PROPOSED REVISIONS TO THE COASTAL ZONE LAND USE ORDINANCE TO RUN CONCURRENTLY WITH THE UPDATE OF THE CAMBRIA AND SAN SIMEON ACRES PORTIONS OF THE NORTH COAST AREA PLAN

ORDINANCE NO.____

AN ORDINANCE AMENDING TITLE 23 OF THE SAN LUIS OBISPO COUNTY CODE, THE COASTAL ZONE LAND USE ORDINANCE; SECTIONS 23.05.050 AND 23.06.100 REGARDING WATER QUALITY AND DRAINAGE; SECTION 23.05.062 REGARDING TREE REMOVAL; SECTION 23.07.170 REGARDING DEVELOPMENT WITHIN OR ADJACENT TO ENVIRONMENTALLY SENSITIVE HABITATS; AND SECTION 23.07.172 REGARDING MINERAL EXTRACTION IN WETLANDS

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

SECTION 1: Section 23.05.050 [Drainage Standards] of the Coastal Zone land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by adding new section 23.05.050f to read as follows:

f. **Parking lots and paved areas.** Parking lots and other paved areas where automobiles are parked that are 1.0 acres or greater in size shall be equipped with sediment and grease traps, and shall be subject to a periodic maintenance program which are funded and carried out by the property owner. (Mod69)

SECTION 2: Section 23.05.062b2 [Exceptions to Tree Removal Permit Requirements] of the Coastal Zone land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended to read as follows:

2. In a hazardous condition which presents an immediate danger to health or property as determined by a county inspection provided that such removal is allowed by letter of the Planning Director and subject to the standards of Section 23.05.064 (Tree Removal Standards); or

SECTION 3: Section 23.06.100 [Water Quality] of the Coastal Zone land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by adding new section 23.06.100a to read as follows:

a. **Standards for Preventing Polluted Runoff Impacts from Non-point Sources.** Land use permit applications that require discretionary review shall be designed and located to avoid significant adverse impacts to streams, tidepools, sensitive plants, riparian vegetation, and other environmentally sensitive habitat areas from surface water runoff and wastewater. The following shall apply to new development: (Mod69)

3. Where potentially significant adverse impacts might occur, new development shall assess potential pollutants resulting from the development project, as well as the potential impacts of those pollutants on nearby waterways. Proposed new development shall furthermore be consistent with Central Coast Basin Plan's current water quality objectives for ocean waters, inland surface waters, enclosed bays, and estuaries.

Where polluted surface water runoff might occur as the result of a proposed

development project, the proposed project shall be evaluated for potential impacts to critical waterway components, such as: dissolved oxygen, pH, suspended material, oil/grease, sediment, turbidity, temperature, toxicity, pesticides, chemicals, etc. Where applicable, measures shall be developed and implemented to mitigate potentially significant adverse impacts (e.g., establish a vegetation "filter" strip between a waterway and development).

SECTION 4: Section 23.07.170a [Environmentally Sensitive Habitats] of the Coastal Zone land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended to read as follows:

a. **Application content.** Unless a comprehensive program or list of standards already exists, and mitigation measures have already been identified that will reduce potential impacts to less than significant levels, and the proposed project will incorporate all feasible mitigation measures, 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, mitigation measures required to reduce impacts to less than significant levels, ~~the maximum feasible mitigation measures to protect the resource~~ and a program for monitoring and evaluating the effectiveness of the mitigation 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 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 fist 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 assessment of impacts that may result from the application of fire safety requirements.

(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.

(6) Critically evaluate "after-the-fact" permit applications where unpermitted 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 should be an additional requirement where necessary to offset the temporary impacts of the violation and address the potential for restoration efforts to fail.

