

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 12/11/2012	(3) CONTACT/PHONE Michael Conger, Planner / 805-781-5136	
(4) SUBJECT Submittal of a resolution acknowledging the Certification by the California Coastal Commission of the San Luis Obispo County Local Coastal Program (LCP) Major Amendment 1-10 – Grading and Stormwater Management Ordinances. Districts 2, 3, 4.			
(5) RECOMMENDED ACTION It is recommended that the Board:  (1) Review and consider the modifications the Coastal Commission has made to San Luis Obispo County LCP Amendment 1-10.  (2) Determine whether to acknowledge receipt of the Coastal Commission’s resolution. Acknowledgment can occur by adopting and instructing the Chairperson to sign the attached resolution acknowledging receipt of the Coastal Commission’s resolution with modifications, accepting and agreeing to the modifications.  (3) If acknowledged, direct staff to submit the Resolution to the Executive Director of the California Coastal Commission.			
(6) FUNDING SOURCE(S) Department Budget	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT { } Consent { } Presentation { } Hearing (Time Est. _____) <b>{X}</b> Board Business (Time Est. <u>30 minutes</u> )			
(11) EXECUTED DOCUMENTS <b>{X}</b> Resolutions { } Contracts { } Ordinances { } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: { } 4/5th's Vote Required <b>{X}</b> N/A	
(14) LOCATION MAP  N/A	(15) BUSINESS IMPACT STATEMENT?  No	(16) AGENDA ITEM HISTORY  { } N/A Date <u>_1/26/10, 3/2/10, 3/16/10 and 4/13/10</u> _____	
(17) ADMINISTRATIVE OFFICE REVIEW  Reviewed by Leslie Brown			
(18) SUPERVISOR DISTRICT(S) District 2 - District 3 - District 4 -			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Michael Conger, Planner II

VIA: Kami Griffin, Assistant Director, Department of Planning and Building

DATE: 12/11/2012

SUBJECT: Submittal of a resolution acknowledging the Certification by the California Coastal Commission of the San Luis Obispo County Local Coastal Program (LCP) Major Amendment 1-10 – Grading and Stormwater Management Ordinances. Districts 2, 3, 4.

## **RECOMMENDATION**

It is recommended that the Board:

- (1) Review and consider the modifications the Coastal Commission has made to San Luis Obispo County LCP Amendment 1-10.
- (2) Determine whether to acknowledge receipt of the Coastal Commission's resolution. Acknowledgment can occur by adopting and instructing the Chairperson to sign the attached resolution acknowledging receipt of the Coastal Commission's resolution with modifications, accepting and agreeing to the modifications.
- (3) If acknowledged, direct staff to submit the Resolution to the Executive Director of the California Coastal Commission.

## **SUMMARY**

**The County's Stormwater Management Program required an update to the grading ordinance.** As a condition of our coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Municipal Separate Storm Sewer Systems (MS4), the County developed a Stormwater Management Program (SWMP). The SWMP required that the County amend its grading ordinance. In April 2010, your Board adopted the amended Grading and Stormwater Management Ordinance.

**The grading ordinance is in effect inland, but a Local Coastal Program amendment is required before it will take effect in the Coastal Zone.** In May 2010, the ordinance went into effect in the inland portions of the County. Coastal Commission action (e.g. amendment to the Local Coastal Program) would still be required before the ordinance can take effect in the Coastal Zone. In August 2012, the Coastal Commission took action and approved the amendment to the County's Local Coastal Program. As part of this action, the Commission made 35 modifications to the County-approved grading ordinance.

**The next step in the Local Coastal Program amendment process is for your Board to acknowledge the Coastal Commission's actions and accept their modifications.** Before the ordinance, as modified by the Coastal Commission can take effect, your Board must acknowledge the Coastal Commission's action and transmit that acknowledgement to the Executive Director of the Coastal Commission. As part of the acknowledgment, the Board would be agreeing to all Coastal Commission modifications. Before your Board makes such an acknowledgement, staff would request that the Board consider potential implications of these modifications.

**DISCUSSION**

The California Coastal Commission took action on the Coastal Zone portion of the ordinance in August 2012. As part of that action, the Commission made 35 modifications to the ordinance.

Of these 35 modifications:

- **4** modifications represent a **substantial change in policy**.
- **13** modifications **increase restrictions** beyond the Board-approved ordinance.
- **18** modifications are **minor editorial changes** that help provide clarification.

The table below identifies the Coastal Commission modifications that the Board should be aware of before acknowledging the Commission’s actions.

