thrust behind the discussion of Unmapped ESHA clearly was aimed at the protection of otherwise unmapped sensitive habitats. Because maps were out of date, and because new species become threatened over time, maps could not properly protect all sensitive habitats. Inspecting proposed development sites on a case-by-case basis on the ground is required to provide enhanced protections, as required by the Coastal Act. Without ascertaining where sensitive habitats are located based on on-the-ground analysis, the County was failing to protect "delicate habitats" as intended by the Coastal Act.

### B. June 29, 2001 Coastal Commission Staff Recommendation: Periodic Review of the Implementation of San Luis Obispo County's Local Coastal Program

On June 29, 2001, following several workshops and meetings, the Coastal Commission Staff finalized its recommendations from the Periodic Review of San Luis Obispo County's LCP. The recommendations reiterated the concerns expressed in the February 2001 Preliminary Report, and addressed responses from the County and other interested parties. In particular, with respect to identification of ESHA, the Coastal Commission accepted the County's proposal to require a site inspection by a Field Review Team as part of the application process, but recommended certain changes to ensure adequate identification of ESHA.

In addition to requiring a revised definition of ESHA, the Coastal Commission Staff recommended that the County should determine the presence of ESHA based on the best available information, including field observations, biological reports, the National Diversity Database, and U.S. Fish and Wildlife Critical Habitat Designations and Recovery Program. Where the best available information indicates that an area may qualify as ESHA but is not included on the County's LCP maps, a Field Review Team comprised of biologists would be required to conduct a Site Specific Constraints Analysis.[22]

The Coastal Commission noted that "the actual presence and extent of ESHA must be determined in the field," and field review must include biologists from wildlife agencies and

[20] *Id.* at pp. 122-124; see also pp. 112, 114.
[21] *Id.* at p. 123.
[22] California Coastal Commission, *Staff Recommendation: Periodic Review of the Implementation of San Luis Obispo County's Local Coastal Program*, June 29, 2001, p. 131. (Excerpt attached hereto as Exhibit C.)

organizations to evaluate sites where the County's maps "do not effectively address the potential presence of ESHA."[23] Detailed Biological Reports were to be prepared and submitted to the California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, National Marine Fisheries Service (where applicable) and Coastal Commission "*before applications for development in or adjacent to ESHA are filed as complete.*"[24]

### C. July 12, 2001 Coastal Commission Adopted Report (Revised August 24, 2001)

On July 12, 2001 the Coastal Commission held a hearing on the Periodic Review and approved an Adopted Report that included the analysis and recommendations set forth in the February Staff Report.[25] Specifically, the Coastal Commission directed the County to update its LCP with the following changes:

- Revise definitions of SRA and ESHA contained in Section 23.11.030 so that they conform to the Coastal Act definition. Clarify that ESHA, and the application of ESHA protection standards, is not limited to the areas mapped as Combining Designations. As proposed on page 7-10 of the Estero Update, use the definition of "habitat for rare and endangered species" provided by the CEQA guidelines as an additional tool to define ESHA.

- Determine the presence of ESHA based on the best available information, including current field observation, biological reports, the National Diversity Database, and US Fish and Wildlife Critical Habitat Designations and Recovery Programs. Where the available information indicates that an area may contain ESHA, but that area is not mapped as ESHA by the LCP, a Field Review Team comprised of County staff, project biologist(s), and representatives from involved wildlife agencies and organizations, shall conduct a Site Specific Constraints Analysis.

…

- Recognize maps as a tool for identifying potential locations of ESHA, but that the actual presence and extent of ESHA must be determined in the field. Establish Field Review Teams, comprised of County staff, the project biologist(s) and representatives from involved wildlife agencies and organizations, to evaluate sites where the Combing Designation Maps do not effectively address the potential presence of ESHA.

…

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

[23] *Id.*, p. 132.
[24] *Id.*, p. 133, *emphasis added*.
[25] *Adopted Report*, p. 131. (Excerpt attached hereto as Exhibit D.)

> the Site Specific Constraints Analysis identifies the presence, or potential presence, of any sensitive habitat type, natural community, and/or particular plant or animal species that meets the revised definition of ESHA, a biological report should be required.
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> …
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> - 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 [sic] 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.
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> - Biological reports and their accompanying ESHA delineations should be submitted for the review and comment of the California Department of Fish and Game, the US Fish and Wildlife Service, and to the National Marine Fisheries Service (as applicable), and as well as to the California Coastal Commission, before applications for development in or adjacent to ESHA are filed as complete. The incorporation of such a requirement into the LCP (e.g., within Section 23.07.170 of the CZLUO) should be accompanied by a specific time frame for such reviews (e.g., 14 days) to ensure that they would not result in undue delays in the development review process.[26]

The Coastal Commission's clear direction to the County was that the agency's practice of relying on maps in the LCP to identify ESHA did not comply with the Coastal Act's protections for such sensitive areas. Instead, the County was directed to require an in-depth site-specific analysis, involving biologists and agencies with proper expertise, to determine whether ESHA exists on or near a site proposed for development. The reference to the timing of the determination, tied to filing an application as complete, was clear that the full analysis and biological report had to be completed before such time. In other words, the "deadline" of application completeness was not intended to cut off an evaluation of a site's qualification as ESHA and allow an applicant to circumvent the strict protections afforded ESHA in the Coastal Act; rather, the intention was to make sure that applications were not filed as complete *until such analysis and determination was complete*.

[26] *Id.*, pp. 136-139.

### D. June 27, 2008 Staff Report regarding San Luis Obispo County Local Coastal Program Major Amendment No. 2-04 (Part 3) Title 23 Coastal Zone Land Use Ordinance Amendment ("CZLUO").

Following the Coastal Commission's Periodic Review, the County initiated amendments to its LCP, including updates to the ESHA provisions in the CZLUO. These amendments included the addition of "unmapped ESHA" in the definition of ESHA to ensure site-specific identification of sensitive habitats, even if they were not shown on LCP maps. The amendments also required that development applications include biological evaluations during appropriate times and seasons. Biological reports were to be prepared and incorporate recommendations of the California Department of Fish and Game, U.S. Fish and Wildlife Service, Marine Mammals Commission and National Marine Fisheries Service, as appropriate.

In July 2008, the Commission voted to certify the LCP Amendment, with some clarifications and changes. One of the changes required that the biological report prepared in support of a development application must incorporate the recommendations of the Coastal Commission, as well as the other resource agencies.[27]

Another change addressed the County's proposal to include "unmapped ESHA" in the CZLUO 23.11.030 definition of ESHA. The Coastal Commission supported this addition, noting that "the definition of ESHA must allow for the identification of ESHA based on current on-the-ground biological review," and that a definition that relies on maps alone "does not allow for the identification of ESHA based on updated field work, new knowledge, and other changing circumstances."[28] The Coastal Commission noted that the County's proposed definition provided "sufficient flexibility for identifying ESHA on the ground based on expert biological review.[29] Accordingly, the Coastal Commission found that the proposed addition of "unmapped ESHA" to the County's definition of ESHA would "strengthen the protection of ESHA in San Luis Obispo County."[30]

In sum, in certifying the County's LCP Amendment, the Coastal Commission required two important modifications:

- A clarification that ESHA determinations are not limited to areas mapped in the LCP, and include "unmapped ESHA;" and

- Biological reports and consultations are required prior to filing a complete application for development to ensure adequate identification of ESHA. This process must include consultation with the Coastal Commission.

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[27] California Coastal Commission, *San Luis Obispo County Local Program Major Amendment No 2-04 (Part 3),* June 27, 2008, p. 4. (Excerpt attached hereto as Exhibit E.)
[28] *Id.* at p. 16.
[29] *Id.* at p. 17.
[30] *Id*.

## IV. The Project would displace Unmapped ESHA and must be Denied.

Whether or not ESHA is identified on the County's LCP, it is protected under the Coastal Act and LCP. As explained by County planning staff and evidenced by County documents, ESHA was identified on-site before Phillips' application was filed as complete. Even if that were not the case, the best available information at the time provided indisputable evidence that the site contained ESHA that must be protected under the Coastal Act. Under either approach, the Project must be denied due to the significant disruption of ESHA.

### A. Information Submitted by the Applicant Demonstrated the Existence of ESHA at the Project Site.

#### 1. Arcadis' *Wildlife and Habitat Assessment* report prepared for applicant, dated June 17, 2013

On behalf of Phillips 66, Arcadis prepared the *Wildlife and Habitat Assessment* report dated June 17, 2013, and submitted this report to the County in June 2013, prior to the application being accepted by the County on July 12, 2013. The report states, "...the coast horned lizard (*Phrynosoma coronatum*) and American badger (*Taxidea taxus*), are more likely encountered on the Site and therefore are discussed in more detail below."[31] The report then describes the site as providing "foraging opportunities" for a number of additional special-status species, including northern harrier, red-tailed hawk, red-shouldered hawk, Cooper's hawk, great horned owl, barn owl, western screech owl, white-tailed kite, and loggerhead shrike.[32] White-tailed kites are a Fully Protected Species under the California Fish and Game Code. "The open space on the SMR property is considered an important foraging location for both sedentary and migratory raptor species in the area."[33] Raptors are protected under the CDFW Code (Section 3503.5) and the Migratory Bird Treaty Act.[34] The documented presence of these protected species on the Project site prior to application acceptance qualified it as Unmapped ESHA under CZLUO Sections 23.11.030(a), (b) and (c).

Arcadis' report also lists "several sensitive wildlife species" which "have been reported from the Oceano and or neighboring quadrangles" and which have been "observed on the Site" by Arcadis' County-approved biologists, including:

- Western burrowing owl
- Loggerhead shrike
- Northern harrier
- Ferruginous hawk
- Cooper's hawk[35]

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[31] Arcadis, *Wildlife and Habitat Assessment* (June 17, 2013), p. 6.
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*.

The Arcadis report also notes the presence of Bell's Sage Sparrow, a California Species of Concern.[36] The Arcadis report assumes the presence of coast horned lizard and legless lizard, which are special-status species.[37]

In sum, this report indicated that ESHA was present prior to the application being accepted. Under the County definition of Unmapped ESHA, the presence of any one rare species or vegetation alliance triggers ESHA designation: i.e., an area "where plant or animal life or their habitats are either rare or especially valuable," and "[o]ther areas commonly known as habitat for species determined to be threatened, endangered, or otherwise needing protection."[38]

2. Arcadis' *Botanical Assessment* report prepared for applicant dated June 13, 2013

Arcadis' County-approved biologists Mitch Siemens, Mary Carroll and Greg McGowan also prepared the June 13, 2013, *Botanical Assessment* for Phillips 66. This assessment was available to the County as part of the application packet prior to application acceptance, and supported designation of the site as an Unmapped ESHA based on the observed presence of the Blochman's leafy daisy (CNMPS List 1B.2) "within the Proposed Disturbance Area"[39] onsite. The Botanical Assessment refers to this species as a "sensitive plant species."[40] The known presence of one of more rare plant species predating application acceptance qualifies the area as Unmapped ESHA pursuant to the CZLUO.

**B. Best Available Information Supported a Determination of ESHA before the Application was Filed as Complete.**

CZLUO Section 23.11.030 defines Unmapped ESHA as:

> 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 easily be disturbed or degraded by human activities and development. They include, but are not limited to, known wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats that may not be mapped as Land Use Element combining designations. *The existence of Unmapped ESHA is determined by the County at or before the time of application acceptance and shall be based on the best available information*. Unmapped ESHA includes but is not limited to:
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> a. Areas containing features or natural resources when identified by the County or County approved expert as having equivalent characteristics and natural function as mapped other environmental sensitive habitat areas;

[36] *Id.* at pp. 8 - 9.
[37] *Id.* at p. 6.
[38] CZLUO Section 23.11.030: Definition of "Unmapped ESHA."
[39] Arcadis, *Botanical Assessment* (June 13, 2013), at p. 9.
[40] *Id.* at p. 1.

b. Areas previously known to the County from environmental experts, documents or recognized studies as containing ESHA resources;

c. Other areas commonly known as habitat for species determined to be threatened, endangered, or otherwise needing protection.[41]

CZLUO Section 23.07.170 (Environmentally Sensitive Habitats) sets forth the following requirements to ensure that the County's determination is based on best available information:

a. **Application content**. A land use permit application for a project on a site located within or adjacent to an Environmentally Sensitive Habitat shall also include a report by a biologist approved by the Environmental Coordinator that:

(1) Evaluates the impact the development may have on the habitat, and whether the development will be consistent with the biological continuance of the habitat. For those environmentally sensitive habitat areas which are only seasonally occupied, or where the presence of the species can best be determined during a certain season (e.g., an anadromous fish species or annual wildflower species), the field investigation(s) must be conducted during the appropriate time to maximize detection of the subject species. The report shall identify possible impacts, their significance, measures to avoid possible impacts, mitigation measures required to reduce impacts to less than significant levels when impacts cannot be avoided, measures for the restoration of damaged habitats and long-term protection of the habitats, and a program for monitoring and evaluating the effectiveness of such measures.

(2) Is complete, current, and meets established standards for report content and assessment methodology. Report standards shall be consistent with CEQA guidelines, and incorporate the recommendations of the California Coastal Commission, California Department of Fish and Game, U.S. Fish and Wildlife Service, Marine Mammals Commission, and National Marine Fisheries Service, as appropriate.

(3) Evaluates development proposed adjacent to environmentally sensitive habitats to identify significant negative impacts from noise, sediment and other potential disturbances that may become evident during project review.

(4) Identifies the biological constraints that need to be addressed in designing development that would first avoid, then minimize impacts to ESHA. These identified constrains will be used by the County to evaluate, and require implementation of project design alternatives that result in impacts to ESHA being avoided and unavoidable impacts minimized. This shall also include

[41] CZLUO Section 23.11.030, *emphasis added*.

> assessment of impacts that may result from the application of fire safety requirements.
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> (5) Verifies that applicable setbacks from the habitat area required by Sections 23.07.170 to 23.07.178 are adequate to protect the habitat or recommends greater, more appropriate setbacks.
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> (6) Critically evaluate "after-the-fact" permit applications where un-permitted development 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 consisting of replacing the area of disturbance with like habitat at a minimum of 3:1 ratio shall be an additional requirement to offset the temporary impacts of the violation and address the potential for restoration efforts to fail.

Several of the requirements of CZLUO Section 23.07.170(a) were omitted for the Phillips 66 application. As noted above, the applicant hired Arcadis to prepare the Wildlife and Habitat Assessment report (June 17, 2013) and the Botanical Assessment report (June 13, 2016). The Arcadis reports, however, do not address "whether the development will be consistent with the biological continuance of the habitat" as required pursuant by CZLUO Section 23.07.170(a)(1). The reports do not address the potential to "first avoid" the habitat impacts as required pursuant to CZLUO Section 23.07.170(a)(4). The reports identify "Resource Protection Measures" but do not include buffers for the sensitive habitats, and hence the reports fail to identify the required setbacks pursuant to CZLUO Sections 23.07.170(a)(5) (citing to Section 23.05.034(c) and the requirement for 100-foot ESHA buffers) and 23.07.178. Furthermore, the reports were apparently not submitted to the California Coastal Commission, California Department of Fish and Game or U.S. Fish and Wildlife Service, and do not "incorporate the recommendations of the California Coastal Commission, California Department of Fish and Game, U.S. Fish and Wildlife Service, Marine Mammals Commission, and National Marine Fisheries Service, as appropriate" as required by CZLUO Section 23.07.170(a)(2).

In addition, there was other "best available information" at the time the application was filed that showed the existence of ESHA at the Project site. The following examples indicate the existence of best available information at the time of application acceptance that showed ESHA was present.

1. <u>The Manual of California Vegetation</u>

The *Manual of California Vegetation* ("MCV") and its membership rules constitute the State's primary authority for classifying vegetation types, including rare vegetation alliances. The MCV existed prior to the time the County accepted Phillips' application on July 12, 2013. Considering the MCV along with the Arcadis reports, the County's Initial Study properly found that the development footprint may contain Unmapped ESHA. As noted by biologist Scott Cashen in his comments on the Project's RDEIR, the Silver Dune Lupine-Dune Heather vegetation type and the Dune Heather vegetation type are treated as one vegetation alliance

pursuant to the MCV membership rules.[42] Cashen concludes, based on the MCV, that "the Dune Heather alliance and its associations should be treated under the Silver Dune Lupine-Dune (Mock) Heather Scrub alliance." "This alliance is considered a sensitive natural community."[43] This information from the MCV constitutes best available information that was available before the application was filed as complete.

2. CNPS Inventory of Rare and Endangered Plants

In addition, the California Native Plant Society's ("CNPS") *Inventory of Rare and Endangered Plants*[44] was available online prior to July 2013.[45] According to the Inventory, "A total of 77 rare plant species are known to occur in the eight topographic quadrangles covering the project site and surrounding areas."[46] Versions of the online inventory go back to 2001. Prior to 2001, CNPS issued a written inventory which included the Nipomo Mesa Lupine as far back as 1974. Based on the Inventory, the areas within and near the Project site were "commonly known as habitat for species determined to be threatened, endangered, or otherwise needing protection"[47] and therefore qualified as Unmapped ESHA pursuant to the CZLUO. This supports the determination that the Project site contains Unmapped ESHA.

3. Preliminary Descriptions of Terrestrial Natural Communities of California. California Department of Fish and Game. Holland, R. (1986)

Furthermore, available information dating back to 1986 also supported designation of the Project area as "Unmapped ESHA" prior to the time the application was filed as complete in July 2013. According to biologist Scott Cashen:

> It should be noted that all dune communities within the BSA would be considered Central Dune Scrub by Holland regardless of their alliance or association. Central Dune Scrub has a Conservation Status Rank of S2. A rank of S2 indicates a vegetation type that is "imperiled" because of rarity due to a very restricted range, very few populations, steep declines, or other factors making it very vulnerable to extirpation from jurisdiction. Therefore, all dune vegetation within the BSA is considered sensitive and impacts should be considered significant.[48]

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[42] Cashen, Scott, M.S. *Comment on the Revised Draft Environmental Impact Report Prepared for the Phillips 66 Company Rail Spur Extension and Crude Unloading Project* at p. 5. (November 19, 2014)
[43] *Id.*., citing California Department of Fish and Game. *List of Vegetation Alliances and Associations*. Vegetation Classification and Mapping Program, California Department of Fish and Game. September 2010.
[44] CNPS, Rare Plant Program. 2016. Inventory of Rare and Endangered Plants (online edition, v8-02). California Native Plant Society, Sacramento, CA. Website http://www.rareplants.cnps.org [accessed 25 March 2016].
[45] Email from Aaron E. Sims, Rare Plant Botanist, California Native Plant Society to Brian Trautwein, EDC. March 28, 2016. (Attached hereto as Exhibit F.)
[46] Cashen at p. 3.
[47] CZLUO Section 23.030.11: Definition of Unmapped ESHA.
[48] Cashen at p. 6, citing Holland, R. *Preliminary Descriptions of Terrestrial Natural Communities of California*. California Department of Fish and Game, The Resources Agency. 1986; NatureServe. *Interpreting NatureServe Conservation Status Ranks*. NatureServe Explorer [Online] and NatureServe Central Databases, Arlington, VA. 2013. Available: http:www.natureserve.org.explorer/.

The California Department of Fish and Game's 1986 *Preliminary Descriptions of Terrestrial Natural Communities of California* was also available and was utilized extensively throughout the state to classify vegetation communities prior to application acceptance on July 12, 2013. This additional "best available information" supports the determination of "Unmapped ESHA" as defined in the CZLUO.

4. Hunt, L.E. Origin, maintenance, and land use of aeolian sand dunes of the Santa Maria Basin, California. Prepared for The Nature Conservancy, San Luis Obispo, CA (1993)

A 1993 report by Lawrence Hunt, a qualified biologist with Lawrence Hunt and Associates, mapped the Project site as part of the "Nipomo Mesa Dune Sheet."[49] The County's Coastal Plan, which was approved by the County and certified by the Coastal Commission in 1988, identifies the Nipomo Dunes as a "Sensitive Habitat Area."[50] The Hunt 1993 report also finds that the dunes are unique landforms and are vulnerable to and threatened by various activities including changes in sediment budgets and by exotic invasive plants.[51] Vulnerability to degradation by human activities and development is one of the factors defining ESHA, including Unmapped ESHA.[52] This report constitutes best available information that was available prior to the filing of the application and that supports a determination that the Project site includes Unmapped ESHA.