SECTION 5: Section 23.07.170d and e [Environmentally Sensitive Habitats] of the Coastal Zone land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended to read as follows:

d. **Alternatives analysis required.** Construction of new, improved, or expanded roads, bridges and other crossings will only be allowed within required setbacks after an alternatives analysis has been completed. The alternatives analysis shall examine at least two other feasible locations with the goal of locating the least environmentally damaging alternative. ~~The bridge or road may be allowed in the proposed location when accompanied by all feasible mitigation measures to avoid and/or minimize adverse environmental effects, only~~ When the alternatives analysis concludes that a feasible and less environmentally damaging alternative does not exist, the bridge or road may be allowed in the proposed location when accompanied by all feasible mitigation measures to avoid and/or minimize adverse environmentally effects. If however, the alternatives analysis concludes that a feasible and less-environmentally damaging alternative does exist, that alternative shall be used and any existing bridge or road within the setback shall be removed and the total area of disturbance restored to natural topography and vegetation.

e. **Development standards for environmentally sensitive habitats.** All development and land divisions within or adjacent to an Environmentally Sensitive Habitat Area shall be designed and located in a manner which avoids any significant disruption or degradation of habitat values. ~~New development within or adjacent to the habitat shall not significantly disrupt the resource.~~ This standard requires that any project which has the potential to cause significant adverse impacts to an ESHA be redesigned or relocated so as to avoid the impact, or reduce the impact to a less than significant level. (Mod67)

(1) Development within an ESHA. In those cases where development within the ESHA cannot be avoided, the development shall be modified as necessary so that it is the least environmentally damaging feasible alternative. Development shall be consistent with the biological continuance of the habitat. Circumstances in which a development project would be allowable within an ESHA include:

i. Mitigation. Restoration or management measures required to protect the resource. Where feasible, damaged habitats shall be restored as a condition of development approval.

ii. Coastal accessways. Public access easements and interpretive facilities such as nature trails which will improve public understanding of and support for protection of the resource.

iii. Public services and utilities. Essential public services and utilities, such as Highway One, which cannot be feasiblely located elsewhere and are designed to avoid any significant disruption of the ESHA.

iv. Resource-dependent uses. ~~New development within the habitat shall be limited to those uses that are dependent upon the resource.~~ Where the project results in loss (i.e., permanent conversion) of habitat area, replacement habitat shall be provided in accordance with California Department of Fish and Game and/or U.S. Fish and Wildlife Service recommendations. Generally, replacement habitat must be provided at recognized ratios to successfully reestablish the habitat at its previous size, or as is deemed appropriate in the particular biologic assessment(s) for the impacted site. Replacement habitat, whenever feasible, shall be of the same type as is lost ("same-kind") and within the same biome ("same-system").

(2) Standards for nonconforming development in ESHA's. Where the County is obligated to allow development in an ESHA on the basis that a constitutional taking would otherwise result, the following standards shall apply with respect to development:

i. Avoidance of takings. The amount and type of development allowed shall be the least that would allow for reasonable economic use.

ii. Mitigation required. All significant adverse impacts to the ESHA shall be fully mitigated.

(3) Steelhead stream protection: Net loss stream diversions prohibited. Diversions of surface and subsurface water will not be allowed where a significant adverse impact on the steelhead run, either individually or cumulatively, would result. Steelhead streams within the Cambria Urban Area include Santa Rosa Creek and its respective tributaries. (Mod67)

Diversion dams, water supply wells which tap the subflow, and similar water supply facilities which could significantly harm the steelhead run in any of these streams shall not be allowed. Exceptions may be considered only where the impact is fully mitigated and no significant disruption would result. Techniques for impact avoidance include:

i. Limiting diversions. Limiting diversions to peak winter flows exceeding the amount needed to maintain the steelhead runs, with off-stream storage where year-round water supplies are desired.

ii. Protecting water quality. Treating diverted water after use, and returning it to the watershed of origin in like quantities and qualities; and

iii. Supplementing flows. Supplementing stream flows with water imported from sources that do not exacerbate impacts on steelhead or salmon runs elsewhere.

(4) Other prohibited uses. Prohibited development activities include:

i. Placement of barriers to fish. In-stream barriers to sensitive freshwater species migration, including types of dams not covered above, weirs, and similar obstacles which would substantially interfere with normal migration patterns, except where mitigated to less than significant levels (e.g., with fish ladders or other effective bypass systems).

ii. Destruction of rearing habitats. Development which would cause loss of spawning or rearing habitat through flooding, siltation or similar impacts.

iii. Disturbance or removal of native riparian vegetation on the banks of streams. Locations constituting an exception to this requirement are:

a. In-between stream banks when essential for flood control purposes;

b. On roads, trails, or public utility crossings where there is no feasible alternative and no significant disruption would result; and

c. For native habitat restoration and protection projects.