<b>COASTAL COMMISSION MODIFICATIONS</b>	
<b>Substantial change in policy</b>	<b>Increase in restrictions</b>
<p>#1 – Narrowing the Coastal Development Permit exemption for crop production and grazing activities.</p> <p>#8 – All grading activities require a Coastal Development Permit, unless exempted by Chapter 3.</p> <p>#9 and 27 – Including “cultivation activities” under the definition of excavation and grading.</p>	<ul style="list-style-type: none"> <li>• Changes in thresholds               <ul style="list-style-type: none"> <li>#11 – Ongoing crop production exemption</li> <li>#12 – Watercourse setback for agricultural grading on steep slopes.</li> <li>#15 – Groundwater recharge measures</li> <li>#16 – Drainage Plan near watercourses</li> <li>#17 – Erosion Control Plan near watercourses</li> <li>#18 – Drainage Plan for agricultural exempt structures</li> <li>#21 – Erosion Control Plan for removal of non-native vegetation</li> <li>#24 – Landform alterations minimized from public view corridors</li> </ul> </li> <li>• New restrictions               <ul style="list-style-type: none"> <li>#2 – Stormwater control measures for projects within 200 feet of ESHA</li> <li>#14 – Emergency Permit procedure must be followed to correct a hazardous condition</li> <li>#30 – Revegetation must use native plants</li> </ul> </li> <li>• Changes in reference               <ul style="list-style-type: none"> <li>#31 – “mapped ESHA” → “all ESHA”</li> <li>#32 – “blue-line stream” → “watercourse”</li> </ul> </li> </ul>
<p><i>Numbers are in reference to the modification numbers identified in the Coastal Commission Staff Report. Refer to Exhibit A for specific discussions regarding each modification.</i></p>	

**MODIFICATIONS FOR CONSIDERATION**

- **Narrowing the Coastal Development Permit exemption for crop production and grazing activities.**  
(Coastal Commission Modification #1)

Presently, all “development” in the Coastal Zone must receive a Coastal Development Permit. Section 23.03.040.d(9) provides an exemption for agricultural activities:

**d. Exemptions from permit requirements.** The following types of development within the Coastal Zone are exempt from the land use permit requirements of this title:

(9) Crop production and grazing where designated allowable by Coastal Table 'O', Part I of the Land Use Element, except where more than one-half acre of native vegetation is proposed to be mechanically removed.

This exemption means that, under the present ordinance, crop production and grazing projects ***DO NOT*** require a Coastal Development Permit, unless they are *mechanically* removing more than one-half acre of native vegetation. Historically, most agricultural operations have managed to fall within the parameters of this exemption.

The Coastal Commission modifies this section as follows:

**d. Exemptions from permit requirements.** The following types of development within the Coastal Zone are exempt from the land use permit requirements of this title:

(9) Ongoing crop production and grazing where designated allowable by Coastal Table 'O', Part I of the Land Use Element, except where more than one-half acre of native vegetation is proposed to be removed. Ongoing crop production is limited to grading, planting, and cultivation activities for crop production on land that has been used for crop production, including at a minimum planting or harvesting crops, within at least the previous five years.

As a result of this modification, a Coastal Development Permit would now be required in the following circumstances:

- Any grading, clearing, or cultivation activities, for the purposes of crop production or grazing, on lands not historically used for crop production or grazing.
- Any grading, clearing, or cultivation of land for the purposes of crop production and grazing on lands that had previously been used for crop production/grazing, but were not actively farmed/grazed within the last five years.
- Any grading, clearing, or cultivation on an active farm/ranch where one-half acre of native vegetation is to be removed by any means (not limited to mechanical removal).

As proposed by the County, in some agricultural grading cases, the Coastal Development Permit could be issued “over the counter” by the Planning Director in order to authorize processing of a Grading Permit or Alternative Review. However, in cases where the project would be appealable to the Coastal Commission (i.e. in an “appealable area” as defined by the Coastal Zone Land Use Ordinance), the Coastal Development Permit is elevated to a discretionary Minor Use Permit, and an accompanying environmental document pursuant to the California Environmental Quality Act (CEQA) must be completed.

In analyzing the language, the Planning Director’s interpretation of this section is as follows:

- ❖ Ongoing crop production and grazing activities are exempt from a Coastal Development Permit. Crop production which is occurring on lands already in crop production shall not be required to obtain a Coastal Development Permit.
- ❖ Removal of one-half acre of native vegetation to accommodate crop production or grazing on new lands would require a Coastal Development Permit. The Coastal Development Permit may be issued through an over-the-counter Plot Plan.

- ❖ Crop production and grazing activities on new lands would require a Coastal Development Permit where those lands were not previously used for crop production or grazing. Again, this Coastal Development Permit could be issued through an over-the counter Plot Plan (with potential elevation to MUP).

This modification does extend beyond the goal of the Grading and Stormwater Management Ordinances which were intended to address permit exemptions for *grading permits*. There was never any consideration of changing thresholds for *coastal development permits*. However, it would appear that in most instances, the change can be handled through over the counter permits. If your Board chooses to not accept this Coastal modification, staff will be required to process a new amendment to implement the NPDES requirements (as this remains a mandate) and try to continue to negotiate with coastal staff to leave the existing language of Section 23.03.040.d(9). If unsuccessful, the County would be in the same circumstances when considering whether to acknowledge those amendments. It is also unknown whether the Regional Water Quality Control Board will accept the County's reasoning for why the mandates have not been implemented. If they don't, the County could be subject to fines.

➤ **All grading activities require a Coastal Development Permit, unless exempted by Chapter 3.**  
(Coastal Commission Modification #8)

The Coastal Commission has also added language to the grading ordinance, itself, asserting that all grading activities require a Coastal Development Permit. This means that even grading activities which are fully exempted from a grading permit (e.g. activities under the 50 cubic yard threshold) would still need to seek a Coastal Development Permit approval unless they are explicitly exempted from a Coastal Development Permit.

Grading activities which are explicitly exempted from a Coastal Development Permit are limited. These include:

- Repair and maintenance activities Sec 23.03.040(d)(1)
- Installation of walls or fences Sec 23.03.040(d)(2)
- Installation of irrigation lines Sec 23.03.040(d)(5)
- Utility connections Sec 23.03.040(d)(6)
- "Ongoing crop production and grazing" (new language) Sec 23.03.040(d)(9)

All other grading activities would require a Coastal Development Permit under this modification, regardless of whether a grading permit is triggered.

The Coastal Commission did recognize the original definition of grading under a different section of the Ordinance. It would appear that their intent was to continue to exempt very small projects.

In analyzing the language, the Planning Director's interpretation of this section is as follows:

- ❖ Although in some cases, where the site is in an appealable area, smaller grading projects could be "bumped" up to Minor Use Permits with review pursuant to the California Environmental Quality Act (CEQA). This call should be rare as most of the small projects that fall under the exemptions as set forth in Coastal revised section 23.05.032b (example: a landscaping project with less than 50 cubic yards of grading) and will not be considered development under the Coastal Act.

As was stated with the previously described modification, if your Board chooses to not accept this Coastal modification, staff will be required to process a new amendment to implement the NPDES requirements (as this remains a mandate) and try to continue to negotiate with coastal staff to clarify the applicability of the ordinance relative to small projects. If unsuccessful, the County would be in the same circumstances when considering whether to acknowledge those amendments. It is also unknown whether the Regional

Water Quality Control Board will accept the County's reasoning for why the mandates have not been implemented. If they don't, the County could be subject to fines.

➤ **Including "cultivation activities" under the definition of excavation and grading.**  
(Coastal Commission Modifications #9 and #27)

When your Board adopted the Grading and Stormwater Management ordinances in 2010, the definition of "grading" was discussed at length. "Grading" includes both excavation activities and fill activities. Standard farming practices could be construed as "excavation" and therefore fall under the definition and thresholds of "grading."

<b>Cultivation</b> includes disking, harrowing, raking, chiseling, planting, plowing, seeding, or other tilling
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Working with input from the Farm Bureau, Agricultural Liaison Advisory Board, and Farm Bureau, staff was able to reach a consensus that cultivation activities would not be counted towards grading thresholds. For example, the thought was that a farmer harrowing a 10-acre field should not trigger the 50 cubic-yard grading threshold, even though more than 50 cubic yards would have been "excavated."

In order to address this, your Board adopted a revised definition of "excavation" which clearly draws a line between grading and cultivation:

<b>Excavation.</b> Any activity by which earth, sand, gravel, rock or any other similar material is dug into, cut quarried, uncovered, removed, displaced, relocated or bulldozed and shall include the conditions resulting thereof. <u>Excavation excludes activities associated with crop production, such as cultivation, disking, harrowing, raking or chiseling, planting, plowing, seeding, or other tilling.</u> (addition to the definition shown with underline)
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As part of the Coastal Commission action, they reverted to the present definition of "excavation," which implies that cultivation activities would count towards grading thresholds (e.g. cubic yardage). This could result in an unintended consequence of requiring a higher level of permit for relatively benign agricultural maintenance operations.

In analyzing the language, the Planning Director's interpretation of this section is as follows:

- ❖ Since the definition would remain the same as it exists today, staff would continue to implement the Ordinance in the same manner as previously implemented. Rarely has it been necessary to receive a Coastal Development Permit for the establishment of new fields as these rarely fall under the definition of development.
- ❖ It is clear that the revisions continue to exempt ongoing production. In the recent past, the creation of new fields in the Coastal Zone has not been significant. As such, staff doesn't believe that although it would appear that this modification could be construed to include common agricultural practices creating the need for a Coastal Development Permit, most agriculture in the Coastal Zone is ongoing and therefore this modification will not affect its continuance.

As was stated with the previously described modification, if your Board chooses to not accept this Coastal modification, staff will be required to process a new amendment to implement the NPDES requirements (as this remains a mandate) and try to continue to negotiate with coastal staff to clarify the applicability of the ordinance. If unsuccessful, the County would be in the same circumstances when considering whether to acknowledge those amendments. It is also unknown whether the Regional Water Quality Control Board will accept the County's reasoning for why the mandates have not been implemented. If they don't, the County could be subject to fines.

## MODIFICATIONS RESULTING IN INCREASED RESTRICTIONS

### Threshold Changes

Threshold	Ordinance 3189 April 2010	Coastal Commission Modifications
Qualification for “ongoing crop production” exemption	Farmed within the last 10 years	Farmed within the last 5 years
Agricultural grading setbacks on 30%+ slopes	None	Must be 100 feet from a watercourse or ESHA
Groundwater recharge measures required	Only if the site is considered “a valuable groundwater recharge area”	In all cases
Drainage Plan triggered by distance to a stream	Within 100 feet of a blue-line stream	Within 200 feet of watercourse
Erosion Control Plan triggered by distance to a stream	Within 100 feet of a blue-line stream	Within 200 feet of watercourse
Erosion Control Plan triggered by vegetation removal	One-half acre of native vegetation	One-half acre of vegetation (not necessarily native)
Landform alterations to be minimized	Within “public view corridors” such as collector or arterial roads determined by the Planning Director.	Within “public view corridors” (further language removed)

### New Requirements

- Correction to Hazardous Condition process must follow Emergency Permit procedures
- Projects within 200 feet of ESHA and involving 2,500 square feet of net increase in impervious surfaces must comply with the Stormwater Management Ordinance.
- Where revegetation is required, native plants must be used.

### Replacing references

- All references to “mapped ESHA” will be replaced with “all ESHA”
- All references to a “blue-line stream” will be replaced with “watercourse”

For the most part, these modifications increase requirements that were already proposed in the ordinance.

## OTHER AGENCY INVOLVEMENT/IMPACT

The California Coastal Commission has taken action on the LCP amendment. County Counsel has reviewed and approved the resolution as to form and legal effect. The Agricultural Commissioner’s office and the local Resource Conservation Districts will also be involved with the Alternative Review Program.

## FINANCIAL CONSIDERATIONS

All County staff costs for administering the grading and stormwater ordinance and other programs as part of the National Pollutant Discharge Elimination System (NPDES) are contained with the Planning and Building Department budget.

## **RESULTS**

The Board's acknowledgment of the Coastal Commission's action is "all or none." The Board can either agree to all of the modifications, or choose not to acknowledge them, which means no change to the Local Coastal Program will occur.

1. **If your Board chooses to acknowledge the Coastal Commission's action** by adopting the attached resolution, staff will then submit the required material to the Executive Director of the Coastal Commission for certification. Certification must occur by February 9, 2013.

This action will allow the County to be in compliance with the Best Management Practices (BMPs) established in the Stormwater Management Program concerning construction and post-construction phase stormwater discharges.

2. **If your Board chooses not to acknowledge the Coastal Commission's action**, the grading ordinance will not be amended in the Coastal Zone.

Because we would not have completed the ordinance revisions, this action could put the County out of compliance with the Stormwater Management Program, which in turn could result in fines from the Regional Water Quality Control Board.

To address this, your Board could:

- a. Direct staff to process a *new* Local Coastal Program amendment for the grading and stormwater management ordinances.
- b. Direct staff to work with the Regional Water Quality Control Board to develop a path to compliance with the Stormwater Management Program requirement concerning grading ordinance revisions.

## **ATTACHMENTS**

Resolution

Exhibit A: Part 1 – Coastal Commission Staff Report  
Part 2 – Coastal Commission Exhibits A through C (*showing language as adopted by the Board*)  
Part 3 – Coastal Commission Exhibit D (*showing language as adopted by the Coastal Commission*)