## C. The County's Initial Study Identified ESHA at the Project Site.

The County's Initial Study, which was prepared before the application was filed as complete, identified many sensitive habitats that qualified as ESHA.[53] According to the Initial Study, the Project would result in potentially significant impacts to Biological Resources due to the fact that the Project would result in a loss of unique or special status species or their habitats; reduce the extent, diversity or quality of native or other important vegetation; interfere with the movement of resident or migratory fish or wildlife species, or factors, which could hinder the normal activities of wildlife; and conflict with any regional plans or policies to protect sensitive species, or regulations of the California Department of Fish & Wildlife or U.S. Fish & Wildlife Service.[54]

The Initial Study listed several sensitive plant and animal species and their habitats. Information was obtained from the Natural Diversity Database as well as surveys at the Project site.[55] Included in this analysis was a list of sensitive species "observed within the proposed area

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[49] Hunt, L.E. *Origin, maintenance, and land use of aeolian sand dunes of the Santa Maria Basin, California*. Prepared for The Nature Conservancy, San Luis Obispo, CA. Figure 1 (1993) (excerpt attached hereto as Exhibit G); *See also* Orme, A.R. *Late Quaternary Coastal Dunes of the Santa Maria Area; A Synopsis* (1991); and Orme, A.R. and Vatche P. Tchakerian. *Quaternary Dunes of the Pacific Coast of the Californias* (1986).
[50] Coastal Plan Figure 6-1.
[51] Hunt at pp. 46 – 49.
[52] CZLUO § 23.11.030; see also California Coastal Act § 30107.5.
[53] *Initial Study Summary – Environmental Checklist*, July 8, 2013.
[54] Initial Study at pp. 1, 9.
[55] *Id.* at p. 10.

of disturbance for the rail spur extension."[56] The Study concluded that:

> Due to the area's special environmental qualities, areas west of the railroad have been designated as within the County's SRA combining designation and are also considered ESHA due to the potential value of the Terrestrial Habitat (TH) at that location. Additional areas within the project site that contain habitat and/or qualities consistent with those found in an SRA, TH, or ESHA designation would also be considered Environmentally Sensitive Habitat Area. Special requirements will apply to these areas relating to the protection of sensitive biological resources, which are intended to preserve and protect rare and endangered plants and wildlife and the habitat in which they reside.[57]

The Initial Study further found that the Project would

> result in the removal of a large amount of on-site vegetation, including areas that may qualify as ESHA. Appropriate habitat characteristics for certain sensitive wildlife and plant species exist at the project site and are likely to support candidate or listed special status species. Construction and development activities associated with the rail extension have the potential to disrupt these sensitive species and/or damage or destroy suitable habitat areas.[58]

Therefore, prior to the acceptance of the application as complete, the County identified not only the presence of ESHA, but also the potential for adverse impacts to such sensitive habitat areas. Combined with the information presented by the applicant and the other information available at the time of the application, the Initial Study clearly identified the presence of ESHA at the Project site. The Coastal Act protects such areas from disturbance.

**Conclusion**

During the Planning Commission's deliberations thus far, there has been much discussion about whether Unmapped ESHA was identified before the Project application was filed as complete. As discussed above, the answer is clearly "yes." The application included information regarding the biological resources on-site, including areas that met the definition of ESHA. Other "best available information" also existed and should have been included in the application review process. Finally, the County's Initial Study confirmed the presence of ESHA and the potential impacts that would occur to ESHA if the Project was allowed to proceed.

To the extent Phillips failed to comply with some of the application requirements set forth in CZLUO Section 23.07.170, the applicant cannot now attempt to use its own lack of compliance to avoid the strict requirements of the Coastal Act and of the County's own LCP. Accordingly, the **only** option for the Planning Commission is Option 2: the Project is located in Unmapped ESHA and the County must therefore deny the Project.

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[56] *Id.*
[57] *Id.* at p. 11.
[58] *Id.*

Thank you for your consideration of these comments.

Sincerely,

Linda Krop,
Chief Counsel

Brian Trautwein
Environmental Analyst

cc: Sierra Club
Stand
Center for Biological Diversity
San Luis Obispo Surfrider Foundation
California Coastal Commission

Attachments:

Exhibit A: California Coastal Commission, *Preliminary Report on the Periodic Review of the San Luis Obispo County LCP*, February 2, 2001 [excerpt]

Exhibit B: California Coastal Commission, *Updating the LCP – A Place to Start*, March 30, 2007 [excerpt]

Exhibit C: California Coastal Commission, *Staff Recommendation: Periodic Review of the Implementation of San Luis Obispo County's Local Coastal Program*, June 29, 2001 [excerpt]

Exhibit D: California Coastal Commission, *Adopted Report: San Luis Obispo County LCP Periodic Review*, July 12, 2001 (Revised August 24, 2001) [excerpt]

Exhibit E: California Coastal Commission, *San Luis Obispo County Local Program Major Amendment No 2-04 (Part 3)*, June 27, 2008 [excerpt]

Exhibit F: Email from Aaron E. Sims, Rare Plant Botanist, California Native Plant Society, to Brian Trautwein, EDC. March 28, 2016.

Exhibit G: Hunt, L.E. *Origin, maintenance, and land use of aeolian sand dunes of the Santa Maria Basin, California*. Prepared for The Nature Conservancy, San Luis Obispo (1993) [excerpt]

# EXHIBIT A

STATE OF CALIFORNIA—THE RESOURCES AGENCY GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION
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SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
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RECORD PACKET COPY

Th 5b

February 2, 2001

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: Peter Douglas, Executive Director
Tami Grove, Deputy Director
Elizabeth Fuchs, *AICP*, Coastal Program Manager
Charles Lester, Central Coast District Manager
ReCAP Project Staff

SUBJECT: **EXECUTIVE SUMMARY: PRELIMINARY REPORT ON THE PERIODIC REVIEW OF THE SAN LUIS OBISPO COUNTY LCP**

California Coastal Act section 30519.5 requires that the Coastal Commission periodically review certified Local Coastal Programs to determine whether they are being effectively implemented in conformance with the Coastal Act. Accordingly, staff has prepared a report that identifies preliminary options for improving LCP implementation in San Luis Obispo County. The *Preliminary Report on the Periodic Review of the San Luis Obispo County LCP* provides an initial framework for important public policy discussions concerning a variety of coastal resource protection issues in the County. These include environmentally-sustainable urban development, coastal water quality protection, maintaining agriculture and scenic rural landscapes, and preservation of sensitive species and habitats. Before summarizing these issues, it is important to understand the fundamental role of *Periodic Review* in the Commission's coastal management program.

## *LCP PERIODIC REVIEW & THE PARTNERSHIP WITH LOCAL GOVERNMENT*

The Commission's partnership with local government is the cornerstone of coastal management in California. Under the Coastal Act, counties and cities are responsible for achieving statewide coastal resource protection goals through the implementation of Local Coastal Programs (LCPs). Working with local governments, the Commission initially assures that the goals of the Coastal Act are integrated into these LCPs, and that they contain policies and procedures adequate to protect coastal resources of local and statewide importance. But once an LCP is certified by the Commission, local governments assume the principal responsibility for issuing coastal development permits. Local governments such as San Luis Obispo County also become the custodians of their LCPs, and play a vital role in keeping these plans current and responsive to environmental and social change. Since certification of its LCP in 1988, San Luis Obispo County has amended its LCP 26 times. Of course, many of these were piecemeal changes to the LCP, highlighting the need for comprehensive updates. Most recently, the County and its Advisory Councils have been developing comprehensive planning updates for the sensitive North Coast and Estero coastal areas. Overall, since LCP certification the County has been working on a variety of fronts, along with an informed and active citizenry, to respond to the complex and dynamic challenges of coastal resource protection through local implementation.

# 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:[1]

- undeveloped ocean shoreline and the Peaks Area;[2]
- 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;

[1] For a description of these areas please refer to pages 7-1 through 7-4 of the Estero Area Plan.
[2] 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:[3]

- 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.

[3] 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:[4]

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

**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:

> *A type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special*

[4] For a description of these areas please refer to pages 37 through 38 of the South County Area Plan.

> *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 of 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 is 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.[5]

[5] 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.

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.[6] 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 (CNDDB), 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 (CNDDB) 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 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

[6] 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).

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 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[7] 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 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,

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

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[8] 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.

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

[8] Recommended changes to this section of the CZLUO can be found on pages _ 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.

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 area 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 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.[9] Similarly, rural lands used for agricultural activities such as grazing may have been preciously 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.[10]

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

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

[10] Coastal Development Permit Files A-3-SLO-99014 and A-3-SLO-99-032 (Morro Bay Limited), A-3-SLO-00-40 (Schneider)

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. [11] The 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.

[11] 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 .

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

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 2c). 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 1b 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.

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 Recommendation 2a is 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.[16] Where avoiding development in or near ESHA is not possible, the 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.[17]

Long-term monitoring and maintenance provisions appear to have been implemented with more limited success. While monitoring and maintenance of

[16] ESHA Policies 1 and 2, CZLUO Section 23.07.170b.
[17] 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.

# EXHIBIT B

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# Updating The LCP – A Place to Start

*What is an LCP?*

*Local coastal program means a local government's (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resource areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of the California Coastal Act (PRC 30108.6)*

*Who is Issuing the Permits?*

*As of 2007, about 70% of the 128 local coastal program segments of the 75 coastal jurisdictions were certified and the local jurisdictions were issuing permits for most developments in those certified areas. In addition to areas that do not yet have a certified LCP, the Coastal Commission retains permitting jurisdiction below mean high tide, on public trust or tidelands, and may exercise permit authority within its appeal jurisdiction (see Coastal Act 30603).*

The California Coastal Act of 1976 ushered in an era of significant new land use planning in California. Local governments prepared and implemented Local Coastal Programs (LCPs) to carry out the Coastal Act's mandate to protect coastal resources and maximize public access to the shoreline. These LCPs established the allowable kinds, locations, and intensities of new development in the coastal zone, and set out other development limitations, to achieve the objectives of the Coastal Act. Once an LCP was certified by the Coastal Commission, local governments were given the responsibility of issuing coastal permits for most new development, subject to the standards of their LCPs.

In the last two decades LCPs have become an important part of California's coastal zone management program. But the Commission and many local governments have also recognized that LCPs need to be updated to remain effective. Significant changes have occurred that directly impact our efforts to protect California's coast. Population and development patterns have changed, leading to new pressures on resources and public access. New nonpoint source pollution laws are in place, and scientists have learned more about sensitive species, habitats and other coastal resources. Global warming and sea level rise are real concerns that must be considered in land use decisions.

Successfully providing for a community's need to grow and thrive while protecting resources depends on our ability to address such changes in our planning documents. If an LCP is out of sync with current conditions, knowledge, and practices, the potential for land use conflicts is exacerbated, and we are less likely to achieve either appropriate development or coastal resource protection. At the same time, comprehensive planning updates are increasingly difficult to undertake in part because there are so many issues and committed stakeholders. Resources for such planning are typically limited. This document is intended to support LCP update efforts by providing core guidance for meeting Coastal Act policies in the face of change. It does not cover every issue that should be considered in an update, but it does highlight recent Coastal Commission decisions and policy concerns that most coastal communities need to address. It is a place to start.

*This report was prepared with financial assistance from the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, under provisions of Section 309 of the Coastal Act Reauthorization Amendments of 1990.*

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# Protecting Sensitive Habitats and Other Natural Resources

The Coastal Act sets high standards for the protection of Environmentally Sensitive Habitat Areas (ESHA), wetlands, riparian areas, and other natural resources in the coastal zone. The Commission has gained significant experience in applying the Coastal Act and LCPs to the protection of such resources. Also, there have been some important changes regarding the protection of ESHAs that stem from new scientific research, such as the identification of new sensitive species, or from court decisions interpreting the requirements of the Coastal Act.

## ➢ *What should an updated resources component include?*

*Review the principal Coastal Act policies concerning Marine Resources and ESHA in Sections 30107.5, 30121, 30240, 30230, 30231, 30233. These statutes can be found at: http://www.coastal.ca.gov/coastact.pdf.*

Based on the Commission's regulatory experience and new information, the Commission has identified a number of areas where LCP Resource policies and ordinances should be updated. As applicable, an LCP should include:

- A definition of ESHA that is consistent with the Coastal Act §30107.5.
- A definition of wetland that is consistent with Coastal Act §30121 and §13577(b) of the Code of Regulations.
- An updated map and description of existing, known habitats, with strengthened requirements for conducting site specific biological evaluations and field observations to identify ESHA and other sensitive resources at the time of proposed development or plan amendments.
- Clear policies stating that the identification of ESHA, wetlands, etc. will be determined in part through an evaluation of existing known resources at the time of proposed development or plan amendment.
- Review of areas adjacent to environmentally sensitive habitat areas and parks and recreation areas to ensure land use designations and development standards that are compatible with the protection of the resources.
- Updated setback requirements to reflect new scientific information on adequacy of buffers.
- Updated requirements for ensuring complete and detailed restoration and monitoring plans for projects involving habitat mitigation and restoration.

## ➢ Where can I read some examples of updated resource policies?

- City of Malibu LUP policies pages 38-75 of the LUP at http://www.coastal.ca.gov/ventura/malibu-lup-final.pdf.
- City of Malibu Zoning Ordinance provisions at http://www.coastal.ca.gov/ventura/malibu-lip-final.pdf.

San Luis Obispo County Periodic LCP Review at:

- http://www.coastal.ca.gov/recap/slo/slo-intro.pdf.
- http://www.coastal.ca.gov/recap/slo/slo-esha.pdf.

City of Newport Beach LUP Coastal Resource Protection at:

- http://www.city.newport-beach.ca.us/Pln/LCP/Internet%20PDFs/CLUP%20Part%204.pdf.

## ➢ What are some of the issues to be addressed in an updated resources component?

The following highlights information that should be considered in updating policies for protection of environmentally sensitive habitat areas and other important natural resources.

### ◆ Avoidance of Impacts to ESHA

The Bolsa Chica decision [*Bolsa Chica Land Trust v. Superior Court* 71 Cal. Ap.4th 493, 507] confirmed that the Coastal Act requires that ESHA be avoided and buffered from development impacts and that providing mitigation is not sufficient justification for allowing development with avoidable impacts to ESHA. LCPs should clearly state that only "resource dependent" development, such as restoration or nature study, is allowed in ESHA, consistent with Coastal Act §30240.

### ◆ Need for Updated Definitions

Since many LCPs were certified, there have been problems on appeals and increased litigation stemming from confusing and inconsistent definitions for wetlands and other ESHA. The general LCP definition of ESHA should mirror Coastal Act §30107.5; similarly the definition of wetland should be that of §30121 of the Coastal Act and §13577(b) of the Calif. Code of Regulations (CCR). Note that the Coastal Commission relies on a potentially more inclusive, one-parameter definition of wetlands whereas the U.S. Army Corps of Engineers uses a three parameter definition under its federal authorities. The Commission conducted a workshop on wetlands delineation that may be useful in understanding these distinctions: *Definition and Delineation of Wetlands in the Coastal Zone* http://documents.coastal.ca.gov/reports/2006/11/Th3-11-2006.pdf.

In addition, see, for example, the revised findings for A-2-HMB-01-011(Keenan/Beachwood Subdivision).

### ◆ Use of Resource Maps

In recent years the Commission has identified at least two major concerns related to the use of LCP Resource Maps. First, many LCPs adopted a decade or more ago may be relying on maps that no longer adequately illustrate the potential presence of ESHAs given new scientific information and changes in the natural environment. This could result in the lack of protection of ESHA. Second, some jurisdictions may be relying only on outdated maps in determining whether ESHA exists on a site, potentially resulting in an incorrect determination of appealability and, possibly, resulting in litigation. While maps can serve as one illustrative tool to help identify potential resources, the presence of ESHA on the ground dictates the application of policies. LCPs must be updated to ensure that ESHA and wetland determinations are based on site specific biological surveys at the time of proposed development or plan amendment, and that any area that actually meets the definitions of either must be given all the protection provided for in the Coastal Act, regardless of its prior identification on a resource map. Be sure your LCP policies and filing requirements ensure that a thorough site-specific assessment of habitat and resources is undertaken as part of the development review process in order to identify any such resources.

### ◆ Identifying ESHA

*Coastal Act §30107.5 defines environmental 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.*

ESHA designations are often based on the presence of rare habitats or on areas that supports populations of rare, sensitive, or especially valuable species or habitats. The Department of Fish and Game identifies rare habitats in their *List of California Terrestrial Natural Communities Recognized by the California Natural Diversity Database*. Rare species also include those that are listed under the California or Federal Endangered Species act, those that are listed as "1b" or "2" by the California Native Plant Society, and those for which there is other compelling evidence of rarity such as published academic studies.

More online tools have become available recently to assist in site specific analysis, including such resources as the California Natural Resources Diversity Database at http://www.dfg.ca.gov/bdb/html/cnddb.html and http://www.dfg.ca.gov/bdb/pdfs/natcomlist.pdf, as well as the Inventory of the California Native Plant Society at http://cnps.web.aplus.net/cgi-bin/inv/inventory.cgi

For an example of an updated Resources Component, including ESHA definitions, see Chapters 3 and 4 of the City of Malibu LCP found at http://www.coastal.ca.gov/ventura/malibu-lup-final.pdf and http://www.coastal.ca.gov/ventura/malibu-lip-final.pdf.

Also check out Chapter 4 of the *San Luis Obispo County LCP Periodic Review* at http://www.coastal.ca.gov/recap/slo/slo-esha.pdf, http://www.coastal.ca.gov/recap/slo/slo-intro.pdf

## ♦ Monitoring Requirements

Updated LCPs should include specific provisions to require a complete and detailed Restoration and Monitoring Plan for any proposed or required habitat restoration or creation. Because submittal of conceptual plans can cause review delays, it is recommended that LCP filing requirements be updated to require that applications that involve habitat restoration or mitigation not be deemed filed until submittal of such a plan. Nearly all significant restoration projects will require preliminary field sampling and the results of this sampling should be included in the Restoration and Monitoring Plan.

Your updated LCP should ensure that such a Restoration and Monitoring Plan:

- Is a stand-alone document that describes actual methods and practices to be employed,
- Avoids such things as marginal notes on large format engineering or landscaping plans, simple tables and bulleted lists or mere references to information in other planning documents or to literature on field or statistical methods,
- Is able to be implemented by a technical specialist who has not been involved in the project, and
- Is written in such a way that an educated layman could understand and evaluate the plan.

Restoration and Monitoring Plans should include the following key components:

- A clear statement of the goals of the restoration for all habitat types. Characterization of the desired habitat, including an actual habitat, sampled that can act both as a model for the restoration and as a reference site for developing success criteria.
- Sampling of reference habitat using the methods that will be applied to the restoration site with reporting of resultant data.
- Quantitative description of the chosen restoration site.
- Requirements for designation of a qualified restoration biologist as the Restoration Manager who will be personally responsible for all phases of the restoration.
- Prohibition on assignment of different phases of the restoration to different contractors without onsite supervision by the restoration manager.
- A specific grading plan if the topography must be altered.
- A specific Erosion Control plan if soil or other substrate will be significantly disturbed during the course of the restoration.
- A Weed Eradication Plan designed to eradicate existing weeds and to control future invasion by exotic species that is carried out by hand weeding and supervised by a restoration biologist.

- A Planting plan that specifies detailed plant palette based on the natural habitat type that is the model for the restoration and using local native stock and requiring that if plants, cuttings, or seed are obtained from a nursery, the nursery must certify that they are of local origin and are not cultivars. The Planting plan should provide specifications for preparation of nursery stock and include technical details of planting methods (e.g., spacing, micorrhyzal inoculation, etc.)
- An Irrigation Plan that describes the method and timing of watering and ensures removal of watering infrastructure by the end of the monitoring period.
- An Interim Monitoring Plan that includes maintenance and remediation activities, interim performance goals, assessment methods, and schedule.
- A Final Monitoring Plan to determine whether the restoration has been successful that specifies:
  - A basis for selection of the performance criteria,
  - Types of performance criteria,
  - Procedure for judging success,
  - Formal sampling design,
  - Sample size,
  - Approval of a final report, and
  - Provision for possible further action.

## ➢ *What are some important LCP issues in resource protection?*

### ♦ Invasive, Non-native Species

The impacts of non-native invasive species on natural plant and marine resource communities are a growing concern. Such species can displace native species and impact natural communities. Consider including requirements for landscaping in your LCP. These could include:

- Professionally prepared landscape plans,
- Permanent implementation of the plans through bonding or deed restrictions,
- Requiring non-invasive plants, and
- Removing non-natives from the site.

Your LCP should also promote other methods to eradicate non-native invasive plants, recommending the most environmentally benign methods available.

LCPs should be updated to include a specific prohibition on the use of non-native invasive plants. The identification of such plants should be tied to authoritative lists, such as the California Invasive Plant Council inventory: http://www.cal-ipc.org/ip/inventory/index.php.

## ◆ Beach Grooming/Beach Wrack/Grunion

Recent research has reinforced the importance of protecting the beach wrack as part of the marine ecosystem. Beach wrack refers to the piles of seaweed and plant and animal remains that are washed ashore by waves. While this may appear to beach visitors as unsightly debris, wrack accumulates as a result of natural processes. Research has found that it is an important nutrient source and provides micro-habitat for a variety of organisms. Regular grooming of sandy beaches can destroy the wrack and help to degrade the near shore habitat. LCPs should be updated to include policies and management measures for beach maintenance to strike the appropriate balance between protection of this habitat and maintaining the recreational values of sandy beaches.

Beach grooming or other disruptive activities on the high shore can also have negative impacts to grunion. The grunion is a fish that comes ashore in the spring and summer during particularly high night-time tides to reproduce and lay their eggs. The eggs develop while buried in the sand and hatch two weeks later when high tides again wash the high-shore and enable the baby grunion to reach the sea. Where applicable, LCPs should include policies and management procedures that protect grunion by restricting sand-disturbing activities when grunion are present. During those periods, beach grooming and other disruptive activities should only take place above the semi lunar high tide mark

For more information concerning beach wrack see:

- http://www.coastalconservancy.ca.gov/coast&ocean/winter2004/pages/two.htm.

You can find more information on grunion at:

- http://www.dfg.ca.gov/mrd/gruschd.html, and
- http://arachnid.pepperdine.edu/grunion.

To read some discussion of these issues check out the Beach and Sediment Management Program for the Santa Barbara Harbor and Waterfront Area at http://documents.coastal.ca.gov/reports/2006/4/Th12c-4-2006.pdf, and the City of Santa Cruz Beach Management Permit at http://documents.coastal.ca.gov/reports/2006/8/Th12a-8-2006.pdf.

# EXHIBIT C

STATE OF CALIFORNIA—THE RESOURCES AGENCY GRAY DAVIS, GOVERNOR

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June 29, 2001

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Th 4a

TO: Commissioners and Interested Persons

FROM: Peter Douglas, Executive Director
Tami Grove, Deputy Director
Periodic Review Project Staff

SUBJECT: **Staff Recommendation: Periodic Review of the Implementation of San Luis Obispo County's Local Coastal Program.**

## INTRODUCTION

This Report presents the Staff Recommendation on the Periodic Review of the County of San Luis Obispo's certified Local Coastal Program (LCP), pursuant to Section 30519.5 of the Coastal Act. The Coastal Act provisions require review every certified LCP to determine whether the LCP is being effectively implemented in conformity with the policies of the Coastal Act. If the Commission determines that a certified LCP is not being carried out in conformity with any policy of the Act, it is to submit to the local government recommendations of corrective actions that should be taken, including possible suggested amendments to the LCP. Under the law the County has one year to respond to the recommendations that the Commission adopts and if actions are not taken, forward to the commission a report setting forth its reasons for not taking the recommended action.

A *Preliminary Periodic Review Report* was submitted to the County and the Commission in February 2001 (Exhibits A and B). Based on that *Preliminary Report,* the Commission continued the public hearing for additional public comment and instructed the staff to conduct additional outreach to the County and the community on the Preliminary Recommendations.

Since February, the Commission and the County and have undertaken substantial outreach and further investigation. Community workshops were held throughout the county from March 26 through March 30 which were attended by hundreds of citizens. The workshops, which were held in Cambria (for North County) Los Osos (for the Estero Area) and Arroyo Grande (for South County), were also televised by a local cable television station. A fourth workshop was held with the Agricultural Liaison Committee and the agriculture community specific to the issues raised by the preliminary recommendation on Agriculture. An additional informal meeting with organized by the SLO Farm Bureau for staff to meet with agriculturists in a more informal setting to continue the dialogue concerning the effects of the Preliminary Recommendation on agricultural operations. Additional meetings were held with the staff of the Cambria Community Services District and the Los Osos Community Services District and members of the various Citizen Advisory Councils.

Sewage Management modification could include:

- Provide sewage pumpout service at convenient times and at a reasonable cost.
- Provide portable toilet dump stations near small slips and launch ramps.
- Provide restrooms at all marinas and boat ramps.
- Establish practices and post signs to control pet waste problems.
- Establish no discharge zones to prevent sewage from entering waters.

### 4) Conclusion

As discussed in the preliminary report, the existing LCP policies and standards, certified in the late 1980s, do not reflect the most up-to-date management measures to protect water quality from marinas and boating areas. The Commission finds that revisions to the LCP are necessary to ensure that the LCP is effectively implemented to adequately protect water quality in conformance with Coastal Act Sections 30230 and 30231. After further evaluation and consideration of public comments, pursuant to Coastal Act Section 30519.5, the Commission adopts Recommendations 3-13a and 3-13b as appropriate corrective actions for submission to the County.

## 4. ENVIRONMENTALLY SENSITIVE HABITATS AND WETLANDS

### A. Overview

#### 1. Summary of *Preliminary Periodic Review* Findings (Exhibit A, pg. 101-185)

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

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

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

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

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

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

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

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

3. San Luis Obispo County Response

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

- Preliminary Recommendation 4.1, recommending that the LCP definition of ESHA be revised to conform to the Coastal Act, among other means by recognizing areas mapped as Combining Designations.

- Preliminary Recommendation 4.2, calling for continuous updates to LCP ESHA maps.

Preliminary Recommendation 4.3, suggesting the expansion of biological investigation and report requirements, provided that the recommended interagency review of the biological reports is completed in a timely fashion.

- Preliminary Recommendation 4.6; encouraging the development of comprehensive habitat protection programs for Cambria and Los Osos.
- Preliminary Recommendation 4.13, recommending the use of easements to protect ESHA and providing such easements for Executive Director review and approval.
- Preliminary Recommendation 4.16, calling for the establishment of specific standards for mitigation monitoring and evaluation.
- Preliminary Recommendations 4,17 - 4.21 regarding streambed alterations.
- Preliminary Recommendations 4.22, 4.4, 4.25, 4.27, and 4.28 regarding the protection of riparian habitats and their setbacks;
- Preliminary Recommendations 4.30, 4.31. 4.33. 4.34, and 4.36 regarding the protection of wetland habitats.
- Preliminary Recommendations 4.37 – 4.43, and 4.45 – 4.49, 4.53, 4.54, and 4.56 regarding the protection of Terrestrial habitats.

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

## A. Identifying ESHA

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

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

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

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

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

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

**2. Comments Raised**

*San Luis Obispo County Response* (Exhibit C)

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

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

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

information and habitat delineations developed by these efforts would be used to update LCP habitat maps on a regular basis.

*Public Comments* (Exhibit D)

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

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

Comments from the Los Osos Community Advisory Council asserts that the update of habitat maps and protection plans should happen under he direction of the regulatory and planning agencies. Other commenters argue that habitat delineations and biological reviews should occur on a site specific basis.
Comments from the San Luis Obispo County Farm Bureau and agriculturists identify concern with the idea that if agricultural operations, if viewed as development, would need to complete site specific biological inventories.

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

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

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

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

### 3. Analysis

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

The methodology used to determine the presence of ESHA in the field is an issue that has been raised by numerous commenters. While many support the use of updated Combining Designation to make such determinations (Preliminary Recommendation 4.2), there is differing opinion on what to do when the updated Combining Designation Maps do not effectively resolve this issue.

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

An additional benefit of the Field Review approach proposed by the County and incorporated into Recommendations 4.2 and 4.3 is that it can be implemented through changes in administrative procedures and is therefore not dependent upon an LCP amendment. Immediate implementation of this approach is preferable to treating the entire coastal zone as ESHA until the LCP maps are updated (as recommended by the Environmental Defense Center) because it will facilitate accurate delineation of ESHA,

and application of LCP habitat protection standards to all ESHA, without adding unnecessary regulatory requirements for development that will not impact ESHA.

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

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

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

**4.1: Revise the LCP's Definition of ESHA**

- Revise definitions of SRA and ESHA contained in Section 23.11.030 so that they conform to the Coastal Act definition. Clarify that ESHA, and the application of ESHA protection standards, is not limited to the areas mapped as Combining Designations. As proposed on page 7-10 of the Estero Update, use the definition of "habitat for rare and endangered species" provided by the CEQA guidelines as an additional tool to define ESHA.

- Determine the presence of ESHA based on the best available information, including current field observation, biological reports, the National Diversity Database, and US Fish and Wildlife Critical Habitat Designations and Recovery Programs. Where the available information indicates that an area may contain ESHA, but that area is not mapped as ESHA by the LCP, a Field Review Team comprised of County staff, project biologist(s), and representatives from involved wildlife agencies and organizations, shall conduct a Site Specific Constraints Analysis.

- As proposed by both the North Coast and Estero Updates, recognize all riparian habitats as ESHA regardless of whether they are mapped by USGS quadrangles.

- Replace the LCP's definition of streams, currently limited to streams shown by USGS maps, with an alternative definition, such as ~~that~~ the following definition used by the Department of Fish and Game:

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

### 4.2: Revise and Update ESHA Combining Designations

• Recognize maps as a tool for identifying potential locations of ESHA, but that the actual presence and extent of ESHA must be determined in the field. Establish Field Review Teams, comprised of County staff, the project biologist(s) and representatives from involved wildlife agencies and organizations, to evaluate sites where the Combing Designation Maps do not effectively address the potential presence of ESHA.

• Incorporate other rare and valuable habitat types into the ESHA Combining Designation Programs. These should include, but not be limited to, the additional sensitive habitats identified by the North Coast and Estero Updates.

~~• Periodically update the Combining Designation Maps to identify habitats of rare and endangered species that have become listed since LCP certification, to correct mistakes contained in existing maps, and to incorporate other habitat types determined to be ESHA by the County. Consider implementing annual updates to the Combining Designation Maps as part of the LCP's Resource Management System.~~

• Maintain the Combining Designation maps as a dynamic geographic database that can be routinely updated as new information becomes available. To facilitate such efforts, the County should ~~consider~~ establishing standard formatting requirements for field surveys and biological reports that could be directly incorporated into such a system ~~facilitate such updates~~. Coordination with other resource management entities involved with mapping sensitive habitats (e.g., the Morro Bay National Estuary Project) should also be pursued along with other grant programs and cooperative mapping efforts.

### 4.3: Update Requirements for Biological Investigations and Reports

• Revise CZLUO Section 23.07.170 so that biological reports are prepared for all development within or adjacent to ESHA, not just those sites that have been mapped as ESHA. Use the Field Review process recommended above to determine the need for biological reports when development is located on a site that has the potential to support ESHA, but is not mapped as ESHA by LCP Combining Designations. Where the Site Specific Constraints Analysis identifies the presence, or potential presence, of any sensitive habitat type, natural community, and/or particular plant or animal species that meets the revised definition of ESHA, a biological report should be required.

~~• To determine when a biological report may be required for a development site that has not been previously mapped as, or determined to be ESHA, require a habitat and biological inventory prepared by a qualified biologist as part of development permit applications. Where it is clearly evident that a development site has the potential to support sensitive habitats based on the initial inspection of County planning staff, a biological report may be required without a biological inventory.~~

• Evaluate particular areas, particularly urban areas, where it may be appropriate to exclude new development from Site Specific Constraints Analyses ~~the need to provide a biological inventory as part of the application process~~. Incorporate such exclusions into the LCP based on scientific evidence demonstrating the absence of ESHA in such areas.

• Develop comprehensive habitat conservation and management programs for areas with particular habitat protection needs (e.g., Los Osos dune scrub and maritime chaparral habitats, Cambria Pine Forest, coastal watersheds that support Steelhead trout, and Cayucos Creeks; please see recommendation ~~2e~~ 4.6). Upon incorporation of such programs into the LCP, development within particular habitat areas may be excluded from the need to provide site-specific biological investigations and reports. Instead, the

biological information required at the application stage would be related to implementation of the area wide habitat protection program (e.g., contribution to area wide program that retires development potential in ESHA).

• ~~Where the required biological inventory identifies the presence or potential presence of any sensitive habitat type, natural community, and/or particular plant or animal species that meets the revised definition of ESHA, a biological report should be required. Minimum requirements for biological inventories and reports should be coordinated with state and federal resource management agencies and specified in CZLUO Section 23.07.170 a.~~

• Update the minimum requirements for biological reports specified by CZLUO Section 23.07.170 in coordination with state and federal resource management agencies.

• The location and extent of ESHA on and adjacent to a development site should be described and mapped by the Biology Report, in a format that allows it to be incorporated into a GIS based Combining Designation map system (see Preliminary Recommendation 1b above). The delineation should not be limited to the particular locations where rare plants or animals are observed at one point in time. Rather, it should consider the full range of the sites physical characteristics (e.g., soil type, vegetation, topographical features) represent potential habitat for such rare plant and animal species. In addition, where previously disturbed but restorable habitat for rare and sensitive plant and animal species exist on a site that is surrounded by other valuable habitat areas, these areas should be delineated and protected as ESHA as well. Implementation of this recommendation will also require the incorporation of additional standards for Biological Reports within CZLUO Section 23.07.170.

• Biological reports and their accompanying ESHA delineations should be submitted for the review and comment of the California Department of Fish and Game, the US Fish and Wildlife Service, and to the National Marine Fisheries Service (as applicable), ~~and~~ as well as to the California Coastal Commission, before applications for development in or adjacent to ESHA are filed as complete. The incorporation of such a requirement into the LCP (e.g., within Section 23.07.170 of the CZLUO) eshould be accompanied by a specific time frame for such reviews (e.g., 14 days) to ensure that they would not result in undue delays in the development review process.

CNPS preference for the NCCP process, and concern about the HCP process are addressed in a subsequent section of this chapter, as is the Los Osos Community Advisory Council's request for a "top down" approach.
With respect to the Environmental Defense Center's suggestion that the entire San Luis Obispo coastal zone be treated as ESHA until the LCP ESHA maps are updated, it should be noted that the Field Review approach supported by the County and reflected in the above recommendations can be implemented immediately.

## 4. Conclusion

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

recommendations, which also responds to concerns regarding the previously recommended requirement for biological inventories.

## B. Avoiding and Minimizing Impacts to ESHA

*Limiting Development in ESHA to Resource Dependent Uses*

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

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

### 2. Comments Received

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

### 3. Analysis

The proposed preamble to Table O would not appear to be any different than the current provisions of Table O; as detailed in Chapter 12, anything that is not identified as a P use is already considered to be conditional. More importantly, it would not resolve the fact that the wide range of principally permitted uses established by Table O, irrespective of habitat considerations, is inconsistent with Coastal Act Section 30240(a) and conflicts with LCP ESHA policies and ordinances limiting development in ESHA to resource dependent uses. However, the suggestion that the clarification to Table O proposed by Preliminary Recommendation 4.4 take the form as a preamble to this Table, appears to be an effective way of implementing the recommended changes and has been incorporated into the final recommendation. (See below)

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

As detailed in the Preliminary Report, the incorporation of area specific Habitat Conservation Plans into the LCP provides an excellent way to resolve this problem. Where such plans are certified as being consistent with the Coastal Act, it may be

# EXHIBIT D

## 4. ENVIRONMENTALLY SENSITIVE HABITATS AND WETLANDS

### Overview

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

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

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

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

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

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

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

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

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

**San Luis Obispo County Response**

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

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

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

## A. Identifying ESHA

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

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

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

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

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

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

### 2. Comments Raised

*San Luis Obispo County Response* (Exhibit C)

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

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

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- ~~Where the required biological inventory identifies the presence or potential presence of any sensitive habitat type, natural community, and/or particular plant or animal species that meets the revised definition of ESHA, a biological report should be required. Minimum requirements for biological inventories and reports should be coordinated with state and federal resource management agencies and specified in CZLUO Section 23.07.170 a.~~

- Update the minimum requirements for biological reports specified by CZLUO Section 23.07.170 in coordination with state and federal resource management agencies.

- The location and extent of ESHA on and adjacent to a development site should be described and mapped by the Biology Report, in a format that allows it to be incorporated into a GIS based Combining Designation map system (see Preliminary Recommendation 4.2 above). The delineation should not be limited to the particular locations where rare plants or animals are observed at one point in time. Rather, it should consider the full range of the sites physical characteristics (e.g., soil type, vegetation, topographical features) represent potential habitat for such rare plant and animal species. In addition, where previously disturbed but restorable habitat for rare and sensitive plant and animal species exist on a site that is surrounded by other valuable habitat areas, these areas should be delineated and protected as ESHA as well. Implementation of this recommendation will also require the incorporation of additional standards for Biological Reports within CZLUO Section 23.07.170.

- Biological reports and their accompanying ESHA delineations should be submitted for the review and comment of the California Department of Fish and Game, the US Fish and Wildlife Service, and to the National Marine Fisheries Service (as applicable), ~~and~~ as well as to the California Coastal Commission, before applications for development in or adjacent to ESHA are filed as

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

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

### 4. Conclusion

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

## B. Avoiding and Minimizing Impacts to ESHA

*Limiting Development in ESHA to Resource Dependent Uses*

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

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

### 2. Comments Received

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

### 3. Analysis

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

# EXHIBIT E

**CALIFORNIA COASTAL COMMISSION**
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

# Th16b

**Prepared June 27, 2008 (for July 10, 2008 hearing)**

**To:** Commissioners and Interested Persons

**From:** Charles Lester, Deputy Director
Jonathan Bishop, Coastal Program Analyst

**Subject: San Luis Obispo County Local Coastal Program Major Amendment No. 2-04 (Part 3) Title 23 Coastal Zone Land Use Ordinance Amendment.** For public hearing and action at the California Coastal Commission's July 10, 2008 meeting to take place in San Luis Obispo.

## SYNOPSIS

San Luis Obispo County proposes to amend the Coastal Zone Land Use Ordinance (CZLUO), or Implementation Plan (IP) portion of its certified Local Coastal Program (LCP). The amendment updates multiple IP sections including: 1) Section 23.01.043c(3)(i) – Appeals to the Coastal Commission; 2) Section 23.04.186d3 – Landscape Plan Content; 3) 23.04.200 – Archaeology; 4) 23.04.210 – Visual Resources; 5) 23.04.220 – Energy/Solar; 6) Section 23.05.050 - Drainage; 7) Section 23.05.062 - Tree Removal; 8) Section 23.05.110 – Roads and Bridges; 9) Section 23.06.100 - Water Quality; 10) Section 23.06.104 – Municipal Wells; 11) Section 23.06.106 – Onsite Sewage; 12) Section 23.06.108 – Chemical Control; 13) 23.07.104c – Archaeology; 14) 23.07.170 - Environmentally Sensitive Habitats; 15) Section 23.07.172 - Wetlands; 16) Section 23.11.030 – Environmentally Sensitive Habitats Definition. **The standard for review for the amendment is conformity with and adequacy to carry out the provisions of the County's certified Land Use Plan (LUP)**.

## SUMMARY OF STAFF RECOMMENDATION

**Staff is recommending that the update be approved if modified as recommended in this staff report.** In summary, the suggested modifications include changes to:

- Clarify that ESHA, and the application of ESHA standards, are not limited to the areas mapped as Combining Designations, consistent with the proposed addition of "unmapped ESHA" to the existing ESHA definition.
- Maintain the CZLUO Section 23.07.170a so that biological reports are prepared for all development within or adjacent to ESHA.
- Maintain the existing CZLUO requirement that only resource dependent uses are allowed in an ESHA.
- Maintain the requirement that projects located within and adjacent to ESHA first avoid adverse impacts before applying mitigation measures.
- Maintain existing visual and scenic resource protection standards.
- Strengthen archaeological resource protection standards through required coordination and

~~The p~~Policies and guidelines for designing compact communities and energy efficient projects ~~described in the Energy Element of the County General Plan shall be consulted for new land divisions and development.~~ New development shall consider compact community design and incorporation of energy efficiency measures.

**10. Section 23.05.110 – Road and Bridge Design, Construction and Maintenance:**

Roads and bridges shall be designed, constructed and maintained to protect sensitive resources (such as aquatic habitat and scenic vistas) and prime agricultural soils to the maximum extent feasible; to minimize terrain disturbance, vegetation removal and disturbance of natural drainage courses; to avoid the need for shoreline and streambank protective devices; and to provide for bikeways and trails, consistent with the Circulation Element of the Local Coastal Plan~~County General Plan~~. In addition, the following measures shall be implemented:

a. Contour slopes to blend in with adjacent natural topography
b. Replant graded areas with native non-invasive vegetation of local stock
c. Include pollution prevention procedures in the operation and maintenance of roads and bridges to reduce pollution of surface waters
d. Give preference to aerial crossings of watercourses

# III. Findings and Declarations

## 1. Environmentally Sensitive Habitat Areas

### A. Policy

San Luis Obispo County proposes to amend several sections of the Implementation Plan (Coastal Zone Land Use Ordinance (CZLUO)) that address the protection of Environmentally Sensitive Habitat (ESHA). The standard of review for the proposed changes is conformity with and adequacy to carry out the Coastal Plan Policy document of the LCP (Land Use Plan). The LUP includes a general statement of the definition of ESHA, the Coastal Act requirements to protect ESHA, and includes the Coastal Act definition of environmentally sensitive area in Appendix A:

> *Environmentally sensitive habitat areas are settings in which plant or animal life (or their habitats) are rare or especially valuable due to their special role in an ecosystem. Designation of environmentally sensitive habitats include but are not limited to: 1) wetlands and marshes; 2) coastal streams and adjacent riparian areas; 3) habitats containing or supporting rare and endangered or threatened species; 4) marine habitats containing breeding and/or nesting sites and coastal areas used by migratory and permanent birds for resting and feeding. The Coastal Act provides protection for these areas and permits only resource-dependent uses within the habitat area. Development adjacent must be sited to avoid impacts.* (Coastal Plan Policies, p. 6-5)

> **Appendix A*: Environmentally Sensitive Area*** *- means 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. (Section 30107.5)*

The LUP also includes 42 separate policies to protect ESHA, including wetlands (Policies 7-19), streams (policies 20-28), terrestrial habitats (policies 29-37) and marine habitats (policies 38-42). Coastal Plan Policy 1 embodies the essential requirements of Coastal Act section 30240:

> **Policy 1: Land Uses Within or Adjacent to Environmentally Sensitive Habitats**
> New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area.

Other policies include the requirement that new development not significantly disrupt ESHA (Policy 2); habitat restoration requirements (Policy 4); and land divisions restrictions (Policy 4).

## B. Conformity of the IP Amendment

### 1. ESHA Definition

The County proposes to amend the CZLUO 23.11.030 definition of ESHA by clearly including "unmapped ESHA" within the definition of ESHA (see Exhibit 1, p. 7) This proposed amendment of the IP is an important change to address the LUP and by extension Coastal Act requirements to protect ESHA. It also addresses Commission recommendations in the adopted Periodic Review of the County's LCP. In order to protect ESHA consistent with the general LUP ESHA definition, the definition of ESHA must allow for the identification of ESHA based on current on-the-ground biological review. It should not be tied to a specific map of resources identified at a point in time. Although ESHA mapping is also important, and provides both more certainty in the development review process and higher protection of known ESHA, an ESHA definition that relies solely on such mapping does not allow for the identification of ESHA based on updated field work, new knowledge, and other changing circumstances. As with many other jurisdictions, new sensitive species and habitats have been identified in San Luis Obispo County since certification of the LCP, including the Morro shoulderband snail in Los Osos and the California red-legged frog.

The County's proposed ESHA definition amendment allows for the identification of ESHA consistent with the broad definition of ESHA in the LUP and the Coastal Act. In addition, the proposed definition identifies examples of ESHA, including but not limited to wetlands, riparian areas, and terrestrial habitats. It also includes categorical examples of ESHA including:

> ... *Areas containing features or natural resources when identified by the county or County-approved expert as having equivalent characteristics and natural function as mapped other environmentally sensitive habitat areas;*

- *Areas previously known to the County from environmental experts, documents or recognized studies as containing ESHA resources*
- *Other areas commonly known as habitat for species determined to be threatened, endangered, or otherwise needing protection.*

These general categories are presumptively ESHA under the new definition and would allow sufficient flexibility for identifying ESHA on the ground based on expert biological review. This is consistent with recent Commission adoption of ESHA definitions in the Malibu LCP and the UCSC LRDP that generally presume the existence of ESHA in the following categories unless there is compelling evidence to the contrary:

- Any habitat area that is rare or especially valuable from a local, regional, or statewide basis.
- Habitat Areas that contribute to the viability of plant or animal species designated or candidates for listing as rare, threatened, or endangered under State or Federal law.
- Habitat Areas that contribute to the viability of species designated as Fully Protected or Species of Special Concern under State law or regulations.
- Habitat Areas that contribute to the viability of plant species for which there is compelling evidence of rarity, for example, those designated 1b (Rare or endangered in California and elsewhere) or 2 (rare, threatened or endangered in California but more common elsewhere) by the California Native Plant Society.
- Areas that are designated as an Area of Special Biological Significance or a Marine Protected Area

In short, the proposed ESHA definition is broad, but also provides some guidance as to the categories of biological resources that may be considered ESHA. The Commission finds that the proposed addition of "unmapped ESHA" to the LCP ESHA definition would strengthen the protection of ESHA in San Luis Obispo County.[1] However, minor modifications to the CZLUO are needed to assure internal consistency with the County's proposal to protect all ESHAs, whether mapped or unmapped (see Modifications 1, 2, and 3). With such minor changes, the Commission finds that the proposed amendment to the LCP ESHA definition is in conformity with and adequate to carry out the LUP.

[1] The LCP currently designates mapped ESHAs as Sensitive Coastal Resource Areas (SCRAs) for purposes of applying heightened procedural protections, including the extension of the Commission's appeal jurisdiction over development proposed within an ESHA. However, the County proposes to amend CZLUO section 23.01.043c(3)(i) to clearly state that development in "unmapped ESHA" would not trigger the Commission's appeal jurisdiction (see Exhibit 1). Although the LUP does not provide any basis for distinguishing mapped and unmapped ESHA for such purposes, the decision to not include unmapped ESHA in the appeal jurisdiction is not inconsistent with the LUP.

# EXHIBIT F

**Brian Trautwein**

**From:** Aaron E. Sims <asims@cnps.org>
**Sent:** Monday, March 28, 2016 9:43 AM
**To:** David Magney
**Cc:** Brian Trautwein
**Subject:** Re: question about CNPS

Hi Brian,

David is correct. We update and maintain the CNPS Inventory on an ongoing basis, and the data gets updated to the Online Inventory in the beginning of every month.

The Online Inventory at rareplants.cnps.org has been up since December 2010, and older version has been up since 2001 (http://cnps.site.aplus.net/cgi-bin/inv/inventory.cgi). However, the Inventory dates back to 1974, with 6 print editions from 1974 to 2001, and in the case of Nipomo lupine, it's been included since the beginning in 1974.

As far as occurrences go, CNPS gets county and quad data directly from the CNDDB, which maintains this data as well as detailed occurrence information in their RareFind app and GIS layers. This, as well as other data sharing and collaboration between CNPS and CNDDB, is in exchange for updates and maintenance of the California Rare Plant Ranks, and implementation of the status review process by CNPS.

What's very important to understand, however, specifically in the example you are working with, is that CNDDB data should NOT be substituted for pre-project review or for on-site surveys.

I hope this is helpful. Feel free to contact me directly with any further questions you may have.

All the best,
Aaron

--
Aaron E. Sims, Rare Plant Botanist | California Native Plant Society
(805) 458-1012 | cnps.org/cnps/rareplants

On Fri, Mar 25, 2016 at 9:16 PM, David Magney <david@magney.org> wrote:
Brian,
The CNPS Inventory is updated regularly; however, there is a lag time from when new data are received and when the Inventory is updated. Aaron Sims, CNPS Rare Plant Botanist, can better answer that questions.
CNPS works closely with the CNDDB in getting occurrences updated/added as well, but there is a longer lag time for those updates.
Regardless, the fact that the Phillips site is known habitat for federally listed species, Nipomo Lupine, it should have been considered ESHA already.
I have copied Aaron on this email so that he can speak more accurately about the CNPS Inventory.
Cheers,

David L. Magney
President
David Magney Environmental Consulting
P.O. Box 1346
Ojai, CA 93024
805/646-6045 Headquarters
530/273-1799 Northern California office
www.magney.org

*To provide quality environmental consulting services with integrity that protects and enhances the human and natural environment.*

On Fri, Mar 25, 2016 at 3:24 PM, Brian Trautwein <btrautwein@environmentaldefensecenter.org> wrote:

Hi David,

I'm looking at CNPS' Inventory of Rare and Endangered Plants here: www.rareplants.cnps.org

Can you help me determine whether this particular web page has been up since July 2013?

This has to do with the Phillips 66 Rail Spur Project in the Nipomo Dunes and whether information existing when the county deemed the application complete should have led the county to designate the area an "Unmapped ESHA" at that time.

Thank you!

**Brian Trautwein**

Environmental Analyst / Watershed Program Coordinator

Environmental Defense Center

906 Garden Street

Santa Barbara, CA 93101

# EXHIBIT G

# ORIGIN, MAINTENANCE AND LAND USE OF AEOLIAN SAND DUNES OF THE SANTA MARIA BASIN, CALIFORNIA

*Prepared for:*

The Nature Conservancy
P.O. Box 15810
San Luis Obispo, CA 93406

Contact: Mr. Chuck Warner
CHARLES
(805) 545-8510

*Prepared by:*

Lawrence E. Hunt
Department of Biological Sciences
University of California
Santa Barbara, CA 93106

(805) 967-8512 (phone and fax)

22 July 1993

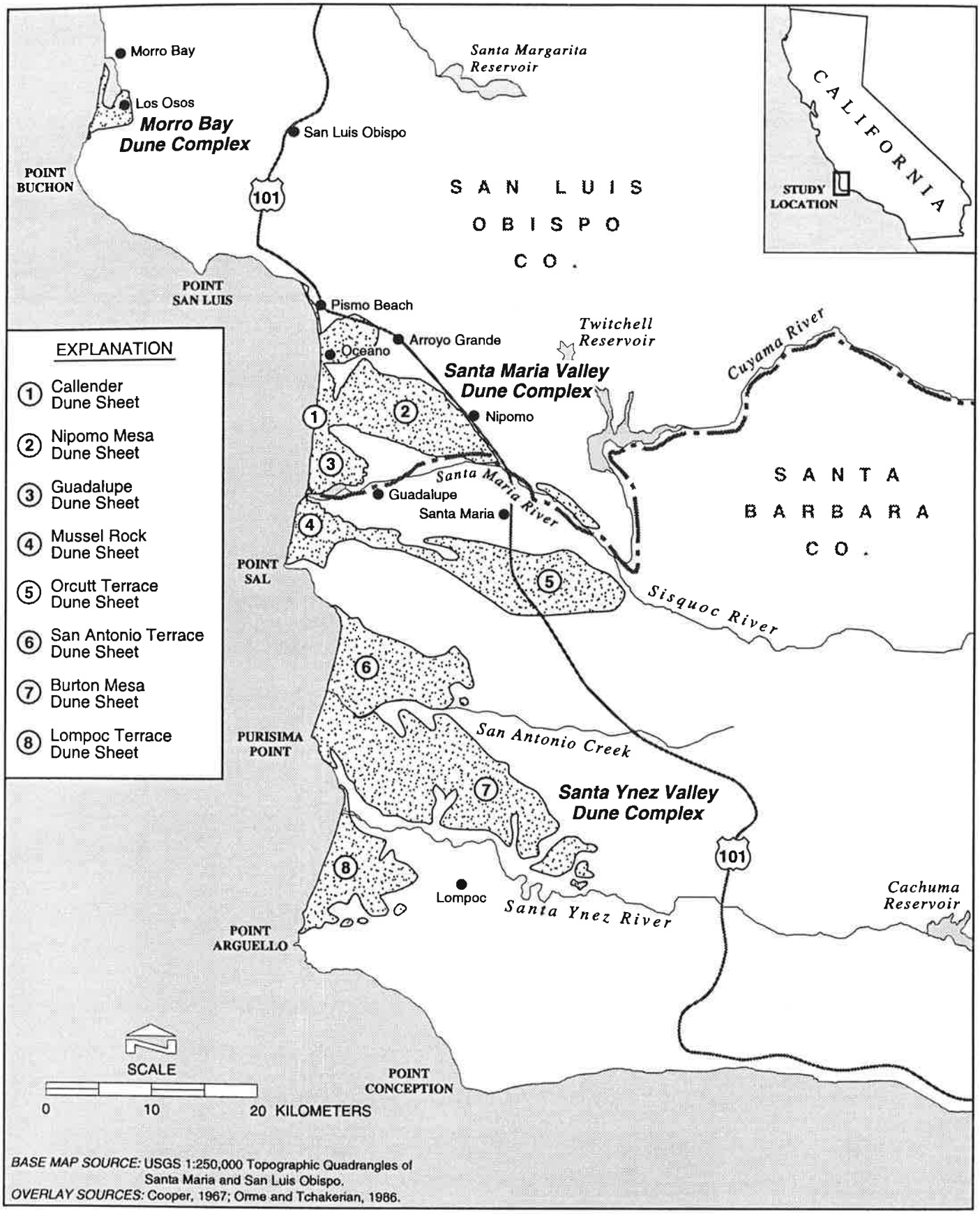


**Figure 1**
**DUNE SYSTEMS OF SOUTHWESTERN SAN LUIS OBISPO AND WESTERN SANTA BARBARA COUNTIES, CALIFORNIA**

## 3.0 REGIONAL THREATS TO THE DUNE SYSTEMS

### 3.1 Changes in sediment budgets

Human-induced reductions in the amount of sand reaching the ocean from these watercourses is a serious threat to the continued existence of the coastal dune systems. Surface mining of sediments within the streambeds in the basin and the construction of dams on basin watersheds are the most important factors affecting rates of fluvial sediment transport. Disruption of the natural longshore sediment transport processes due to human activities outside the limits of the Santa Maria Basin began to affect sediment budgets within the basin in the middle part of this century. These activities included the construction of groins and breakwaters along the coast.

Between the late 1940's and the late 1970's large-scale, human-induced changes in the sediment budgets that control the creation and maintenance of the dunes included sand mining in the dry watercourses of the basin, extensive groundwater pumping and the construction of dams.

Mining of river sands during the ten year period between 1945-55 (prior to dam construction), averaged 43,000 cubic yards/year from the Santa Maria River and 11,000 cubic yards/year from the Santa Ynez River. These quantities represented a significant proportion of the estimated annual sediment yield of these watercourses at the time (Johnson, 1959).

Dams were constructed on the Cuyama and Santa Ynez Rivers as well as smaller watercourses such as Arroyo Grande Creek. Extensive groundwater pumping and surface water diversion for agricultural, municipal and flood control purposes, significantly reduced or eliminated major sources of sediment contributive to the coastal dunes of the basin. The Vaquero Dam on the Cuyama River (built in 1957) and the Bradbury Dam on the Santa Ynez River (built in 1953), reduced the effective drainage

basins of these watersheds by 66% and 48%, respectively (Fig. 8; Judge, 1970). Currently most of the sediment load carried by the Santa Maria River comes from the Sisquoc River (Fig. 8). Prior to regulation by dams, the Santa Maria and Santa Ynez Rivers taken together, drained approximately 80 percent of the Santa Maria Basin, including the most actively eroding portions which are the greatest sources of sediments to the ocean. Much of the present drainage area of the Santa Ynez River now consists of floodplain and a rather small area of active erosion (Johnson, 1959; Bowen and Inman, 1966).

## 3.2 Exotic Invasive plants

The significance of biological invasions as a causative agent in species extinctions has only recently been appreciated (Mooney and Drake, 1986; Coblentz, 1990). An insidious threat to the viability of the native scrub/shrub habitats of the dune systems in the Santa Maria Basin are invasions by exotic plant species. Several species of invasive exotics are well-established in all of the extant dune systems within the Basin. The most extensive are: Hottentot Fig (*Carpobrotus edulis*), Common Ice Plant (*Mesembryanthemum crystallinum*), Veldt Grass (*Ehrharta calycina*) and Pampas Grass (*Cortaderia jubata*), European Beach Grass (*Ammophila arenaria*) and Conicosia (*Conicosia pugioniformis*) (D'Antonio, 1990; Earth Technology Corporation, 1992). These species are particularly suited to colonizing disturbed and early successional habitats.

Invasion by Ice Plant and introduced grasses, especially Veldt Grass and Beach Grass, is a serious threat to the native plants and certain animals inhabiting the dune systems on Vandenberg AFB (Schmalzer and Hinkle, 1987; D'Antonio, 1990; Earth Technology Corporation, 1992). Land use changes associated with agriculture, grazing

and abandonment of agricultural land, in the Basin, documented in the previous section, selects for alien grass invasion. These grasses were also planted over large areas dunes within Vandenberg Air Force Base to stabilize the dunes and control erosion. These species will eventually convert dune scrub habitats to dune grassland habitats. Once incorporated with into the grass/fire cycle, these invasions alter or arrest plant succession, leading to important changes in regional population, species and landscape diversity (D'Antonio and Vitousek, 1992).

Ice Plant, Veldt Grass and European Beach Grass are especially well-established on VAFB. These species alter microclimatic processes such as insolation, soil surface temperatures and nutrient and soil moisture relations. They can also affect dunes at larger-scale levels through geomorphological alterations. For example, where European Beach Grass is established dunes tend to be taller and steeper than those formed by native species because its ability to bind sand is greater than that of native species (Barbour and Johnson, 1977; Slobodchikoff and Doyen, 1977).

Ground coverage by alien grasses, especially Veldt Grass, increased dramatically across portions of the San Antonio Terrace between 1988 and 1993 (L.E. Hunt, pers. obs.). In many places, what was once a dune shrub community with widely separated shrubs and an understory of forbs, is now a shrub-grassland community with very little open space. Certain portions of the San Antonio Terrace currently exceed 15-20% cover by Veldt Grass alone (Earth Technology Corporation, 1992). A direct consequence of alien grass invasion is elimination of localized populations of unique animal species, such as endemic sand dune-dwelling arthropods (Slobodchikoff and Doyen, 1977) and the Silvery Legless Lizard (*Anniella pulchra pulchra*), due to physical and thermal changes in the substrate (L.E. Hunt, unpub. data). The latter species is a unique constituent of the regional fauna, being the only limbless lizard in the western United States. The dunes systems in the Santa Maria

Basin, especially the dune phases occurring within Vandenberg Air Force Base, provide the most extensive habitat for this species within its geographic range. On the San Antonio Terrace, these lizards tend to concentrate beneath shrubs that form a dense leaf litter. The presence or absence of leaf litter is a fundamental factor governing the local distribution of this lizard. Leaf litter decreases soil surface temperatures, retains soil moisture and provides the substrate for the arthropods that these lizards feed upon. Introduced grasses tend to grow most densely beneath native shrubs, eventually eliminating the native shrub leaf litter, elevating soil temperature regimes and inhibiting germination of native shrub seeds and seedlings. Changes in substrate temperature, moisture and subsurface root densities, as a result of grass invasion, will eventually reduce or eliminate legless lizard populations in these dunes (L.E. Hunt, unpub. data).

Efforts have been directed at controlling exotic invasives such as Ice Plant and Veldt Grass on portions of the San Antonio Terrace (Schmalzer and Hinkle, 1987; Earth Technology Corporation, 1992). Effective control of *Carpobrotus* has been achieved through the use of systemic herbicides, coupled with burning of the dead plants and restoration of the sites with native shrub species. However, invasive grasses are more difficult to control because of their habit of growing beneath shrubs. Additional experimental treatments for controlling grasses, similar to those conducted for Ice Plant, are essential if retaining the habitat and wildlife values of the remaining protected dune systems is a priority.