iv. Interference with fish migration. Any other development activity that would raise overall stream temperatures to unfavorable levels, or that would interfere with normal fish migration and movement within the stream.

v. Breaching. Breaching of the beach berm, where such berm creates a coastal lagoon that provides summer rearing habitat for juvenile steelhead and/or other sensitive aquatic species. Exceptions shall be authorized only where such breaching represents the least environmentally damaging feasible alternative for relieving a flood hazard, public health hazard, or water pollution problem. In the event that a breach is authorized, it shall be conducted subject to the following standards:

a. Artificial breaching of a sand bar or beach berm containing a coastal lagoon is considered coastal development, therefore a coastal development permit must be obtained prior to breaching activity.

b. As appropriate, permits for creek mouth breaching must also be obtained prior to commencement of any work from California Department of Fish and Game, the U.S. Army Corps of Engineers, the Monterey Bay National Marine Sanctuary (if applicable), the Regional Water Quality Control Board, and all other concerned agencies prior to the breaching. In many cases, the required coastal development permit must be obtained from the California Coastal Commission instead of, or in addition to, the County, because the lagoon/creek mouth will be located entirely or partially within the State's retained jurisdiction.

c. Because of the unique nature of individual creekmouth environments, breaching standards must be designed specifically for each location where breaching activity will occur.

d. Development of a creek mouth breaching plan for each site shall include consideration of the following:

1. Use of feasible available alternatives, to eliminate the practice of artificial breaching if possible.

2. Thorough study of affected rare, threatened, or endangered

species and habitat, in particular steelhead trout, and tidewater goby.

3. Review of mitigation options as compensation for environmental damage caused by breaching.

4. Public access impacts.

5. Public health impacts.

6. Public safety impacts.

7. Review of historic and projected flooding of public and private properties, agricultural lands, and habitat.

8. Monitoring of lagoon and stream water quality.

9. Creation of a monitoring plan for each individual breaching incident, and a long-term monitoring plan to study lagoon health and the impacts of breaching on the lagoon. (Mod67)

(5) Grading adjacent to Environmentally Senstive Habitats shall conform to the provisions of Section 23.05.034c (Grading Standards).

SECTION 6: Section 23.07.172e1 [Site Development Standards] of the Coastal Zone land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended to read as follows:

(1) **Diking, dredging, or filling of wetlands:** Diking, dredging, or filling activities in wetland areas under county jurisdiction shall be allowed only to the extent that they are consistent with Environmentally Sensitive Habitats Policy 11 of the San Luis Obispo County Coastal Plan Policies ~~Local Coastal Plan~~, except that mineral extraction is not an allowed use in a wetland, and shall not be conducted without the property owner first securing approval of all permits required by this title.

SECTION 7: That the Board of Supervisors has considered the initial study prepared and conducted with respect to the matter described above. The Board of Supervisors hereby, as a result of its consideration, and the evidence presented at the hearings on said matter, certifies that the FEIR has been prepared and completed in compliance with the California Environmental Quality Act, California Public Resources Code Section 21000 et seq. and the Board of Supervisors reviewed and considered the information contained in the FEIR prior to approving the amendments and that the FEIR reflects the lead agency's independent judgement and analysis. Further, the Board of Supervisors hereby adopts the recommended findings of the County Environmental Coordinator which are attached hereto and incorporated herein as though fully set forth.

SECTION 8: If any section, subsection, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portion

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

SECTION 9: This ordinance shall become operative only upon approval by the California Coastal Commission and upon acknowledgment by the San Luis Obispo County Board of Supervisors of receipt of the Commission's resolution of certification.

SECTION 10: This ordinance shall take effect and be in full force on and after 30 days from the date of its passage hereof. Before the expiration of 15 days after the adoption of this ordinance, it shall be published once in a newspaper of general circulation published in the County of San Luis Obispo, State of California, together with the names of the members of the Board of Supervisors voting for and against the ordinance.

INTRODUCED at a regular meeting of the Board of Supervisors held on the_____ day of _____, 20____, and PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the _____ day of _____, 20__, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT: None

ABSTAINING: None

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

ATTEST:

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

[SEAL]

ORDINANCE CODE PROVISIONS APPROVED
AS TO FORM AND CODIFICATION:

JAMES B. LINDHOLM, JR.
County Counsel

By:
Deputy County Counsel

Dated: