

September 10, 2013

BY HAND DELIVERY

Brian Pedrotti, Project Manager
County of San Luis Obispo
Dept. of Planning & Building
976 Osos St., Room 300
San Luis Obispo, CA 93408-2040

**RE: Recirculated RDEIR (July 2013) Laetitia Agricultural Cluster
Subdivision Tentative Tract Map and Conditional Use Permit
SUB2003-00001 (Tract 2606) SCH # 2005041094**

Dear Mr. Pedrotti:

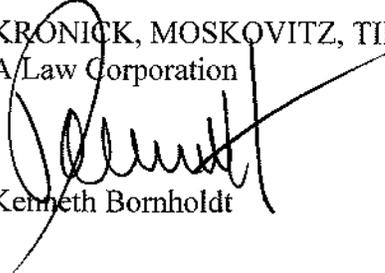
We recently reviewed the materials that were resubmitted to the County as comments to the above-referenced document under our letter dated August 23, 2013 and marked as Exhibit LV-12. We discovered that we erroneously included a draft Technical Study dated December 2006 as an exhibit to a letter from ESA dated October 15, 2008 (marked Exhibit LV-3), instead of the final study dated June 2007 that was included with the original ESA letter.

We are transmitting to you with this letter a copy of the final Technical Study dated June, 2007, to replace the one wrong we submitted with our letter of August 23, 2013. Please disregard the draft ESA Technical Study dated December 2006.

If you have any questions, please do not hesitate to contact us.

Very truly yours,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation


Kenneth Bornholdt

KB/clk

cc: John Janneck
Vic Montgomery

1037184.1 11929.006

LV-24

Kenneth Bornholdt

805.786.4302
kbornholdt@kmtg.com

October 1, 2013

BY HAND DELIVERY

Brian Pedrotti, Project Manager
County of San Luis Obispo
Dept. of Planning & Building
976 Osos St., Room 300
San Luis Obispo, CA 93408-2040

**RE: Laetitia Agricultural Cluster Subdivision Tentative Tract Map and
Conditional Use Permit SUB2003-00001 (Tract 2606) SCH # 2005041094**

Dear Mr. Pedrotti:

Based on our last meeting, the purpose of this letter is to confirm our understandings on the calculation of allowable lots under the above-referenced application based on our last meeting on September 10, 2013. The County and the Applicant agree that the determination of the base number of lots allowed must use the Agricultural Category (22.22.040) for lands designated Agriculture and the Rural Lands Category (22.22.050) for lands designated Rural. We further agree that for lands designated Agriculture, the clustered parcels can be double those normally allowed in a standard subdivision. We agreed to provide further documentation on whether the Applicant is entitled to the double parcel density on the Rural Lands area of the property and review the County's record on the Biddle Ranch project.

As we stated in the meeting, we believe the provisions in LUO Sections 22.22.150.B and 22.22.150.I clearly state that Rural Lands that are in agricultural use at the time of the application are entitled to the double parcel bonus allowed in this section. Since this Applicant applied for an "Agricultural Lands Clustering" subdivision under this Section, the provisions of a Cluster Division under a different LUO Section clearly do not apply on this issue. Also, we researched the records of other County determinations where the County found that Agricultural Cluster developments on Rural Lands were entitled to the double bonus provisions under LUO Section 22.22.150.

We wanted to supplement the administrative record with copies of the attached documents which support the interpretation that the above-referenced project is entitled to the double density bonus of lots in the lands designated Rural Lands:

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Brian Pedrotti, Project Manager
October 1, 2013
Page 2

1. Biddle Ranch Ag Cluster Conditional Use Permit Finding A.b (3/13/03);
2. Project Density Calculations Reviewed By County Planner James Caruso During Meeting with Applicant Team (5/5/07);
3. DEIR for Agricultural Cluster Subdivision Program (excerpt) (9/11); and
4. FEIR for Agricultural Cluster Subdivision Program (excerpt) (8/12).

We have highlighted the applicable language for ease of reference and ask that you consider these documents, which are all inconsistent with the position that the County has taken currently for the Rural Lands area in above-referenced project. If you have any questions, please do not hesitate to contact me.

Your courtesy and cooperation are greatly appreciated.

Very truly yours,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation

Kenneth C. Bornholdt (my cle)

Kenneth Bornholdt

KB/clk

cc: John Janneck
Victor Montgomery
Enclosures (4)

1038615.1 11929.006

LV-25

Enclosure 1

R L

**PLANNING COMMISSION
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA**

Thursday, March 13, 2003

PRESENT: Commissioners Wayne Cooper, Doreen Liberto-Blanck, Pat Veear, Chairman Bob Roos

ABSENT: Commissioner Eugene Mehlschau

**RESOLUTION NO. 2003-17
RESOLUTION RELATIVE TO THE GRANTING
OF A CONDITIONAL USE PERMIT**

WHEREAS, the County Planning Commission of the County of San Luis Obispo, State of California, did, on the 13th day of March, 2003, grant a Conditional Use Permit to TALLEY FARMS, INC. to allow subdivision of an approximately 4,719 acre site into 87 clustered residential lots in two clusters ranging in size from 1.0 to 2.5 acres, a 1,560 square foot private clubhouse and parking area, private equestrian facility including trailer parking, paddocks and arena, entry features including gate and roads, pedestrian/equestrian trail, two water storage tanks and water distribution lines and an open space easement restricting development on 95% of the site. In addition, the project includes a road exception request to reduce pavement width, reduce right-of-way width and reduce design speed criteria on a private road, in the Agriculture and Rural Lands Land Use Categories. The property on the east cluster is located on the east side of Lopez Drive, east of the intersection of Lopez Drive and Orcutt Road and the west cluster is located west of Lopez Drive, approximately ½ mile south of the intersection of Lopez Drive and Orcutt Road, APN: 047-081-031, in the San Luis Obispo and Huasna-Lopez Planning Areas. County File Number: Tract 2408/S990298T/D990392D.

WHEREAS, The Planning Commission, after considering the facts relating to said application, approves this Permit subject to the Statement of Overriding Considerations listed in

-out

EXHIBIT A
CONDITIONAL USE PERMIT FINDINGS

A. As conditioned the proposed project is consistent with the General Plan and the Land Use Element of the general plan because the proposed project is consistent with the Ag and Open Space:

- a. **The property is located within 5 miles of an urban area and is eligible for clustering.**
- b. **The number of parcels allowed on the site is equal to the maximum number of dwelling units that could be allowed on a standard subdivision (i.e. two per parcel).**
- c. **All resulting open space parcels will be covered by a permanent easement.**
- a. **All resulting residential parcels are limited to one dwelling.**

B. As conditioned, the project or use satisfies all applicable provisions of Title 22 of the San Luis Obispo County Code because:

1. **The proposed project will result in the continuation, enhancement and long-term preservation of agricultural operations consisting of the production of food and fiber on the subject site and in the surrounding area because the clustered lots have been located in an areas not conducive to ag operations, the clustered lots are located in areas that will not be affected by the external effects of production agriculture such as noise, odors and chemicals.**
2. **Locate proposed development to avoid and buffer all prime agricultural soils on the site, other agricultural production areas on the site, as well as agricultural operations on adjoining properties because the clustered lots have been located in areas that do not contain prime soils. the prime soils on the site are located in the bottom lands near the creeks and the clustered lots are located either on the slopes above ht creeks or on the west side of Lopez Drive that is outside of the agriculturally designated lands.**
3. **Minimize to the maximum extent feasible the need for construction of new roads by clustering new development close to existing roads because roads used to access the clustered lots are chiefly existing ranch roads that require some amount of widening but minimize new construction.**
4. **Avoid placement of roads or structures on any environmentally sensitive habitat areas because all road and residential construction is located outside of Sensitive Resource Areas, Geologic Study Areas and Flood hazard areas.**
5. **Minimize impacts of non-agricultural structures and roads on public views from public roads and public recreation areas because new residential construction will not be visible from nearby parkland (Biddle Park) due to rearrangement of proposed lot locations as mentioned in the Final EIR.**

Enclosure 2

LAETITIA
AS
CLUSTER

save

Reviewed w/
James C
5/5/07

Need
EXHIBIT *

Assumptions

① CHECK UNPLANTED
AREAS w/
VINEYARDS IF BIG!

Laetitia Density Calculations

May 5, 2004

AG Lands is a total of 828.38 ac's

Requires 95% of the acreage to remain in Agricultural use and the remaining 5% allowable area for development = 41.4 ac

38 Lots @ 1 ac. =	38.1 ac
<u>Roads acreage =</u>	<u>3.3 ac</u>
Total =	41.4 ac

Rural Lands is a total of 1082.28 ac's minus 388.52 ac dude ranch parcel = 693.76ac - RL
@ <30% slope ÷ 20du/ac = 34.7 × 2 = 69.4 ac (allowable area for development based on slope only).

Home site lots must be 1 acre minimum

Requires 90% of the acreage to remain in OS, the remaining 10% allowable for dev. area
10% of 693.76 = 69.4 ac

60 lots @ 1 ac =	60.0 ac
HOA Facility =	1.5 ac ✓
Boutique Winery =	1.0 ac ✓
<u>Roads acreage =</u>	<u>6.9 ac</u> ✓
Total =	69.4ac

Summary

Existing Proposal: RL =	60 - 1 ac. Lots
AG =	40 - 1 ac. Lots
	<u>100 Total Lots</u>

} OLD
CALC.

New Proposal: RL =	60 - 1 ac. Lots
AG =	38 - 1 ac. Lots
	<u>98 Total 1 ac Lots</u>

} new
CALC.

Enclosure 3

Draft

ENVIRONMENTAL IMPACT REPORT
for the **AGRICULTURAL CLUSTER**
SUBDIVISION PROGRAM

General Plan Amendment LRP2008-00010
State Clearinghouse No. 2010011079



County of San Luis Obispo

Department of Planning and Building
San Luis Obispo, CA 93408

September 2011

parcel size under the use test in Section 22.22.040; however, the proposed development standards effectively limit a cluster subdivision to the density that could be achieved by applying a 50 acre minimum parcel size.

- **NRCS Class V - VIII: 320 acre minimum.** Forty-four percent (52,809 acres) of the eligible parcels contain NRCS Class V, VI, VII, and VIII soils. These soils have severe limitations that restrict their use and make them generally unsuitable for any form of cultivation. For the purpose of calculating the subdivision potential within the project area, it is assumed that these areas would be used for rangeland and grazing and would therefore qualify for a 320 acre minimum parcel size when applying the use test in Section 22.22.040.

Based on the NRCS soil capability classifications and associated minimum parcel sizes described above, the existing 1,090 eligible parcels have the potential to be divided into 1,508 new parcels, resulting in a net increase of 418 parcels. Each new residential cluster parcel could be developed with one new single family residence.

Table 2.6-1: Development Potential under Proposed Amendments

NRCS Soil Class	Eligible Area (acres)	Minimum Parcel Size (acres)	Potential Parcels	Existing Parcels	New Parcels / SFRs
I and II*	20,584	50	412	1,090	418
III and IV*	46,584	50	932		
V - VIII	52,809	320	165		
Total	119,976		1,508		

*Assumed to be irrigated

Source: County of San Luis Obispo Department of Planning and Building

It should be noted that the proposed ordinance does not include a density bonus, and the maximum number of residential cluster parcels allowed would be based on the number of parcels that would result from a demonstrated conventional land division applying the use test minimum parcel size criteria in Section 22.22.040 of the LUO. Therefore, the Agricultural Cluster Subdivision Program does not change the amount of development that could otherwise occur. Rather, it dictates where it should be located, with the overarching intent of preserving the majority of the site in agricultural production.

2.6.2 Development Potential under Existing Ordinance

The existing ordinance provides separate requirements for "major" agricultural cluster projects and "minor" agricultural cluster projects. Major agricultural cluster projects are those located within five miles of an identified urban or village reserve line (URL or VRL), and qualify for a residential parcel bonus of 100%. Minor agricultural cluster projects can be located on any AG or RL parcel in the Inland area of the county and qualify for a parcel bonus of 25%.

Based on the same methodology discussed above in Section 2.6.1, under the existing ordinance, there is a potential for 4,582 new residential cluster parcels on agricultural lands throughout the Inland portion of the county. This includes 1,150 new parcels as a result of "major" cluster



2.8 PROGRAM SUMMARY

Table 2.8-1 summarizes the various features of the existing Land Use Ordinance standards and Agriculture Element policies governing agricultural cluster subdivisions and how these provisions would be modified under the proposed project.

Table 2.8-1: Program Summary

Feature	Existing	Proposed
Land Use Ordinance Section 22.22.150: Agricultural Lands Clustering		
Locational Criteria	<ul style="list-style-type: none"> • Major clusters are limited to AG and RL designated parcels within five miles of Arroyo Grande, Atascadero, San Luis Obispo, San Miguel, Nipomo, Templeton, Paso Robles, and Santa Maria URLs, and Creston VRL. • No clustering provisions in the Coastal Zone. • Minor clusters are limited to AG and RL designated parcels (no URL distance limitation). • Excludes properties located in Arroyo Grande, Cienega, and Oso Flaco valleys • Williamson Act lands may be used for density calculations, however, cluster parcels may not be established on contracted lands. 	<ul style="list-style-type: none"> • No distinction between major and minor cluster subdivisions. • In the inland area, agricultural cluster subdivisions are limited to AG designated parcels within five road miles of identified URLs (excluding Santa Maria and Creston VRL). • Clusters allowed on AG designated parcels in the North Coast and Estero planning areas of the Coastal Zone. Hearst Ranch is excluded from the program. • Excludes Williamson Act lands entirely. • Excludes properties within RL category.
Density Calculation	<ul style="list-style-type: none"> • For major clusters, the maximum number of allowed parcels equals the number of primary dwellings allowed on parcels that could result from a presumed conventional subdivision. • For minor clusters, the maximum number of allowed parcels equals the number of parcels that could result from a presumed conventional subdivision plus a 25% 	<ul style="list-style-type: none"> • In the inland area, the number of allowed residential parcels equals the number of parcels that could result from a demonstrated conventional subdivision applying the "use" test only, except the minimum parcel size can be no less than 40 acres. • In the Coastal Zone, the number of allowed parcels



Agricultural Cluster Subdivision Program EIR
Section 2.0 Project Description

Feature	Existing	Proposed
	<p>density bonus (or at least one parcel).</p> <ul style="list-style-type: none"> The number of allowed parcels can be determined by applying either "use" or "soil capability" test. 	<p>equals the number existing underlying lots.</p> <ul style="list-style-type: none"> Agricultural parcel as density bonus. No residential density bonus.
Maximum Allowed Development Area	<ul style="list-style-type: none"> Major clusters: 5% of total site area. Minor clusters: 10% of total site area. 	<ul style="list-style-type: none"> 5% of total site area. Further clarifies what residential components are included in the 5% area.
Minimum Cluster Parcel Size	<ul style="list-style-type: none"> 10,000 square feet for major clusters. 20,000 square feet for minor clusters. 	<ul style="list-style-type: none"> 2.5 acres.
Maximum Cluster Parcel Size	<ul style="list-style-type: none"> Major: 2.5 acres Minor: 5 acres 	<ul style="list-style-type: none"> Parcel may be increased in size up to 5 acres when doing so is necessary to accommodate the required agricultural buffers on the residential parcel.
Allowed Structural Uses on Cluster Parcels	<ul style="list-style-type: none"> One dwelling unit. 	<ul style="list-style-type: none"> Each residential cluster parcel shall be limited to one residence and residential accessory structures.
Layout and Design Standards	<ul style="list-style-type: none"> Cluster residential development to the maximum extent feasible so as to not interfere with agricultural production. No residential development allowed on prime soils. Residential building sites and access roads shall be located to avoid impacts to adjacent agricultural operations. Roads and building sites shall be located to minimize site disturbance, environmentally sensitive habitat areas, and visibility. Projects shall comply with adopted agricultural buffer 	<ul style="list-style-type: none"> No residential development allowed on prime farmland. Residential cluster parcels shall be physically contiguous to each other. Residential parcels shall be located as close as possible to existing access roads. When possible, new road or driveway development shall be avoided. Projects shall comply with adopted agricultural buffer policies. Further clarifies that agricultural buffers shall be located within the residential development area.

Feature	Existing	Proposed
	<p>policies.</p> <ul style="list-style-type: none"> When possible, new road or driveway development shall be avoided. 	<p>not on the agricultural parcel.</p>
<p>Agricultural Land Preservation</p>	<ul style="list-style-type: none"> Permanent agricultural open space easement required on 95% of project site for major clusters and 90% of the site for minor clusters. Agricultural open space parcel shall be the minimum size to qualify as a separate agricultural parcel. Agricultural open space parcel shall qualify for a standalone Williamson Act preserve and contract. Agricultural open space parcel may not include any portion of residential cluster parcels. 	<ul style="list-style-type: none"> Permanent agricultural easement required on 95% of the project site. The agricultural preservation area shall be a single parcel of a minimum size to qualify as a separate agricultural parcel. The agricultural preservation area shall qualify for a standalone Williamson Act preserve and contract. Agricultural preservation area may not include any portion of residential cluster parcels.
<p>Water and Wastewater Systems</p>	<ul style="list-style-type: none"> Community water systems are required for parcels less than 2.5 acres in size. Parcels less than one acre are allowed only where the leaching capacity of site soils for septic tank use is from 0 to 5 minutes per inch, or where community sewer is provided. 	<ul style="list-style-type: none"> Each cluster parcel shall be designed and developed to provide for individual on-site water and wastewater systems. Community water and wastewater systems are not allowed.
<p>Application Content</p>	<ul style="list-style-type: none"> Written explanation of how project meets required findings 	<ul style="list-style-type: none"> Written explanation of how project meets required findings. Demonstration of conventional subdivision qualification. Demonstration of agricultural history. Hydrogeologic analysis verifying adequate water availability for anticipated residential use without impacting supplies for existing and future agricultural



Agricultural Cluster Subdivision Program EIR
 Section 2.0 Project Description

Feature	Existing	Proposed
Agriculture Element of the County General Plan		
Policy	Existing	Proposed
20: Agricultural Land Divisions	<ul style="list-style-type: none"> • Identifies cluster subdivisions as an alternative to conventional "lot split" divisions. • Specifies that agricultural subdivisions should ensure long-term protection of agricultural resources. 	<ul style="list-style-type: none"> • Update text to reflect proposed ordinance amendments. • Addition of design criteria to ensure protection of long-term agricultural resources, consistent with proposed ordinance amendments.
Policy 22: Major Ag Cluster Projects	<ul style="list-style-type: none"> • This policy contains requirements for major agricultural cluster subdivisions. 	<ul style="list-style-type: none"> • Amend policy consistent with proposed ordinance amendments for all agricultural cluster subdivisions.
Policy 23: Minor Ag Cluster Projects	<ul style="list-style-type: none"> • This policy contains requirements for minor agricultural cluster subdivisions. 	<ul style="list-style-type: none"> • Delete policy since the proposed amendments would eliminate the distinction between major and minor clusters.

b. Project Impacts and Mitigation Measures.

Impact AG-1 Development under the proposed Agricultural Cluster Subdivision Program could convert Important Farmland, as mapped by the California Department of Conservation, in areas currently designated Agriculture to residential and non-agricultural uses. When compared to development potential under the existing ordinance, the program would be expected to have fewer impacts. Impacts compared to the existing ordinance would therefore be Class III, *less than significant*. Compared to existing conditions, impacts would be Class I, *significant and unavoidable*.

Compared to Development Potential under the Existing Ordinance

Elimination of Minor Clusters. The proposed program revisions would eliminate the distinction between major and minor clusters. Currently, Section 22.22.150 (Agricultural Lands Clustering) of the County's Land Use Ordinance (LUO) provides separate requirements for "major" agricultural cluster projects and "minor" agricultural cluster projects. Major agricultural cluster projects are those located within five miles of an identified urban or village reserve line (URL or VRL), and qualify for a residential parcel bonus of 100%. Minor agricultural cluster projects can be located anywhere in the Inland portion of the county (on land designated Agriculture or Rural Lands), and qualify for a parcel bonus of 25%. The proposed ordinance revision would remove the distinction between the two types of agricultural clusters. In doing so, it would effectively eliminate the minor agricultural cluster altogether, such that agricultural cluster projects would no longer be allowed outside an established distance from a URL. The effect of this change, compared to the development potential of the existing ordinance, would be less agricultural cluster development throughout the Inland portion of the county and thus reduced potential for important farmland to be converted due to implementation of residential uses and associated urban improvements. As the minor agricultural cluster planning tool would effectively be eliminated under the revised ordinance, the remaining program revisions can be viewed as alterations to the major agricultural cluster, as currently outlined in Section 22.22.150 of the County's LUO.

Rural Lands Exclusion. This proposed program revision would eliminate agricultural cluster subdivisions as an option in the Rural Lands (RL) category. The existing ordinance allows for agricultural cluster subdivisions in the RL category if the parcel is in agricultural use at the time of application. Under the revised ordinance, RL properties would no longer be eligible for agricultural cluster subdivisions, regardless of current land use. RL designated property is located throughout the County, with concentrations in the southeastern portion of the County, to the southeast of Atascadero, and to the northwest of Avila Beach. Scattered RL parcels are also common in the northwestern portion of the County. Excluding these lands from the proposed program would result in fewer areas of the county being eligible for agricultural cluster subdivision.

It should be noted that RL properties would still be eligible for standard (non-agricultural) cluster divisions in accordance with LUO Section 22.22.140. The proposed program would not



alter Section 22.22.140 requirements. Rather, it would eliminate the possibility of agricultural clusters in these areas. Therefore, the net impact of removing RL lands from being eligible for agricultural cluster subdivision would be a reduction in the amount of important farmland converted to non-agricultural use due to implementation of residential uses and associated urban improvements associated with the agricultural cluster density bonus.

URL Distance Reduction. This proposed program revision would modify agricultural cluster eligibility criteria to include only parcels within five road miles of the urban reserve lines (URLs) of Arroyo Grande, Atascadero, San Luis Obispo, San Miguel, Nipomo, Templeton, and Paso Robles. The existing ordinance allows major agricultural clusters within five miles of these URLs, as well as within five miles of the Santa Maria and Creston village reserve lines (VRLs). It also allows minor agricultural clusters throughout the Inland portion of the county, regardless of proximity to urban areas. The result of this program revision would be a substantial reduction in the areas of the county eligible for agricultural cluster subdivision. Specifically, this program revision would reduce build-out potential by an estimated 2,902 residential cluster parcels. Substantially less important farmland would therefore be converted to non-agricultural use as a result of this revision.

Eliminate Agricultural Cluster Development Associated with Properties under Williamson Act Contract. The existing ordinance does not allow lands under Williamson Act contract to be used for agricultural cluster subdivisions. However, the existing ordinance does stipulate that if ownership includes contiguous non-contracted lands, the allowable number of cluster parcels (from the Williamson Act lands) may be clustered on the non-contract lands. In other words, although the Williamson Act lands themselves cannot be developed, they can provide qualifying density for an adjacent cluster. As of 2007, over 794,000 acres were enrolled in Williamson Act contracts in San Luis Obispo County (California Department of Conservation, *California Land Conservation (Williamson) Act 2008 Status Report*, February 2009). The proposed program revisions would eliminate the provision that Williamson Act lands can provide qualifying density. This change would reduce the total development potential of agricultural cluster subdivisions throughout the county. The total amount of important farmland converted to non-agricultural use would consequently be reduced. In addition, this would reduce potential conflicts with Williamson Act contract lands, compared to the existing ordinance.

Density Bonus Elimination. This proposed program revision would modify the way the number of allowable residential cluster parcels is calculated. Under the existing ordinance, the maximum number of residential parcels allowed in a major agricultural cluster project is equivalent to the number of primary dwellings normally allowed under a presumed conventional land division, plus a parcel density bonus of up to 100 percent. Under the revised ordinance, density would be determined based on *demonstrated* conventional land division and a minimum 40 acre standard, with no parcel density bonus. Because bonus residential parcels would not be allowed with the revised ordinance, fewer residential parcels would be created and less overall site disturbance would occur. Specifically, this program revision would reduce build-out potential by approximately 1,261 units. Therefore, the total amount of important farmland converted to non-agricultural use would be substantially reduced.

Increase Minimum Cluster Parcel Size. Currently, the residential parcel size for a major agricultural cluster project may be as small as 10,000 square feet (or approximately 0.2 acre),



6.1 ALTERNATIVE 1: NO PROJECT

Description

State CEQA Guidelines Section 15126.6 requires that an Environmental Impact Report's alternatives analysis consider a "no project" alternative. A "no project" alternative considers maintaining the status quo. This alternative anticipates that existing policies governing rural subdivisions would remain in place unchanged.

The purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of approving the Proposed Project with the impacts of not approving the Proposed Project. The no project alternative analysis is not the baseline for determining whether the Proposed Project's environmental effects may be significant, unless it is identical to the existing environmental setting analysis, which does establish that baseline.

When the project consists of the adoption of a new plan or policy, State CEQA Guidelines Section 15126.6(e)(3)(A) states that the no project alternative must consider "the continuation of the existing plan, policy, or operation into the future." The California Court of Appeal clarifies that the no project alternative analysis "[assists] the decision maker and the public in ascertaining the environmental consequences of doing nothing." As such, the "no project" alternative is not a "no development" alternative. This alternative does not consider elimination of the existing agricultural cluster subdivision program. Rather, that scenario was considered but eliminated since it would not meet the project objectives. This alternative considers continuation of existing policies governing agricultural cluster subdivisions and reasonably foreseeable development that could occur under existing regulations.

Existing Conditions

Existing conditions which affect residential development on rural agricultural land are summarized as follows:

- **Each standard parcel designated Agriculture is entitled to build two primary residential units.** Agriculture Element Policy 5 and Section 22.30.480 govern residential density on existing parcels. Additional residential units may qualify as farm support quarters commensurate to the agricultural use on the site. Historic trends demonstrate that only 8 percent of existing standard parcels have been developed with 2 primary residences.
- **Standard subdivisions could result in parcels as small as 20 acres.** New subdivisions of agricultural land may result in parcels of 20 acres, provided that there are at least 18 acres of intensively farmed area on each parcel and soils are prime. In circumstances where parcels are created under this provision, only one residence may be built per parcel.

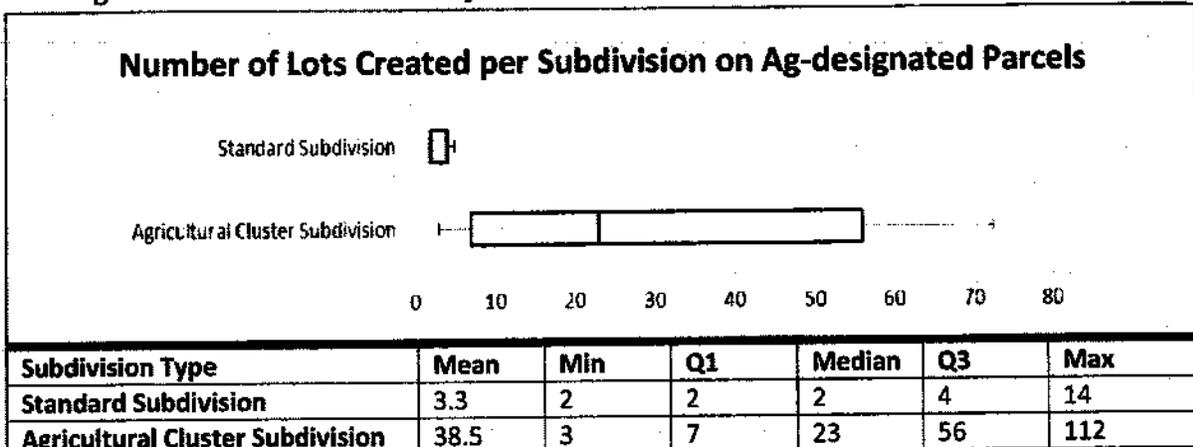


- **Subdivision minimum parcel size is determined based on application of a use or soils and capability test.** Land may qualify for subdivision to parcel sizes as low as 40 acres based on historical use. Intensively farmed land qualifies for lower minimum parcel sizes, because intensive farm activities tend to be viable on smaller parcels compared to less intensive uses such as livestock grazing. Land may also qualify for subdivision to parcel sizes as low as 40 acres based on capability. The more capable lands would have soils rated Class I to IV and a sufficient water supply to irrigate for intensive farming. Less capable lands requiring larger parcel sizes would have poorer soils and/or insufficient irrigation capability. In the best conditions where intensive farming has historically occurred on prime soils, subdivision to 20 acre parcels is possible.
- **Owners of Agriculture and Rural Lands designated parcels may subdivide either through the standard subdivision process or through the agricultural cluster subdivision program.** Existing agricultural cluster subdivision policies and standards are set through Agriculture Element Policies 22 and 23, and through Section 22.22.150 through 22.22.154 of the Land Use Ordinance. Major agricultural cluster subdivisions allow a 100 percent density bonus, essentially equating the number of residential cluster parcels with the potential number of primary residences that could be generated through a standard subdivision (assuming 100 percent of standard parcels would be developed with two primary residences). Minor agricultural cluster subdivisions qualify for a 25 percent density bonus. In exchange for these incentives, a large amount of land is to be protected in perpetuity as open space (90 percent for minor, 95 percent for major).
- **Based on historic trends, a greater number of new residences are generated through agricultural cluster subdivisions than through standard subdivisions.** Over the last ten years, roughly 73 percent of new Agriculture-designated parcels were created as part of an agricultural cluster subdivision. As depicted in Figure 6.1-1, the median number of parcels created as part of an agricultural cluster subdivision (23) is roughly 11 times greater than the median number of parcels created as part of a standard agricultural subdivision (2). Furthermore, residential build-out on agricultural cluster parcels tends to be close to 100 percent of the maximum build-out. In contrast, residential build-out on standard parcels tends to be closer to 54 percent¹
- **Agricultural cluster subdivisions are not allowed in the Coastal Zone.** There are no provisions in the Local Coastal Program or Coastal Zone Land Use Ordinance to allow agricultural cluster subdivisions within the Coastal Zone.

¹Based on the historic trend that second primary residences are constructed on only about 8 percent of standard agricultural parcels.



Figure 6.1-1: Whisker Plot Comparison between Standard and Cluster Subdivisions



Source: County Department of Planning and Building Permit Tacking Database

Contrast in Policies between the Project and the No Project Alternative

In the case of agricultural cluster subdivisions, the existing policies which would be carried forward under a no-project alternative include, but are not limited to the following:

Inland Areas

- **Minor cluster option will remain.** This alternative would not eliminate the minor cluster subdivision option. Under the present ordinance, minor clusters may occur on most agricultural lands throughout the County. There is no limitation on distance from an urban reserve line. Minor clusters allow development on 10 percent of the site area, and require the remaining 90 percent area to be placed within an open space easement. A 25 percent bonus density is awarded for minor agricultural cluster subdivisions.
- **Agricultural cluster subdivisions may occur in Rural Lands.** This alternative would allow agricultural cluster subdivisions to occur within the Rural Lands land use category.
- **Major cluster density bonus will remain.** This alternative would maintain the 100 percent density bonus allowed for major agricultural clusters located within 5 miles of identified urban reserve line.
- **Smaller cluster parcels will be allowable.** Residential cluster parcels are allowed down to a size of 10,000 square feet under the present ordinance. Parcel sizes are, however, constrained by the need to accommodate sufficient agricultural buffers. Parcels sized less than 2.5 acres would be required to be served by a community water system.
- **Design standards remain unchanged.** Clarified design requirements (e.g. contiguity, counting roads and infrastructure towards developable areas, etc.) would not be



provided under this alternative. Application of these design standards, however, may still occur as part of the discretionary review process.

- **Agricultural cluster subdivisions may qualify on capability.** Under the existing ordinance, the applicant may choose which subdivision test is applied to determine minimum parcel size: the *use test*, which considers existing and historic agricultural use; or the *soils capability test*, which considers the potential for future agricultural production as determined by soil quality. Under this alternative, the applicant could continue to choose which subdivision test to use in order to determine base density. Additionally, compliance with standard subdivision requirements aimed at ensuring the creation of sustainable parcels would continue to be presumed rather than demonstrated. This presumption would continue to result in the creation of a greater number of residential parcels in agricultural areas.
- **New application materials will not necessarily be required.** Under this alternative, existing application content requirements will remain in place. Newly proposed application contents (e.g. hydrogeologic analysis) will not be statutorily required. Historically, the County has, however, required these application contents in order to process individual projects pursuant to CEQA. As such, under this alternative, whether these materials will be necessary will remain at the discretion of the Environmental Coordinator.
- **Agricultural buffer requirements will remain the same.** At present, agricultural buffers are governed under the Board-adopted Agricultural Buffer Policy (November 2005). This existing policy clearly states that agricultural buffers are to be accommodated on the developer's land. The policy further states that the County does not have authority to restrict agricultural practices on agricultural land in order to accommodate the buffer. The clarifying language proposed as part of the project mirrors this existing policy. As there is no change proposed to the buffer policy, this alternative will not substantially differ from the proposed program.
- **Standard subdivisions could continue to occur with no change.** Existing ordinance standards governing standard agricultural subdivisions would remain in place unchanged. In this respect, this alternative will not differ from the proposed program.
- **Density on existing parcels would not be affected.** Agricultural parcels over 20 acres in the Inland portion of the County would continue to be allowed up to two single family residences, plus qualifying farm support residences. In this respect, this alternative will not differ from the proposed program.

Coastal Zone

- **No cluster option in the Coastal Zone.** This alternative would not introduce the agricultural cluster subdivision option for agricultural lands in the Coastal Zone. Subdivision of agricultural properties within the Coastal Zone could still occur as a standard subdivision.



Enclosure 4

Final

ENVIRONMENTAL IMPACT REPORT
for the **AGRICULTURAL CLUSTER**
SUBDIVISION PROGRAM

General Plan Amendment LRP2008-00010
State Clearinghouse No. 2010011079



County of San Luis Obispo

Department of Planning and Building
San Luis Obispo, CA 93408

August 2012

August 2012

2.0 PROJECT DESCRIPTION

The County of San Luis Obispo has existing ordinance standards and General Plan policies governing agricultural cluster land divisions. These ordinances and policies allow owners of eligible properties to apply for an agricultural cluster subdivision as an alternative to a conventional land division. The proposed ordinance and general plan changes will modify existing criteria and standards associated with agricultural cluster subdivisions in order to reduce environmental impacts and to protect lands for continued and enhanced agricultural production.

The proposed project consists of revisions to the Land Use Ordinance (Title 22 of the County Code), Coastal Zone Land Use Ordinance (Title 23 of the County Code), and the Agriculture Element of the County General Plan.

Key components of the proposed project include:

- Allowing agricultural cluster subdivisions in the Coastal Zone, where this program does not presently exist;
- Eliminating the distinction between major and minor agricultural cluster subdivisions;
- ~~Eliminating the residential density bonus for agricultural cluster subdivisions;~~
- Precluding the qualifying density for agricultural cluster subdivisions from occurring on lands protected under the Williamson Act;
- Restricting agricultural cluster subdivisions to properties located within five road miles of identified urban reserve areas;
- Increasing the minimum residential parcel size for cluster subdivisions from 10,000 square feet to 2.5 acres;
- Requiring residential cluster parcels to be designed and developed to provide for individual on-site water and wastewater systems;
- Requiring agricultural cluster subdivision design to be more compact and environmentally sensitive;
- Clarifying agricultural buffer policies;
- Expanding the application content requirements for agricultural cluster subdivisions; and
- Maintaining existing residential density standards allowing two primary residences on agricultural parcels located beyond the five road mile URL boundary.

A complete summary of the proposed amendments is provided in Table 2.8-1 at the end of this section.



2.1 PROJECT APPLICANT

County of San Luis Obispo
 County Government Center
 San Luis Obispo, CA 93408
 Project Manager: Bill Robeson, Senior Planner

2.2 PROJECT AREA

The proposed Agricultural Cluster Subdivision Program would be applied on a countywide basis (refer to Figure 2.2-1, Figure 2.2-2, and Figure 2.2-3). Based on the proposed locational criteria for agricultural cluster subdivisions, the project area can be further refined as follows:

- **Inland Project Area.** The Inland project area consists of Agriculture-designated parcels located partly or entirely within five road miles of the Urban Reserve Lines (URLs) of Arroyo Grande, Atascadero, San Luis Obispo, San Miguel, Nipomo, Templeton, and Paso Robles. Parcels that meet the distance criteria are eligible under the proposed program, provided that the cluster development occurs entirely on the portion of the site that is within five road miles of the URL (refer to Figure 2.2-2). The Inland project area contains 129,712 acres of land within the five road mile boundary and another 37,763 acres of land outside the boundary. These totals exclude 14,393 acres of land which have already been divided through and agricultural cluster subdivision.
- **Coastal Project Area.** The Coastal project area consists of Agriculture-designated parcels within the rural North Coast and Estero planning areas (refer to Figure 2.2-3). No URL distance limitation is proposed in the Coastal Zone. The Coastal project area contains 55,100 acres of land.
- **Exclusion Areas.** Properties located in the Arroyo Grande, Cienega and Oso Flaco valleys and the Hearst Ranch (in the Coastal Zone) would not be eligible for subdivision under the proposed program and are therefore excluded from the project area (refer to Figure 2.2-4 and Figure 2.2-5).

Figure 2.2-6 shows the areas of the county that would be eligible for a cluster subdivision under the existing ordinance. When compared to the existing ordinance, the proposed amendments reduce the area of the county that would be eligible for an agricultural cluster subdivision by 998,674 acres (refer to Table 2.2-1). This reduction is primarily attributable to the proposed five-mile distance limitation and exclusion of the Rural Lands category from the program.

Table 2.2-1: Reduction in Eligible Areas

Land Use Category	Existing Ordinance (acres)			Proposed Amendments (acres)			Total Reduction (acres)
	Inland	Coastal	Total	Inland	Coastal	Total	
AG	1,069,769	N/A	1,069,769	167,475	55,100	222,575	847,197
RL	151,480	N/A	151,480	N/A	N/A	0	151,480
Total	1,221,249	0	1,221,249	167,475	55,100	222,575	998,674

Source: County of San Luis Obispo Assessor's Parcel Database (June 2011)



2.4 PROJECT BACKGROUND

2.4.1 Existing Standards and Policies for Agricultural Cluster Subdivisions

Agricultural cluster subdivisions are discussed in the Agriculture Element of the General Plan. Specifically, there are four policies which govern agricultural cluster subdivisions:

- **Agriculture Policy 20: Agricultural Land Divisions.** This policy discusses how agricultural lands should be divided. It is intended to ensure long-term protection of agricultural resources.
- **Agriculture Policy 21: Minimum Parcel Size Criteria for the Division of Agricultural Lands.** This policy establishes how minimum parcel sizes should be determined to ensure agricultural viability. Minimum parcel sizes for conventional subdivisions dictate the number of residential cluster parcels allowed.
- **Agriculture Policy 22: Major Agricultural Cluster Projects.** This policy establishes provisions for the major agricultural cluster subdivision program. This program is intended only to occur in the Inland portion of the county.
- **Agriculture Policy 23: Minor Agricultural Cluster Projects.** This policy establishes provisions for the minor agricultural cluster subdivision program. This program is intended to apply Countywide.

These policies have been implemented in the Inland portion of the county through Section 22.22.150 of the Land Use Ordinance. Agricultural cluster subdivisions have not yet been implemented in the Coastal Zone portion of the County.

There are two types of agricultural cluster subdivisions established in the Land Use Ordinance:

- **Major agricultural cluster:**
 - **Number of residences:** Number of residences is based on the number of parcels qualifying under a conventional subdivision, plus up to a 100 percent density bonus.
 - **Location:** Major agricultural cluster subdivisions may only be located on parcels within 5 miles of a designated Urban Reserve Line or Village Reserve Line, on land designated Agriculture or Rural Lands, except in certain portions of the County.
 - **Clustered area:** Residential development must be clustered on 5 percent of the site, leaving 95 percent of the site open for agricultural uses.



2.4.2 Board Authorization for Revisions to the Program

On February 17, 2009, the County Board of Supervisors authorized processing of amendments to sections of the Land Use Ordinance that relate to agricultural cluster subdivisions. The Board directed the Department of Planning and Building to consider the following modifications:

- Reduce or eliminate the density bonus;
- Require contiguous residential cluster parcels;
- Protect water supplies for agriculture;
- Require agriculture buffers on residential lots; and
- Require properties to be located closer to urban areas in order to qualify for a cluster subdivision.

In 2008, the Board of Supervisors adopted Strategic Growth principles, which are designed to focus development in existing urban areas with adequate services. The proposed Agricultural Cluster Subdivision Program will improve consistency between the County's land use ordinances and Agriculture Element and the following Strategic Growth principles of the County Land Use Element:

- Preserve open space, scenic natural beauty and sensitive environmental areas. Conserve energy resources. Conserve agricultural resources and protect agricultural land.
- Strengthen and direct development towards existing and strategically planned communities.

2.5 PROJECT CHARACTERISTICS

The proposed project consists of revisions to the Land Use Ordinance (Title 22 of the County Code), Coastal Zone Land Use Ordinance (Title 23 of the County Code), and the Agriculture Element of the County General Plan. Table 2.5-1 compares the key features of the existing ordinance and the proposed amendments. A comprehensive summary is provided in Table 2.8-1 at the end of this chapter.

Table 2.5-1: Comparison of Key Ordinance Features

Feature	Existing		Proposed	
	Inland	Coastal	Inland	Coastal
Cluster Density Bonus	Major: 100% Minor: 25% (or one parcel)	N/A	No bonus	No bonus
Minimum Cluster Parcel Size	10,000 square feet	N/A	2.5 acres	2.5 acres
Cluster Location	Major: within 5 miles of URL Minor: none	N/A	Within 5 road miles of URL	No distance limitation

Source: County of San Luis Obispo Department of Planning and Building



2.5.1 Amendments to the Land Use Ordinance (Title 22)

The Land Use Ordinance (LUO), Title 22 of the County Code, is the primary ordinance concerning land use in the Inland portion of the county. The following amendments are proposed to the LUO:

- **Eliminate the distinction between major and minor clusters.** Combining the Major Agricultural Cluster Ordinance (LUO Section 22.22.152) and Minor Agricultural Cluster Ordinance (LUO Section 22.22.154) into a single ordinance (LUO Section 22.22.150) with one set of standards for all eligible properties.
- **Eliminate agricultural cluster subdivision as an option in Rural Lands.** Allowing the agricultural cluster program to be used only in the Agriculture land use category.
- **Allow clusters only within 5 road miles of urban areas.** Modifying agricultural cluster eligibility criteria to include only parcels within the Agriculture land use category that are within five miles of the Urban Reserve Line (URLs) of Arroyo Grande, Atascadero, San Luis Obispo, San Miguel, Nipomo, Templeton, and Paso Robles.
- **Eliminate the density bonus.** Modifying the method for calculating the allowable number of residential cluster parcels and eliminating the residential density bonus.
- **Increase the minimum parcel size.** COSE Policy WR1.9 strongly discourages the formation of new mutual or private water companies in rural areas. Establishing a 2.5 acre minimum size for residential cluster parcels, ~~which~~ would allow each cluster parcel to accommodate individual on-site well and septic systems consistent with COSE Policy WR 1.9.
- **Add design standards.** Adding various site design and development standards to reduce impacts associated with agricultural cluster subdivisions and to protect agricultural lands. Some examples of design provisions include the following:
 - Requiring that cluster lots be physically contiguous to each other.
 - Requiring that clusters be located in a single cluster area (or up to two if environmental conditions warrant this).
 - Clarifying that roads and other residential infrastructure be counted towards the 5 percent developable area.
- **Require protection by an agricultural preservation easement.** Adding a provision that the agricultural open space parcel be covered by an agricultural preservation easement.
- **Add application requirements.** Modifying and expanding application content requirements.
- **Clarify agricultural buffer requirements.** Establish that required agricultural buffers be located on the residential parcels, consistent with the County's agricultural buffer policy.



without being reconfigured, while others may have environmental or physical constraints that limit their potential under the proposed agricultural cluster subdivision program. This leaves a relatively small number of underlying lots that may ultimately be reconfigured into clustered lots in the Coastal Zone. Nevertheless, the program would allow new residences to be constructed in agricultural areas of the Coastal Zone, but they would be able to be developed in a more compact, environmentally sensitive manner when compared to traditional lot patterning.

2.6.1 Development Potential under Proposed Amendments

Under the proposed amendments, the maximum number of parcels allowed for an agricultural cluster subdivision would equal the number of parcels that would result from a demonstrated conventional land division applying the use test minimum parcel size criteria in Section 22.22.040 of the LUO, except that in no case shall the minimum parcel size be less than 40 acres.

The project area contains 3,718 existing parcels designated Agriculture totaling 181,889 acres (refer to Figure 2.2-2). Seventy percent of these parcels (2,628) are already less than, or equal to, the 40 acre minimum parcel size for determining the allowed residential density for an agricultural cluster subdivision. This leaves 1,090 existing parcels which could be further subdivided through an agricultural cluster subdivision. As a reasonable worst case scenario, it is assumed that these parcels would be divided using an agricultural cluster subdivision (rather than a conventional land division).

Under the proposed amendments, the minimum parcel sizes applied to determine the subdivision potential of the 1,090 eligible parcels would range between 40 and 320 acres depending on the agricultural uses of the individual parcels. This analysis assumes that the existing NRCS soil capability classifications on the eligible parcels would be indicative of the future agricultural uses within the project area.

- **NRCS Class I and II Soils: 50 acre minimum.** Seventeen percent (20,584 acres) of the eligible parcels contain NRCS Class I and II soils. These soils are commonly referred to as "prime soils." Class I soils are defined by the NRCS as having few limitations that restrict their use. These soils are typically used for vegetables, seed crops, orchards, and other irrigated specialty crops and irrigated field crops. Class II soils are defined by NRCS as having minor or moderate limitations that reduce the choice of plants or that require moderate conservation practices. Uses are very similar to those found on Class I soils. For the purpose of calculating the subdivision potential within the project area, this EIR makes the worst case assumption that all areas with Class I and II soils would be irrigated and planted. Based on the use test minimum parcel size criteria in Section 22.22.040 of the LUO, when assuming irrigation, these areas would qualify for a 40 acre minimum parcel size. However, the proposed requirement for a 2.5 acre minimum residential cluster parcel combined with the 5 percent limitation on residential development effectively limits a cluster subdivision to the density that could be achieved by applying a 50 acre minimum parcel size.
- **NRCS Class III and IV Soils: 50 acre minimum.** Thirty-nine percent (46,584 acres) of the eligible parcels contain NRCS Class III and IV soils. These soils are defined by NRCS



as having moderate to severe limitations that reduce the choice of plants, or that require special conservation practices, or both. In some situations, the Class III soils may be used for some of the crop types that are typically found on Class I and II soils, but are more typically used for specialty crops, forage lands, mixed crop lands, and dry land field crops. Irrigated Class IV soils are commonly used for vineyards. For the purpose of calculating the subdivision potential within the project area, this EIR assumes that all areas with Class III and IV soils would be irrigated and planted. As with the Class I and II soils, when assuming irrigation, these areas would qualify for a 40 acre minimum parcel size under the use test in Section 22.22.040; however, the proposed development standards effectively limit a cluster subdivision to the density that could be achieved by applying a 50 acre minimum parcel size.

- **NRCS Class V - VIII: 320 acre minimum.** Forty-four percent (52,809 acres) of the eligible parcels contain NRCS Class V, VI, VII, and VIII soils. These soils have severe limitations that restrict their use and make them generally unsuitable for any form of cultivation. For the purpose of calculating the subdivision potential within the project area, it is assumed that these areas would be used for rangeland and grazing and would therefore qualify for a 320 acre minimum parcel size when applying the use test in Section 22.22.040.

Based on the NRCS soil capability classifications and associated minimum parcel sizes described above, the existing 1,090 eligible parcels have the potential to be divided into 1,508 new parcels, resulting in a net increase of 418 parcels. Each new residential cluster parcel could be developed with one new single family residence.

Table 2.6-1: Development Potential under Proposed Amendments

NRCS Soil Class	Eligible Area (acres)	Minimum Parcel Size (acres)	Potential Parcels	Existing Parcels	New Parcels / SFRs
I and II*	20,584	50	412	1,090	418
III and IV*	46,584	50	932		
V - VIII	52,809	320	165		
Total	119,976		1,508		

**Assumed to be irrigated*

Source: County of San Luis Obispo Department of Planning and Building

It should be noted that the proposed ordinance does not include a density bonus, and the maximum number of residential cluster parcels allowed would be based on the number of parcels that would result from a demonstrated conventional land division applying the use test minimum parcel size criteria in Section 22.22.040 of the LUO. Therefore, the Agricultural Cluster Subdivision Program does not change the amount of development that could otherwise occur. Rather, it dictates where it should be located, with the overarching intent of preserving the majority of the site in agricultural production.



2.6.2 Development Potential under Existing Ordinance

The existing ordinance provides separate requirements for "major" agricultural cluster projects and "minor" agricultural cluster projects. Major agricultural cluster projects are those located within five miles of an identified urban or village reserve line (URL or VRL), and qualify for a residential parcel bonus of 100%. Minor agricultural cluster projects can be located on any AG or RL parcel in the Inland area of the county and qualify for a parcel bonus of 25%.

Based on the same methodology discussed above in Section 2.6.1, under the existing ordinance, there is a potential for 4,582 new residential cluster parcels on agricultural lands throughout the Inland portion of the county. This includes 1,150 new parcels as a result of "major" cluster projects and 3,432 new parcels as a result of "minor" cluster projects (refer to Table 2.6-2). Twenty-eight percent (1,261) of these parcels is a direct result of the density bonus provisions of the existing ordinance.

Table 2.6-2: Development Potential under Existing Ordinance

Project Type	NRCS Soil Class	Eligible Area (acres)	Minimum Parcel Size (acres)	Potential Parcels	Existing Parcels	New Parcels	Density Bonus	Total Parcels / SFRs
Major Cluster	I and II*	28,115	40	703				
	III and IV*	70,467	60	1,174				
	V - VIII	112,163	320	351				
Subtotal		210,745		2,228	1,653	575	575	1,150
Minor Cluster	I and II*	96,044	40	2,401				
	III and IV*	132,706	60	2,212				
	V - VIII	301,641	320	943				
Subtotal		530,391		5,555	2,810	2,745	686	3,431
Total		741,136		7,783	4,463	3,320	1,261	4,581

*Assumed to be irrigated

Source: County of San Luis Obispo Department of Planning and Building

2.7 REQUIRED APPROVALS

Implementation of the proposed amendments would require review by the Planning Commission and adoption by the Board of Supervisors for revisions being made to the Land Use Ordinance, Coastal Zone Land Use Ordinance, and Agriculture Element of the County General Plan.

Additionally, since the Coastal Zone Land Use Ordinance is part of the County's Local Coastal Program (LCP), modifications to the LCP must also be submitted to the California Coastal Commission for review and approval.

Individual agricultural cluster subdivision projects that could occur under the new or revised ordinances and Agriculture Element policies would require Conditional Use Permit and tentative map review by the Department of Planning and Building and approval by the County Planning Commission or Subdivision Review Board. As part of this process, each project will be evaluated



2.8 PROGRAM SUMMARY

Table 2.8-1 summarizes the various features of the existing Land Use Ordinance standards and Agriculture Element policies governing agricultural cluster subdivisions and how these provisions would be modified under the proposed project.

Table 2.8-1: Program Summary

Feature	Existing	Proposed
Land Use Ordinance Section 22.22.150: Agricultural Lands Clustering		
Locational Criteria	<ul style="list-style-type: none"> • Major clusters are limited to AG and RL designated parcels within five miles of Arroyo Grande, Atascadero, San Luis Obispo, San Miguel, Nipomo, Templeton, Paso Robles, and Santa Maria URLs, and Creston VRL. • No clustering provisions in the Coastal Zone. • Minor clusters are limited to AG and RL designated parcels (no URL distance limitation). • Excludes properties located in Arroyo Grande, Cienega, and Oso Flaco valleys • Williamson Act lands may be used for density calculations; however, cluster parcels may not be established on contracted lands. 	<ul style="list-style-type: none"> • No distinction between major and minor cluster subdivisions. • In the inland area, agricultural cluster subdivisions are limited to AG designated parcels within five road miles of identified URLs (excluding Santa Maria and Creston VRL). • Clusters allowed on AG designated parcels in the North Coast and Estero planning areas of the Coastal Zone. Hearst Ranch is excluded from the program. • Excludes Williamson Act lands entirely. • Excludes properties within RL category.
Density Calculation	<ul style="list-style-type: none"> • For major clusters, the maximum number of allowed parcels equals the number of primary dwellings allowed on parcels that could result from a presumed conventional subdivision. • For minor clusters, the maximum number of allowed parcels equals the number of parcels that could result from a presumed conventional subdivision plus a 25% 	<ul style="list-style-type: none"> • In the inland area, the number of allowed residential parcels equals the number of parcels that could result from a demonstrated conventional subdivision applying the "use" test only, except the minimum parcel size can be no less than 40 acres. • In the Coastal Zone, the number of allowed parcels



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Feature	Existing	Proposed
	<p>density bonus (or at least one parcel).</p> <ul style="list-style-type: none"> The number of allowed parcels can be determined by applying either "use" or "soil capability" test. 	<p>equals the number existing underlying lots.</p> <ul style="list-style-type: none"> Agricultural parcel as density bonus. No residential density bonus.
Maximum Allowed Development Area	<ul style="list-style-type: none"> Major clusters: 5% of total site area. Minor clusters: 10% of total site area. 	<ul style="list-style-type: none"> 5% of total site area. Further clarifies what residential components are included in the 5% area.
Minimum Cluster Parcel Size	<ul style="list-style-type: none"> 10,000 square feet for major clusters. 20,000 square feet for minor clusters. 	<ul style="list-style-type: none"> 2.5 acres
Maximum Cluster Parcel Size	<ul style="list-style-type: none"> Major: 2.5 acres Minor: 5 acres 	<ul style="list-style-type: none"> Parcel may be increased in size up to 5 acres when doing so is necessary to accommodate the required agricultural buffers on the residential parcel.
Allowed Structural Uses on Cluster Parcels	<ul style="list-style-type: none"> One dwelling unit. 	<ul style="list-style-type: none"> Each residential cluster parcel shall be limited to one residence and residential accessory structures.
Layout and Design Standards	<ul style="list-style-type: none"> Cluster residential development to the maximum extent feasible so as to not interfere with agricultural production. No residential development allowed on prime soils. Residential building sites and access roads shall be located to avoid impacts to adjacent agricultural operations. Roads and building sites shall be located to minimize site disturbance, environmentally sensitive habitat areas, and visibility. Projects shall comply with adopted agricultural buffer 	<ul style="list-style-type: none"> No residential development allowed on prime farmland. Residential cluster parcels shall be physically contiguous to each other. Residential parcels shall be located as close as possible to existing access roads. When possible, new road or driveway development shall be avoided. Projects shall comply with adopted agricultural buffer policies. Further clarifies that agricultural buffers shall be located within the residential development area,



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 Section 2.0 Project Description

Feature	Existing	Proposed
	<p>policies.</p> <ul style="list-style-type: none"> When possible, new road or driveway development shall be avoided. 	<p>not on the agricultural parcel.</p>
<p>Agricultural Land Preservation</p>	<ul style="list-style-type: none"> Permanent agricultural open space easement required on 95% of project site for major clusters and 90% of the site for minor clusters. Agricultural open space parcel shall be the minimum size to qualify as a separate agricultural parcel. Agricultural open space parcel shall qualify for a standalone Williamson Act preserve and contract. Agricultural open space parcel may not include any portion of residential cluster parcels. 	<ul style="list-style-type: none"> Permanent agricultural easement required on 95% of the project site. The agricultural preservation area shall be a single parcel of a minimum size to qualify as a separate agricultural parcel. The agricultural preservation area shall qualify for a standalone Williamson Act preserve and contract Agricultural preservation area may not include any portion of residential cluster parcels.
<p>Water and Wastewater Systems</p>	<ul style="list-style-type: none"> Community water systems are required for parcels less than 2.5 acres in size. Parcels less than one acre are allowed only where the leaching capacity of site soils for septic tank use is from 0 to 5 minutes per inch, or where community sewer is provided. 	<ul style="list-style-type: none"> Each cluster parcel shall be designed and developed to provide for individual on-site water and wastewater systems. Community water and wastewater systems are not allowed.
<p>Application Content</p>	<ul style="list-style-type: none"> Written explanation of how project meets required findings 	<ul style="list-style-type: none"> Written explanation of how project meets required findings. Demonstration of conventional subdivision qualification. Demonstration of agricultural history. Hydrogeologic analysis verifying adequate water availability for anticipated residential use without impacting supplies for existing and future agricultural



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Feature	Existing	Proposed
Agriculture Element of the County General Plan		
Policy	Existing	Proposed
20: Agricultural Land Divisions	<ul style="list-style-type: none"> • Identifies cluster subdivisions as an alternative to conventional "lot split" divisions. • Specifies that agricultural subdivisions should ensure long-term protection of agricultural resources. 	<ul style="list-style-type: none"> • Update text to reflect proposed ordinance amendments. • Addition of design criteria to ensure protection of long-term agricultural resources, consistent with proposed ordinance amendments.
Policy 22: Major Ag Cluster Projects	<ul style="list-style-type: none"> • This policy contains requirements for major agricultural cluster subdivisions. 	<ul style="list-style-type: none"> • Amend policy consistent with proposed ordinance amendments for all agricultural cluster subdivisions.
Policy 23: Minor Ag Cluster Projects	<ul style="list-style-type: none"> • This policy contains requirements for minor agricultural cluster subdivisions 	<ul style="list-style-type: none"> • Delete policy since the proposed amendments would eliminate the distinction between major and minor clusters.



b. Project Impacts and Mitigation Measures.

- Impact AG-1** Development under the proposed Agricultural Cluster Subdivision Program could convert important farmland, as mapped by the California Department of Conservation, in areas currently designated Agriculture to residential and non-agricultural uses. When compared to development potential under the existing ordinance, the program would be expected to have fewer impacts. Impacts compared to the existing ordinance would therefore be Class III, *less than significant*. Compared to existing conditions, impacts would be Class I, *significant and unavoidable*.

Compared to Development Potential under the Existing Ordinance

Elimination of Minor Clusters. The proposed program revisions would eliminate the distinction between major and minor clusters. Currently, Section 22.22.150 (Agricultural Lands Clustering) of the County's Land Use Ordinance (LUO) provides separate requirements for "major" agricultural cluster projects and "minor" agricultural cluster projects. Major agricultural cluster projects are those located within five miles of an identified urban or village reserve line (URL or VRL), and qualify for a residential parcel bonus of 100%. Minor agricultural cluster projects can be located anywhere in the Inland portion of the county (on land designated Agriculture or Rural Lands), and qualify for a parcel bonus of 25%. The proposed ordinance revision would remove the distinction between the two types of agricultural clusters. In doing so, it would effectively eliminate the minor agricultural cluster altogether, such that agricultural cluster projects would no longer be allowed outside an established distance from a URL. The effect of this change, compared to the development potential of the existing ordinance, would be less agricultural cluster development throughout the Inland portion of the county and thus reduced potential for important farmland to be converted due to implementation of residential uses and associated urban improvements. As the minor agricultural cluster planning tool would effectively be eliminated under the revised ordinance, the remaining program revisions can be viewed as alterations to the major agricultural cluster, as currently outlined in Section 22.22.150 of the County's LUO.

Rural Lands Exclusion. This proposed program revision would eliminate agricultural cluster subdivisions as an option in the Rural Lands (RL) category. The existing ordinance allows for agricultural cluster subdivisions in the RL category if the parcel is in agricultural use at the time of application. Under the revised ordinance, RL properties would no longer be eligible for agricultural cluster subdivisions, regardless of current land use. RL designated property is located throughout the County, with concentrations in the southeastern portion of the County, to the southeast of Atascadero, and to the northwest of Avila Beach. Scattered RL parcels are also common in the northwestern portion of the County. Excluding these lands from the proposed program would result in fewer areas of the county being eligible for agricultural cluster subdivision.



It should be noted that RL properties would still be eligible for standard (non-agricultural) cluster divisions in accordance with LUO Section 22.22.140. The proposed program would not alter Section 22.22.140 requirements. Rather, it would eliminate the possibility of agricultural clusters in these areas. Therefore, the net impact of removing RL lands from being eligible for agricultural cluster subdivision would be a reduction in the amount of important farmland converted to non-agricultural use due to implementation of residential uses and associated urban improvements associated with the agricultural cluster density bonus.

URL Distance Reduction. This proposed program revision would modify agricultural cluster eligibility criteria to include only parcels within five road miles of the urban reserve lines (URLs) of Arroyo Grande, Atascadero, San Luis Obispo, San Miguel, Nipomo, Templeton, and Paso Robles. The existing ordinance allows major agricultural clusters within five miles of these URLs, as well as within five miles of the Santa Maria and Creston village reserve lines (VRLs). It also allows minor agricultural clusters throughout the Inland portion of the county, regardless of proximity to urban areas. The result of this program revision would be a substantial reduction in the areas of the county eligible for agricultural cluster subdivision. Specifically, this program revision would reduce build-out potential by an estimated 2,902 residential cluster parcels. Substantially less important farmland would therefore be converted to non-agricultural use as a result of this revision.

Eliminate Agricultural Cluster Development Associated with Properties under Williamson Act Contract. The existing ordinance does not allow lands under Williamson Act contract to be used for agricultural cluster subdivisions. However, the existing ordinance does stipulate that if ownership includes contiguous non-contracted lands, the allowable number of cluster parcels (from the Williamson Act lands) may be clustered on the non-contract lands. In other words, although the Williamson Act lands themselves cannot be developed, they can provide qualifying density for an adjacent cluster. As of 2007, over 794,000 acres were enrolled in Williamson Act contracts in San Luis Obispo County (California Department of Conservation, *California Land Conservation (Williamson) Act 2008 Status Report*, February 2009). The proposed program revisions would eliminate the provision that Williamson Act lands can provide qualifying density. This change would reduce the total development potential of agricultural cluster subdivisions throughout the county. The total amount of important farmland converted to non-agricultural use would consequently be reduced. In addition, this would reduce potential conflicts with Williamson Act contract lands, compared to the existing ordinance.

Density Bonus Elimination. This proposed program revision would modify the way the number of allowable residential cluster parcels is calculated. Under the existing ordinance, the maximum number of residential parcels allowed in a major agricultural cluster project is equivalent to the number of primary dwellings normally allowed under a presumed conventional land division, plus a parcel density bonus of up to 100 percent. Under the revised ordinance, density would be determined based on demonstrated conventional land division and a minimum 40 acre standard, with no parcel density bonus. Because bonus residential parcels would not be allowed with the revised ordinance, fewer residential parcels would be created and less overall site disturbance would occur. Specifically, this program revision would reduce build-out potential by approximately 1,261 units. Therefore, the total amount of important farmland converted to non-agricultural use would be substantially reduced.



6.1 ALTERNATIVE 1: NO PROJECT

Description

State CEQA Guidelines Section 15126.6 requires that an Environmental Impact Report's alternatives analysis consider a "no project" alternative. A "no project" alternative considers maintaining the status quo. This alternative anticipates that existing policies governing rural subdivisions would remain in place unchanged.

The purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of approving the Proposed Project with the impacts of not approving the Proposed Project. The no project alternative analysis is not the baseline for determining whether the Proposed Project's environmental effects may be significant, unless it is identical to the existing environmental setting analysis, which does establish that baseline.

When the project consists of the adoption of a new plan or policy, State CEQA Guidelines Section 15126.6(e)(3)(A) states that the no project alternative must consider "the continuation of the existing plan, policy, or operation into the future." The California Court of Appeal clarifies that the no project alternative analysis "[assists] the decision maker and the public in ascertaining the environmental consequences of doing nothing." As such, the "no project" alternative is not a "no development" alternative. This alternative does not consider elimination of the existing agricultural cluster subdivision program. Rather, that scenario was considered but eliminated since it would not meet the project objectives. This alternative considers continuation of existing policies governing agricultural cluster subdivisions and reasonably foreseeable development that could occur under existing regulations.

Existing Conditions

Existing conditions which affect residential development on rural agricultural land are summarized as follows:

- ~~Each standard parcel designated Agriculture is entitled to build two primary residential units.~~ Agriculture Element Policy 5 and Section 22.30.480 govern residential density on existing parcels. Additional residential units may qualify as farm support quarters commensurate to the agricultural use on the site. Historic trends demonstrate that only 8 percent of existing standard parcels have been developed with 2 primary residences.
- **Standard subdivisions could result in parcels as small as 20 acres.** New subdivisions of agricultural land may result in parcels of 20 acres, provided that there are at least 18 acres of intensively farmed area on each parcel and soils are prime. In circumstances where parcels are created under this provision, only one residence may be built per parcel.

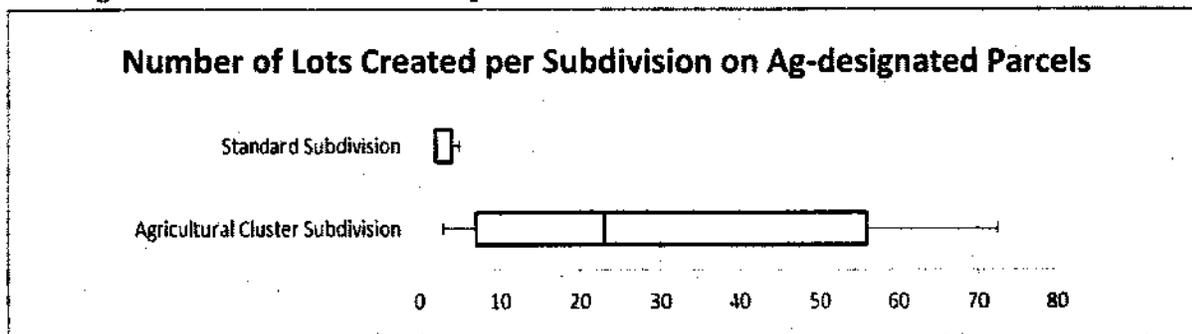


- **Subdivision minimum parcel size is determined based on application of a use or soils and capability test.** Land may qualify for subdivision to parcel sizes as low as 40 acres based on historical use. Intensively farmed land qualifies for lower minimum parcel sizes, because intensive farm activities tend to be viable on smaller parcels compared to less intensive uses such as livestock grazing. Land may also qualify for subdivision to parcel sizes as low as 40 acres based on capability. The more capable lands would have soils rated Class I to IV and a sufficient water supply to irrigate for intensive farming. Less capable lands requiring larger parcel sizes would have poorer soils and/or insufficient irrigation capability. In the best conditions where intensive farming has historically occurred on prime soils, subdivision to 20 acre parcels is possible.
- **Owners of Agriculture and Rural Lands designated parcels may subdivide either through the standard subdivision process or through the agricultural cluster subdivision program.** Existing agricultural cluster subdivision policies and standards are set through Agriculture Element Policies 22 and 23, and through Section 22.22.150 through 22.22.154 of the Land Use Ordinance. Major agricultural cluster subdivisions allow a 100 percent density bonus, essentially equating the number of residential cluster parcels with the potential number of primary residences that could be generated through a standard subdivision (assuming 100 percent of standard parcels would be developed with two primary residences). Minor agricultural cluster subdivisions qualify for a 25 percent density bonus. In exchange for these incentives, a large amount of land is to be protected in perpetuity as open space (90 percent for minor, 95 percent for major).
- **Based on historic trends, a greater number of new residences are generated through agricultural cluster subdivisions than through standard subdivisions.** Over the last ten years, roughly 73 percent of new Agriculture-designated parcels were created as part of an agricultural cluster subdivision. As depicted in Figure 6.1-1, the median number of parcels created as part of an agricultural cluster subdivision (23) is roughly 11 times greater than the median number of parcels created as part of a standard agricultural subdivision (2). Furthermore, residential build-out on agricultural cluster parcels tends to be close to 100 percent of the maximum build-out. In contrast, residential build-out on standard parcels tends to be closer to 54 percent¹
- **Agricultural cluster subdivisions are not allowed in the Coastal Zone.** There are no provisions in the Local Coastal Program or Coastal Zone Land Use Ordinance to allow agricultural cluster subdivisions within the Coastal Zone.

¹Based on the historic trend that second primary residences are constructed on only about 8 percent of standard agricultural parcels.



Figure 6.1-1: Whisker Plot Comparison between Standard and Cluster Subdivisions



Subdivision Type	Mean	Min	Q1	Median	Q3	Max
Standard Subdivision	3.3	2	2	2	4	14
Agricultural Cluster Subdivision	38.5	3	7	23	56	112

Source: County Department of Planning and Building Permit Tacking Database

Contrast in Policies between the Project and the No Project Alternative

In the case of agricultural cluster subdivisions, the existing policies which would be carried forward under a no-project alternative include, but are not limited to the following:

Inland Areas

- **Minor cluster option will remain.** This alternative would not eliminate the minor cluster subdivision option. Under the present ordinance, minor clusters may occur on most agricultural lands throughout the County. There is no limitation on distance from an urban reserve line. Minor clusters allow development on 10 percent of the site area, and require the remaining 90 percent area to be placed within an open space easement. A 25 percent bonus density is awarded for minor agricultural cluster subdivisions.
- **Agricultural cluster subdivisions may occur in Rural Lands.** This alternative would allow agricultural cluster subdivisions to occur within the Rural Lands land use category.
- **Major cluster density bonus will remain.** This alternative would maintain the 100 percent density bonus allowed for major agricultural clusters located within 5 miles of identified urban reserve line.
- **Smaller cluster parcels will be allowable.** Residential cluster parcels are allowed down to a size of 10,000 square feet under the present ordinance. Parcel sizes are, however, constrained by the need to accommodate sufficient agricultural buffers. Parcels sized less than 2.5 acres would be required to be served by a community water system.
- **Design standards remain unchanged.** Clarified design requirements (e.g. contiguity, counting roads and infrastructure towards developable areas, etc.) would not be



provided under this alternative. Application of these design standards, however, may still occur as part of the discretionary review process.

- **Agricultural cluster subdivisions may qualify on capability.** Under the existing ordinance, the applicant may choose which subdivision test is applied to determine minimum parcel size - the *use test*, which considers existing and historic agricultural use; or the *soils capability test*, which considers the potential for future agricultural production as determined by soil quality. Under this alternative, the applicant could continue to choose which subdivision test to use in order to determine base density. Additionally, compliance with standard subdivision requirements aimed at ensuring the creation of sustainable parcels would continue to be presumed rather than demonstrated. This presumption would continue to result in the creation of a greater number of residential parcels in agricultural areas.
- **New application materials will not necessarily be required.** Under this alternative, existing application content requirements will remain in place. Newly proposed application contents (e.g. hydrogeologic analysis) will not be statutorily required. Historically, the County has, however, required these application contents in order to process individual projects pursuant to CEQA. As such, under this alternative, whether these materials will be necessary will remain at the discretion of the Environmental Coordinator.
- **Agricultural buffer requirements will remain the same.** At present, agricultural buffers are governed under the Board-adopted Agricultural Buffer Policy (November 2005). This existing policy clearly states that agricultural buffers are to be accommodated on the developer's land. The policy further states that the County does not have authority to restrict agricultural practices on agricultural land in order to accommodate the buffer. The clarifying language proposed as part of the project mirrors this existing policy. As there is no change proposed to the buffer policy, this alternative will not substantially differ from the proposed program.
- **Standard subdivisions could continue to occur with no change.** Existing ordinance standards governing standard agricultural subdivisions would remain in place unchanged. In this respect, this alternative will not differ from the proposed program.
- **Density on existing parcels would not be affected.** Agricultural parcels over 20 acres in the Inland portion of the County would continue to be allowed up to two single family residences, plus qualifying farm support residences. In this respect, this alternative will not differ from the proposed program.

Coastal Zone

- **No cluster option in the Coastal Zone.** This alternative would not introduce the agricultural cluster subdivision option for agricultural lands in the Coastal Zone. Subdivision of agricultural properties within the Coastal Zone could still occur as a standard subdivision.



residential development could potentially continue to occur in less contiguous patterns. The open areas between residential cluster parcels would effectively be removed from agricultural production.

- **Potentially less dispersion of residences.** Under Alternative 1, minimum parcel sizes for cluster parcels will continue to be as low as 10,000 square feet. As a result, the residences within an agricultural cluster subdivision could be located closer together.

Achievement of Objectives

The objectives identified for the proposed Agricultural Cluster Subdivision Program largely center on modifying the existing program. As the "no project" alternative considers a scenario where existing policies are carried forward, the alternative by its nature is inconsistent with the objectives. This alternative is nonetheless being considered in order to comply with Section 15126.6 of the State CEQA Guidelines.

6.1.1 Impact Analysis

Substantial Change

The following impacts are anticipated to be substantially different when contrasting Alternative 1 and the Proposed Project:

Agricultural Resources. The no project alternative would allow agricultural cluster subdivisions to continue occurring throughout the inland portion of the County on Agriculture and Rural Lands designated land. Agricultural cluster subdivisions are a preferred means for residential development of agricultural land, as they create a small marketable parcel and still allow a majority of the land to be retained for farming. Over the last ten years, roughly 73 percent of new parcels created on land designated Agriculture have been created as part of an agricultural cluster subdivision (refer to Figure 6.1-1). Compared to the Proposed Project, the "no project" alternative would therefore change impacts related to agricultural resources as follows:

- **Increase in non-agricultural development on important farmland [AG-1], exacerbating a significant and unavoidable impact.** This alternative would allow additional and more dispersed residential development to occur on agricultural land when compared with the Proposed Project. As a result, a greater number of residences could be developed in areas with important farmland mapped by the State Department of Conservation. This alternative does not include restrictive provisions limiting development on important farmlands. Impacts to important farmland are therefore anticipated to increase under this alternative.
- **Increase in urban and agricultural land use conflicts [AG-3].** This alternative would allow additional and more dispersed residential development to occur on agricultural lands when compared with the Proposed Project. As a result, this alternative would





ASSOCIATED TRANSPORTATION ENGINEERS

100 N. Hope Avenue, Suite 4, Santa Barbara, CA 93110 • (805) 687-4418 • FAX (805) 682-8509

Since 1978

Richard L. Pool, P.E.
Scott A. Schell, AICP, PTP

October 25, 2013

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Mr. Brian Pedrotti
Department of Planning and Building
San Luis Obispo County
976 Osos Street, Room 200
San Luis Obispo, CA 93408-2040

LAETITIA AGRICULTURAL CLUSTER PROJECT REVISED RECIRCULATED DEIR: REVIEW OF CLASS I & CLASS II IMPACTS AND MITIGATIONS - CALTRANS FACILITIES

Associated Transportation Engineers (ATE) has again reviewed the Revised Recirculated Draft Environmental Impact Report (RRDEIR) for the Laetitia Agricultural Cluster Tract Map and CUP. We also reviewed again the Draft EIR upon which the traffic analysis in the RRDEIR is based. Our comments on the Class I and Class II traffic impacts and mitigation measures for the Caltrans facilities are outlined below.

It is noted that the traffic generated under the Proposed Project and the Mitigated Project-Applicant Proposed Alternative are the same since the number of residential lots is the same. The RRDEIR therefore cites the same traffic impacts and mitigations for both scenarios. Thus, our comments on the Class I and Class II traffic impacts and mitigations apply to both scenarios.

TR Impact 1 (Highway 101/Los Berros Road-North Thompson Avenue Interchange). Impacts to Highway 101/Los Berros Road-North Thompson Avenue interchange (both of the intersections at the interchange) are considered significant since project traffic would worsen operations to LOS E during the A.M. peak and LOS F during the P.M. peak. The mitigation required of the development is to install turn lanes and signals at the interchange.

ATE Comment. As shown in the traffic analysis (contained in the Draft EIR), ***existing operations*** at the Highway 101/Los Berros Road-North Thompson Avenue interchange are LOS D, which does not meet the County's LOS C standard. Thus, improvements to the interchange are required to accommodate existing volumes in order to meet the County's LOS C standard.

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The improvement project outlined in the County's Capital Improvement Program is to install turn lanes and signals at the Highway 101 Southbound Ramps/Los Berros Road intersection and at the Highway 101 Northbound Ramps/North Thompson Avenue intersection. These improvements would mitigate the existing deficiencies at the interchange.

The Draft EIR incorrectly states, "The Capital Improvement Program funding at this intersection is not anticipated to be needed until 2025 without the project." As discussed above, the County's planned improvement project for the interchange is currently needed to address the existing deficiencies.

The mitigation required for the Laetitia Agricultural Cluster Project is to implement the County's planned improvement project. At a minimum, the applicant should receive traffic fee credits if required to construct the improvements that are: 1) already planned by the County (and to be funded by the County's Capital Improvement Program), and 2) are currently needed to address existing deficiencies.

TR Impact 4 (Highway 101 mainline and Highway 101/Los Berros Road-North Thompson Avenue ramp junctions). Impacts to Highway 101 are considered significant since the project would add traffic to southbound Highway 101 during the P.M. peak hour and exacerbate an existing deficient condition (LOS D); and impacts to the Highway 101/Los Berros Road/North Thompson Avenue ramp junctions are considered significant since the project would add traffic to the ramps during the P.M. peak hour and exacerbate an existing deficient condition (LOS D). The addition of any project traffic to Highway 101 facilities (mainline and ramps) already operating at LOS D is considered a significant impact in the Draft EIR.

ATE Comment. Highway 101 southbound operates at LOS D during the P.M. peak hour with or without the project; and some of the ramp junctions at the Highway 101/Los Berros Road-North Thompson Avenue interchange operate at LOS D with or without the project. The Draft EIR shows that the project does not degrade levels of service at these facilities since they are forecast to continue to operate at LOS D under Existing + Project conditions. **However, project traffic is considered significant since the threshold used for determining significant impacts is the addition of one trip.**

There are several points to consider with respect to this impact and the analysis presented in the Draft EIR:

1. According to the Transportation Concept Report for U.S. Route 101 prepared by Caltrans District 5, LOS D is the target level of service for Highway 101 in the Nipomo area. The traffic analysis shows that LOS D would be maintained on the adjacent freeway segments under Existing + Project conditions, thus meeting the LOS D target contained in the Transportation Concept Report prepared by Caltrans.

2. The traffic impacts of the project on the Highway 101 mainline and at the ramp junctions would be nominal. There are three performance measures for freeway operations: a) Density in passenger cars per mile per lane (pc/mi/ln), b) mean passenger car speed (mph), and c) volume to capacity (v/c). Each of these measures is an indication of how the traffic would be accommodated. While the three measures are interrelated, level of service is based upon density (pc/mi/ln). The following table illustrates the Existing and Existing + Project densities and levels of service for Highway 101 and the ramp junctions at the Highway 101/Los Berros Road-North Thompson Avenue interchange, as derived from the Fehr & Peers worksheets contained in the Draft EIR.

Table A
Highway 101 Operations

Direction/Location	Peak Hour	Existing		Existing + Project		Project Change	
		Density (1)	LOS (2)	Density (1)	LOS (2)	Density	LOS
Mainline Segment							
NB Hwy 101 n/o Los Berros Road-Thompson Avenue	A.M.	22.2	LOS C	22.6	LOS C	0.4	None
	P.M.	23.5	LOS C	23.8	LOS C	0.3	None
SB Hwy 101 n/o Los Berros Road-Thompson Avenue	A.M.	18.1	LOS C	18.3	LOS C	0.2	None
	P.M.	29.3	LOS D	29.9	LOS D	0.6	None
NB Hwy 101 s/o Los Berros Road-Thompson Avenue	A.M.	20.1	LOS C	20.2	LOS C	0.1	None
	P.M.	22.6	LOS C	22.8	LOS C	0.2	None
SB Hwy 101 s/o Los Berros Road-Thompson Avenue	A.M.	17.5	LOS B	17.7	LOS B	0.2	None
	P.M.	26.4	LOS D	26.6	LOS D	0.2	None
Ramp Junction							
NB Hwy 101 Los Berros Road-Thompson Avenue Off-Ramp	A.M.	25.4	LOS C	25.5	LOS C	0.1	None
	P.M.	28.1	LOS D	28.4	LOS D	0.3	None
NB Hwy 101 Los Berros Road-Thompson Avenue On-Ramp	A.M.	22.4	LOS C	22.7	LOS C	0.3	None
	P.M.	23.6	LOS C	23.9	LOS C	0.3	None
SB Hwy 101 Los Berros Road-Thompson Avenue Off-Ramp	A.M.	21.6	LOS C	21.8	LOS C	0.2	None
	P.M.	32.4	LOS D	32.9	LOS D	0.5	None
SB Hwy 101 Los Berros Road-Thompson Avenue On-Ramp	A.M.	19.4	LOS B	19.6	LOS B	0.2	None
	P.M.	28.1	LOS D	28.3	LOS D	0.2	None

(1) Density = passenger cars per mile per lane (pc/mi/ln).

(2) LOS based on Density.

Given the operational analyses prepared by Fehr & Peers, it is our professional opinion that the Laetitia Agricultural Cluster Project would not significantly impact operations on Highway 101 or at the ramp junctions at the Highway 101/Los Berros Road-North Thompson Avenue interchange. As shown in Table A, densities would not significantly

change with the addition of project traffic. Also, the project would not change the levels of service and LOS D would be maintained, which is the Caltrans target LOS for Highway 101. Thus, the impact is less than significant.

3. To our knowledge, the County has not adopted thresholds for assessing freeway facilities and the County has not certified any EIRs or MNDs for development projects where thresholds have been applied to Highway 101 mainline operations. The Draft EIR applies "thresholds" from the "Caltrans Guide for the Preparation of Traffic Impact Studies". However, **the Caltrans publication is a guideline and does not contain adopted thresholds or standards.** Furthermore, the Caltrans traffic study guideline states, "Caltrans endeavors to maintain a target LOS at the transition between LOS "C" and LOS "D" on State highway facilities, however, Caltrans acknowledges that this may not always be feasible and recommends that the lead agency consult with Caltrans to determine the appropriate target LOS. If an existing State highway facility is operating at less than the appropriate target LOS, the existing MOE should be maintained." As shown in Table A above, the project would not change the levels of service on Highway 101 and the ramp junctions at the Highway 101/Los Berros Road-North Thompson Avenue interchange.
- 4) The impact threshold used in the Draft EIR is the addition of **one trip**. Building just one of the proposed residential units (or one new residential unit by any land owner in the area) would result in a significant impact to Highway 101 based on this "threshold" since traffic would use a facility that does not meet the LOS C standard. Many of the segments of Highway 101 within San Luis Obispo County operate at LOS D (or worse). Application of this threshold consistently would result in significant impacts to Highway 101 on a routine basis, including development projects that are consistent with the General Plan. If a threshold of one trip were applied consistently it would lead to EIRs for a large number of projects, including those for which Negative Declarations are normally prepared and projects that are normally considered Categorically Exempt.

TR Impact 10 (Emergency Access via Laetitia Vineyard Drive). The RRDEIR finds the proposed emergency access connection to result in a Class I impact because "...a single unauthorized trip would result in an impact considered significant and unavoidable, Class I."

ATE Comment. The applicant is proposing to control the emergency access by installing a gate and a 24-hour guard would control the gate. The guard would only open the gate during emergencies. This is a reasonable mitigation since it would prohibit regular use of the emergency access connection. In our professional opinion, the manned gate would reduce the impact to a less than significant level since traffic would not use the secondary access unless there is an emergency. CEQA Section 15359 defines emergency as, "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent

danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage." Emergency conditions are exempt from CEQA.

TR Impact 13 (Cumulative Impact - Emergency Access via Laetitia Vineyard Drive). The Draft EIR finds a Class I cumulative impact at the Laetitia Vineyard Drive emergency-only access connection to Highway 101 since a single unauthorized trip would result in an impact consider significant and unavoidable.

ATE Comment. See ATE Comment on TR Impact 10. The applicant is proposing to control the emergency access by installing a gate and the gate would be controlled by a guard who would only open the gate during emergencies. Thus, the project would not add traffic to the emergency-only access connection to Highway 101 on a regular basis.

TR Impact 14 (Cumulative Impact - Highway 101/Los Berros Road-North Thompson Avenue Interchange). Cumulative impacts to Highway 101/Los Berros Road-North Thompson Avenue interchange (both of the intersections at the interchange) are considered significant since project traffic would worsen operations to LOS E during the A.M. peak and LOS F during the P.M. peak. The mitigation required of the development is install turn lanes and signals at the interchange.

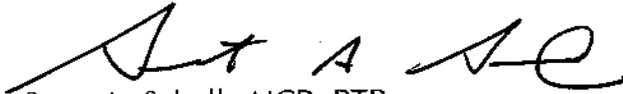
ATE Comment. Refer to ATE Comment on TR Impact 1. As noted, the existing operations is LOS D (which does not meet the County's LOS C standard). Thus, the County's planned improvement project for the interchange is required to accommodate existing volumes in order to meet the County's LOS C standard. At a minimum, the applicant should receive traffic fee credits if required to construct the improvements that are planned by the County and are being funded by the County's Capital Improvement Program.

TR Impact 15 (Cumulative Impact - Highway 101 mainline and Highway 101/Los Berros Road-North Thompson Avenue ramp junctions). The Draft EIR finds a Class I cumulative impact to southbound Highway 101 and at the Highway 101/Los Berros Road/North Thompson Avenue ramp junctions.

ATE Comment. See ATE Comment on TR Impact 4. The Laetitia Agricultural Cluster Project would not significantly affect Highway 101 mainline operations or the Los Berros Road/North Thompson Avenue ramp junctions since levels of service would not change as a result of project-added traffic.

This concludes our review of the Laetitia Agricultural Cluster Project's Class I and Class II traffic impacts and mitigations for the Caltrans facilities.

Associated Transportation Engineers



Scott A. Schell, AICP, PTP
Principal Transportation Planner

SAS/DLD

- c: John Janneck, Janneck LTD
- Ken Bornholdt, Kronick Moskovitz Tiedmann & Girard
- Tim Walters, RRM Design Group
- Vic Montgomery, RRM Design Group
- Frank Honeycutt, SLO County Public Works Department



ASSOCIATED TRANSPORTATION ENGINEERS

100 N. Hope Avenue, Suite 4, Santa Barbara, CA 93110 • [805] 687-4418 • FAX [805] 682-8509

Since 1978

Richard L. Pool, P.E.
Scott A. Schell, AICP, PTP

October 25, 2013

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Mr. Brian Pedrotti
Department of Planning and Building
San Luis Obispo County
976 Osos Street, Room 200
San Luis Obispo, CA 93408-2040

**LAETITIA AGRICULTURAL CLUSTER PROJECT REVISED RECIRCULATED DEIR:
REVIEW OF CLASS I & CLASS II IMPACTS AND MITIGATIONS - SLO COUNTY FACILITIES**

Associated Transportation Engineers (ATE) has again reviewed the Revised Recirculated Draft Environmental Impact Report (RRDEIR) for the Laetitia Agricultural Cluster Tract Map and CUP. We also reviewed again the Draft EIR upon which the traffic analysis of the RRDEIR is based. Our comments on the Class I and Class II traffic impacts and mitigation measures for the County of San Luis Obispo facilities are outlined below.

It is noted that the traffic generated under the Proposed Project and the Mitigated Project-Applicant Proposed Alternative are the same since the number of residential lots is the same. The RRDEIR therefore cites the same traffic impacts and mitigations for both scenarios. Thus, our comments on the Class I and Class II traffic impacts and mitigations apply to both scenarios.

TR Impact 2 (Sheehy Road/North Thompson Avenue). Impacts to the Sheehy Road/North Thompson Avenue intersection are considered significant because, *"Based on consultation with Public Works, implementation of the project may increase the potential for rear-end collisions resulting from the left turn movement (Glen Marshall, 2008)."* The mitigation recommended is installation of a left-turn lane on North Thompson Avenue.

ATE Comment. The impact and mitigation are not supported by any analyses. The Existing + Project analysis shows that the intersection is forecast to operate at LOS A-B with project-added traffic, which meets the County's level of service standard. Furthermore, the delays for the left-turn movement are less than 5 seconds per vehicle and the queue is forecast at less than 1 vehicle during both the A.M. and P.M. peak periods with Existing + Project traffic. Finally, no accident analysis or volume warrants are provided to indicate the need for the left-turn lane.

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TR Impact 3 (Sheehy Road/North Dana Foothill Road). Impacts to the Sheehy Road/North Dana Foothill Road intersection are considered significant because the intersection is currently uncontrolled on all approaches so that vehicle right-of-way is not clearly defined and the addition of project trip would exacerbate an existing deficient condition. The recommended mitigation is installation of a stop sign and painted stop bar on the Sheehy Road approach.

ATE Comment. The Existing + Project analysis shows that the intersection is forecast to operate at LOS A with project-added traffic, which meets the County's level of service standard. More importantly, the impact is based on incorrect information. The westbound North Dana Foothill Road approach is currently controlled by a stop sign and stop bar, which clearly assigns vehicle right-of-way at the intersection. Thus, there is no need for the recommended mitigation measure.

TR Impact 7 (Sheehy Road). Impacts to Sheehy Road are considered significant because the road does not meet the County's current standard. The impact statement says that the road does not have paved shoulders and that the proposed project would exacerbate this deficient conditions. The recommended mitigation is to improve the shoulders along Sheehy Road to County standards.

ATE Comment. There is no discussion that contains a nexus for the impact. The impact should be based on an accident/safety analysis that clearly demonstrates the significance of project traffic.

TR Impact 8 (North Dana Foothill Road). Impacts to North Dana Foothill Road are considered significant because the road does not meet the County's current standard. The impact states that the road does not have paved shoulders or roadway striping and that the proposed project would exacerbate this deficient conditions. The recommended mitigation is to improve the road to County standards.

ATE Comment. There is no discussion that contains a nexus for the impact. The impact should be based on an accident/safety analysis that clearly demonstrates the significance of project traffic.

TR Impact 9 (Upper Los Berros Road). Impacts to Upper Los Berros Road are considered significant because the road does not meet the County's current standard. The impact states that the road does not have paved shoulders, roadway striping, and is unpaved in sections and that the proposed project would exacerbate this deficient conditions. The recommended mitigation is to improve the road to County standards.

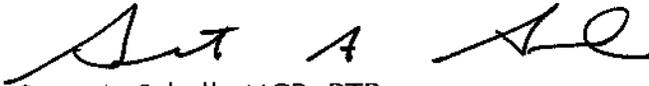
ATE Comment. This road does not meet the County's current standard. Portions of the road are unpaved and narrow, indicating that improvements will be necessary up to the access connection for the residential units.

The applicant's team met with County Public Works staff (Frank Honeycutt) and CAL FIRE staff (Laurie Donnelly) to discuss the feasibility of widening the segment of Upper Los Berros Road from the Dana Foothill bridge to the main entry into the Laetitia site. The County A-1f street section (two 12-foot paved travel lanes with 8-foot gravel shoulders) is desired for this segment and is the recommended mitigation. However, County staff and CAL Fire staff agreed that it may be possible to obtain a County design exception to allow for more flexibility for this portion of the road where the standard may be difficult to achieve due to physical or environmental constraints (e.g. buildings, bridges, trees, etc.). CAL FIRE staff indicated that their minimum paved width is 24 feet (10-foot lanes plus 2-foot shoulders). County staff noted that Public Works could approve a design that does not require removal of most if not all of the trees for the section of paved roadway from the Dana Foothill bridge to the main entry of the Laetitia project.

For the Dude Ranch, primary access is proposed via the connection to North Dana Foothill Road with secondary access via Upper Los Berros Road. Thus this mitigation, which requires improvement of Upper Los Berros Road, should be timed so that the improvements are implemented upon development of the Dude Ranch. The applicant's team meeting with County Public Works staff (Frank Honeycutt) and CAL FIRE staff (Laurie Donnelly) also reviewed this segment in the field. It was agreed that if and when the Dude Ranch is developed, it may be possible to obtain a County design exception to provide a gravel road section between the primary access connection and the secondary access connection on Upper Los Berros Road.

This concludes our review of the Laetitia Agricultural Cluster Project's Class I and Class II traffic impacts and mitigations for the County of San Luis Obispo facilities.

Associated Transportation Engineers



Scott A. Schell, AICP, PTP
Principal Transportation Planner

SAS/DLD

- c: John Janneck, Janneck LTD
- Ken Bornholdt, Kronick Moskovitz Tiedmann & Girard
- Tim Walters, RRM Design Group
- Vic Montgomery, RRM Design Group
- Frank Honeycutt, SLO County Public Works Department

JOHN JANNECK
LAETITIA VINEYARD AND WINERY

453 Laetitia Vineyard Drive
Arroyo Grande, CA 93420
(310) 351-1555/sun9155@aol.com

October 2, 2013

Brian Pedrotti, Project Manager
County of San Luis Obispo
Dept. of Planning & Building
976 Osos St., Room 300
San Luis Obispo, CA 93408-2040

Via Email and Federal Express

RE: Laetitia Agricultural Cluster Subdivision Tentative Tract Map and Conditional Use Permit SUB2003-00001 (Tract 2606) SCH # 2005041094

Dear Brian:

Ken Bornholdt's letter of October 1, 2013 to you and the documents he enclosed showed how the County treated Rural Lands within agricultural cluster subdivisions. In all four of these documents, the County determined that the LUO provided for doubling the number of parcels otherwise allowed in a standard subdivision for the Rural Lands areas in an agricultural cluster subdivision like Laetitia's application. The County's current position on the Laetitia application is totally inconsistent with all of these documents.

When the Laetitia application was filed and accepted as complete in 2004, the parcel density on both lands designated Agriculture and Rural Lands was doubled from a standard subdivision. You mentioned the Biddle Ranch project in our recent meeting because the site had both lands designated Agriculture and Rural Lands. In 2003, the County Planning Commission adopted a finding that the entire Biddle Ranch project was entitled to double the number of parcels ordinarily allowed in a standard subdivision. The finding was not limited to just the designated Agriculture lands, nor did it exempt Rural Lands. This finding was consistent with the Laetitia application and inconsistent with the County's current position for Rural Lands.

In 2007, the Laetitia consultant team confirmed specifically with the County that the calculation doubling the number of parcels in Rural Lands normally allowed under a standard subdivision was the correct application of the LUO for agricultural cluster subdivisions.

Four years after the application was filed, in a comment in the 2008 DEIR for this project the County reversed its position and contended there was no double density of parcels allowed on the Rural Lands areas. That was the first time that the County communicated this change in position to Laetitia. This change in position would result in the potential loss of numerous parcels for this subdivision and is a material adverse change to the owner economically for this project. Furthermore, by 2008 Laetitia had paid hundred of thousands of dollars in fees to the County to process its application for 102 parcels in reliance on the County's prior position on double density in the Rural Lands area on the property. Laetitia immediately commented to the DEIR and pointed out the mistake in interpretation of the LUO as it applied to the project.

LV-28

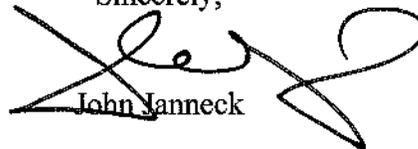
Brian Pedrotti, Project Manager
October 2, 2013
Page Two

Then in 2011 and 2012, in the Agricultural Cluster Program DEIR and FEIR done by the County, the County reaffirmed its original position taken in 2003 in the Biddle Ranch project and its 2007 meeting with Laetitia, that agricultural cluster subdivisions like Laetitia do get to double the number of parcels in Rural Lands areas under the LUO. These County interpretations were several years after the opposite County interpretation in the 2008 DEIR for the Laetitia project.

The Laetitia application should not be singled out and treated differently from the aforementioned County interpretations which apply the double parcel density standard under the LUO for similar projects. They all clearly support Laetitia's application for 102 parcels.

Let me finish with the basic meat and potatoes bottom line. James Caruso, in his letter of March 21, 2006 (Exhibit A) to Allison Donatello at RRM Design Group, enumerated 18 problems with the Laetitia Ag Cluster. Martha Nader, in her letter of April 19, 2006 (Exhibit B) to Allison Donatello, explained there were 38 Class I impacts with the current project. In neither of those letters were the number of units challenged. The number of units in a project is basic to the project's economic viability. If there was a unit count issue with the project, especially something as simple as a bonus in Rural Lands, it should have been disclosed to the applicant when the application was deemed complete in 2004, and at the very least, reiterated in the County letters (Exhibits A and B) in 2006, before the County collected over \$650,000 in fees. Clearly, there was and is no unit count issue.

Sincerely,



John Janneck

Enclosures: Exhibits A and B

EXHIBIT A

12/09/2006 13:35 8055471512
03/23/08 12:28 FAX 310 888 7731

BORNHOLDT & ASSOC.
JANNECK LTD.

PAGE 11/12
0002

CP-02-00 16:47AM FROM-REM Design . . .

805-849-4900

T-007 P.001/002 F-701



SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

March 21, 2008

Alison Donatello
RRM Design Group
3765 B. Higuera St, Ste 102
San Luis Obispo, CA 93401

Post-It Fax Note	7671	Date	3/23/08
To	Alison Donatello	From	Victor Holanda
Cell/Dept.		On	
Phone #		Phone #	
Fax #	805-858-7731	Fax #	

SUBJECT: LAETITIA AG CLUSTER (DRO2003-0001)

Dear Ms. Donatello:

The subject project's Environmental Impact Report (EIR) is under way. The consultant, Morte Group, has informed this Department that several potential Class I impacts have been identified. In addition, based on the results from preliminary studies, additional surveys and reports are necessary prior to completion of the DEIR. As a courtesy, we have described the potential impacts below:

1. Aesthetics

- Significant change to visual character of the area
- Inconsistent with the SRA designation and Highway 101 Corridor Design Plan

2. Agricultural Resources

- Lack of adequate buffering between agricultural and residential uses
- Significant agriculture-residential interface
- Conversion of agriculture resources to non-agricultural use
- Inconsistent with Ag and Open Space Element buffer policy

3. Cultural Resources

- Significant archaeological sites located within proposed development areas
- Additional archaeological studies needed
- Potentially significant historical sites located within proposed development areas
- Additional historical evaluation needed
- Paleontological resources study needed

COUNTY GOVERNMENT CENTER • SAN LUIS OBISPO • CALIFORNIA 93408 • (805) 781-5800

EMAIL: planning@co.slo.ca.us • FAX: (805) 781-1242 • WEBSITE: <http://www.sloplanning.org>

01-13-06 10:47AM FROM: RHM Design Group

603-543-4808

T-667 P.002/002 F-781

4. **Traffic/Circulation**
 - Secondary access use of Laeffla Drive approach to US Highway 101 (conflict with 5 below)
 - Deficient road and highway conditions

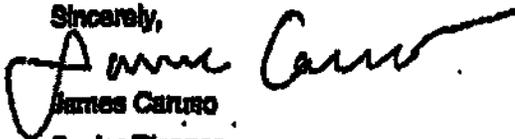
5. **Public Safety (Fire)**
 - Exceeds dead end road length with locked gate
 - Emergency access must be open (conflict with 4 above)

6. **Wastewater**
 - Inadequate percolation or soils.
 - Proposed wastewater system is also problematic (growth inducing)
 - Current project description incomplete. If the proposed wastewater treatment plant remains part of the project description, then additional information will be required to finalize the revised project description. The wastewater treatment plant also represents a substantial change to the project. The Notice of Preparation will be revised and redrafted. The cost estimate and EIR consultant contract will also be revised.

The consultant will continue to work on the document. However, you may wish to discuss possible mitigation measures and/or alternatives to the proposed project with Department and other County staff.

Please be advised that Martha Nader, Senior Planner, has been assigned as Project Manager as of March 20, 2008. Please feel free to contact Ms Nader at 781-4576 to discuss the contents of this letter or other project-related issues.

Sincerely,


James Caruso
Senior Planner

cc: Kami Griffin
John Nail

EXHIBIT B



SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

April 19, 2006

Ms. Alison Donatello
RRM Design Group
3765 S. Higuera St, Ste 102
San Luis Obispo, CA 93401

SUBJECT: *Laetitia Agricultural Cluster (DRC2003-00001)*

Dear Ms. Donatello;

In order to complete the Draft EIR, a decision related to project design needs to be made and additional work related to technical studies, alternative analysis, and percolation testing is required.

During preparation of the Administrative Draft EIR thus far, 33 project-specific and 5 cumulative Class I Impacts have been identified. Out of the project specific impacts, 3 are completely unavoidable due to existing deficient conditions on Highway 101 and the Los Berros/Thompson Road interchange. The remaining 30 of these impacts can possibly be avoided by substantial project redesign include elimination and relocation of approximately 70 percent of the development.

At this stage in the process, there are three main options:

1. **Major redesign.** The first is to place a hold on the Administrative Draft EIR and pursue a major redesign of approximately 70 percent of the development including both relocation and elimination of lots. This option would result in the fewest residual Class I Impacts. This option would affect both the timeframe and the scope of the EIR.
2. **Minor redesign.** A second option would include minor redesign of the project, which may reduce only a small percentage of Class I Impacts to less than significant. This option would also affect both the timeframe and the scope of the EIR.
3. **Current Project.** The third option is to continue with the current project description, which would result in the greatest number of Class I Impacts.

Regardless of which option the applicant chooses to pursue, additional technical studies are required (subsurface archaeological testing, a historical resources evaluation, and paleontological survey). Due to the overlapping characteristics of physical development constraints (e.g., archaeological and visual sensitivity, soil characteristics, and geologic limitations) additional technical studies should be completed prior to initiation of any redesign efforts by the applicant.

If the applicant chooses to redesign the proposed project, impact information pertinent to the redesign effort would be shared with the applicant upon completion of technical studies.

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EMAIL: planning@co.slo.ca.us • FAX: (805) 781-1242 • WEBSITE: <http://www.sloplanning.org>

Additional work related to technical studies, wastewater treatment facility alternative analysis, and percolation testing is required in order to complete the Draft EIR. Once the applicant decides which of the above described options to pursue, the consultant will prepare a revised scope of work and cost estimate to complete the Draft EIR.

Technical Studies

Based on the Phase One Archaeological Surface Survey, four known cultural resource sites were verified onsite, and 11 new archaeological sites were discovered. In addition, 7 isolate findings were observed. Subsurface testing, limited to affected sites, is necessary to delineate the boundaries, determine the significance, and assess the level of impact to each site. In addition to subsurface archaeological testing, a historical resources evaluation and paleontological survey are required.

Alternative Analysis

Pursuant to the March 29, 2006 meeting, the applicant wishes to have a project-specific analysis of the proposed wastewater treatment facility as an alternative to individual leachfields/septic systems. Incorporation of this project element into the EIR will require a revised EIR scope of work and will be incorporated as one of the alternatives evaluations as opposed to incorporation into the project description. Additional information will be requested from the applicant upon submittal of a revised scope of work estimate.

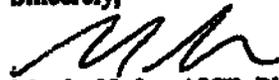
Percolation Testing

Based on the peer review conducted by the EIR subconsultant, Earth Systems Pacific, and consultation with the County Environmental Health Division, additional study is necessary to determine which lots would support an engineered or standard leachfield/septic system. Please note that additional percolation testing is necessary whether the applicant chooses to redesign the proposed project or continue with the current project description and needs to be completed prior to circulation of the Draft EIR.

The attached figure diagrams the three available options and steps necessary for completion of the Draft EIR. Please let me know how you wish to proceed.

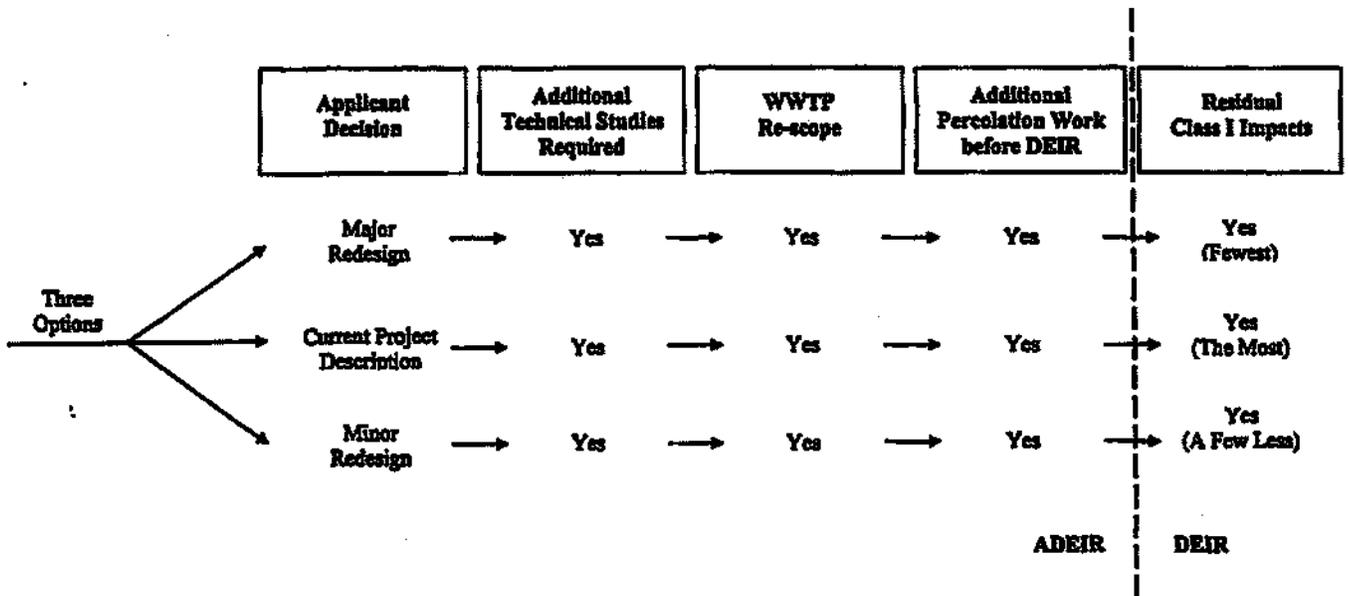
Please contact me if you have any questions.

Sincerely,



Martha Nader, AICP, Planner
Department of Planning and Building

**LAETTIA EIR
POSSIBLE OPTIONS AND OUTCOMES**



October 21, 2013

BY HAND DELIVERY

Brian Pedrotti, Project Manager
County of San Luis Obispo
Dept. of Planning & Building
976 Osos St., Room 300
San Luis Obispo, CA 93408-2040

**RE: Laetitia Agricultural Cluster Subdivision Tentative Tract Map and
Conditional Use Permit SUB2003-00001 (Tract 2606) SCH # 2005041094**

Dear Mr. Pedrotti:

In our last meeting you mentioned that portions of the Laetitia project site are located within a designated Sensitive Resource Area ("SRA") and referred to the goals and policies that apply to such SRAs. We have reviewed the applicable SRA goals and policies and how those goals and policies apply to the Laetitia Project. For the reasons set forth below, the Laetitia Project is consistent with the SRA designation.

The Laetitia Draft EIR ("DEIR") notes that the "western and northern portions of the project site are located within a SRA for scenic qualities under the County, Agriculture and Open Space Element ("AOSE") and Open Space Resources map." (DEIR, at V-286.) The DEIR states that those portions of the project site are located within SRA S47, "Newsom Ridge." (*Id.*) The DEIR then cites to two Open Space Goals (OSG1 and OSG3), one Open Space Policy (OSP25), and three sub-sections of an Agricultural Policy (AGP30b.2, b.3, and b.4). (*Id.* at V-286, V-288.)

The applicable AOSE provides an explanation of how the Goals and Policies cited in the DEIR are meant to be applied.

First, the AOSE makes it clear that "Goals" are a "general expression of community values, an ideal future result or condition, based on public health, safety, or general welfare." (AOSE, at 1-20.) "Policies" are more specific than goals; policies are "statements that guide decision making." (*Id.*) Thus, "Goals" are broad statements of ideal conditions, whereas "Policies" are the specific implementing statements that guide the decision making process on project review.

Second, Policy AGP30 is a policy regarding "Scenic Resources" and the relationship between designated scenic corridors and agricultural uses. That Policy states that designation of a scenic corridor and its subsequent management under Policy OSP25, "shall not interfere with agricultural uses on private lands." (AOSE, at 2-59.) In addition, Policy AGP30 states that land divisions in designated scenic corridors shall "[b]alance the protection of the scenic resources with the protection of agricultural resources and facilities." (*Id.*) AGP30 states that if a landowner along a designated scenic corridor applies for a discretionary land division, "the CEQA review of the proposed project should seek to balance the protection of the scenic qualities along the corridor with the needs of the agricultural resources and facilities. (Emphasis added)" (*Id.* at 2-60.)

Third, the AOSE makes it clear that the Open Space Goals are implemented by the Open Space Policies and implementation measures provided in the AOSE. (AOSE, at 3-37.) Thus, while the DEIR identifies two broad Open Space Goals, it also identifies one Open Space Policy, which implements those Goals. (See DEIR, at V-286.) The Laetitia Project satisfies the broad Open Space Goals cited in the DEIR because the project has been designed to be consistent with the Open Space Policy for Scenic Corridors (OSP25). This Policy directs a project to: 1) locate structures, roads and grading so as to minimize visual impact; 2) locate structures below prominent hilltops; 3) use landforms and vegetation to screen development; 4) design structures with colors from the natural landscape; and 5) minimize the visibility of utilities. (DEIR, at V-286.)

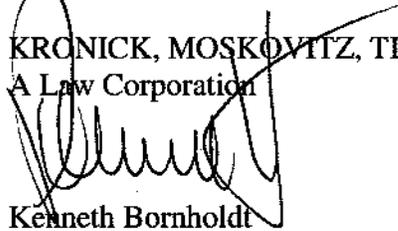
Fourth, it is important to note that the DEIR states that the limits of the Highway Corridor Design Standards, as defined in the South County Area Plan of the Land Use Ordinance ("LUO"), "coincide in part with the limits of the SRA S47 . . ." (DEIR, at V-289.) As the DEIR acknowledges, the Highway Corridor Design Standards state that agricultural residential land divisions are *encouraged* to be clustered on the Laetitia property. (DEIR, at v-290; LUO at 9-251.) The proposed Laetitia project is an agricultural cluster project, which is to be encouraged.

In summary, the Laetitia agricultural cluster project was designed to protect the scenic resources of the property by: 1) clustering residential development and preserving open space; 2) locating roads and structures to minimize visual impact; and 3) screening development through use of landforms, vegetation, and color choices. The proposed project is therefore consistent with the requirements for SRA-designated lands and with the special standards for lands located with a scenic highway corridor.

Brian Pedrotti, Project Manager
October 21, 2013
Page 3

Very truly yours,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation



Kenneth Bornholdt

KB/clk

cc: John Janneck
Victor Montgomery

1039938.1 11929.006

LV-29

April 3, 2014

VIA HAND DELIVERY

Brian Pedrotti
Project Manager
County of San Luis Obispo
Dept. of Planning & Building
976 Osos St., Room 300
San Luis Obispo, CA 93408-2040

Re: **Laetitia Agricultural Cluster Subdivision Tentative Tract Map and
Conditional Use Permit SUB2003-00001 (Tract 2606) SCH # 2005041094**

Dear Mr. Pedrotti:

This letter provides supplemental information to comment letter LV-6 which was previously provided to the County on November 6, 2008 by John Janneck of Janneck Ltd. Since the submission of that letter, there has been new case law which: (1) affirms the use of agricultural conservation easements as mitigation to agricultural resource impacts, and (2) requires the identification of all measures intended to mitigate a project, even if they are incorporated into the design of the project.

In *Masonite Corp. v. County of Mendocino* (2013) 218 Cal.App.4th 230, 238 ("*Masonite*"), the Court of Appeal confirmed that the permanent protection of farmland through agricultural conservation easements ("ACEs") "may appropriately mitigate for the direct loss of farmland when a project converts agricultural land to a nonagricultural use, even though the ACE does not replace the onsite resources." Furthermore, the court disagreed with the County of Mendocino's finding that there was no feasible mitigation for the loss of farmland, which was based on the legal conclusion that ACEs cannot mitigate a project's direct effect on agricultural resources. (*Ibid.*) The court concluded that "the CEQA Guidelines, case law on offsite mitigation for loss of biological resources, case law on ACEs, prevailing practice, and the public policy of this state" all reinforce the court's holding that ACEs can mitigate the loss of farmland. (*Ibid.*)

Like Mendocino County, the County here is acknowledging the approximate 1,792 acres of land the Project will be placing into permanent agricultural conservation open easements and under a Williamson Act contract, but failing to consider this as a mitigation measure which offsets the Project impacts to a less than significant level.

In fact, unlike other cases where the courts have upheld 1:1 conservation easements as adequate mitigation, the Project here is offering an unprecedented ACE on farmland of equal quality at a 7:1 ratio (seven acres preserved for each acre converted).

Furthermore, unlike the comment letters provided to the County, there is no substantial evidence in the record to support the DEIR's conclusion that these impacts will not be reduced to a less than significant level. The DEIR makes a blanket conclusion that "No feasible mitigation measures are available that would mitigate impacts due to the loss of Farmland and productive vineyard," which statement is in direct contrast with the legal conclusion that ACEs are in fact feasible mitigation measures.

Based on the foregoing, the County should incorporate the mitigation measures identified in LV-6-1 (p. 41), along with the additional language underlined below:

"AG/mm-1 The conversion of agricultural land to non-agricultural uses will be mitigated at a ratio greater than 7:1, as the applicant will permanently protect approximately 1,792 acres of agricultural land onsite through the dedication of open space easements. Under the applicant's Mitigated Project, the loss of 2.9 acres of Farmland of Statewide Importance will be mitigated at a ratio of approximately 5:1, as 14.5 acres of Farmland of Statewide Importance will be placed into permanent agricultural open space easements. The loss of 1.8 acres of Farmland of Local Potential will be mitigated at a ratio of approximately 9:1, as 17.5 acres of Farmland of Local Potential will be placed into permanent agricultural open space easements. The loss of 107.8 acres of Unique Farmland will be mitigated at a ratio of approximately 5:1, as 609.9 acres of Unique Farmland will be placed into permanent agricultural open space easements. The loss of 61.5 acres of Grazing Land will be mitigated at a ratio of approximately 15:1, as 950.2 acres of Grazing Land will be placed into permanent agricultural open space easements."

The DEIR must be reorganized to incorporate all the Project's mitigation measures into the mitigation section, and into the analysis of the Project's potential impacts. The recent case of *Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th 645 affirms this methodology. There, the Court of Appeals held that Caltrans' inclusion of mitigation measures as part of the design of the project, when the significance finding was dependent on those measures being fulfilled, violated CEQA. Here, the County is falling prey to the same mistake as Caltrans. Rather than separately identify the approximate 1,792 acres of land that will be placed under an ACE as a

Brian Pedrotti
April 3, 2014
Page 3

mitigation measure of the Project, the DEIR treats this as a design of the Project.

By treating the proposed 1,792 ACE as a mitigation measure, Project impacts to agricultural resources will be reduced to a less than significant level.

Finally, adoption of the recommended changes identified herein and in LV-6 do not require recirculation of the DEIR because they will not show a new impact or increase the severity of an existing impact. Rather, the recommended changes will demonstrate a significant reduction to agricultural resource impacts and should be depicted as mitigation measures.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation



KENNETH BORNHOLDT

cc: John Janneck
Victor Montgomery
County Counsel (via hand delivery)

1090803.2 11929-006

KRONICK
MOSKOVITZ
TIEDEMANN
& GIRARD
A PROFESSIONAL CORPORATION

400 Capitol Mall, 27th Floor
Sacramento, CA 95814
www.kmtg.com

LV-31

KRONICK
MOSKOVITZ
TIEDEMANN
& GIRARD
A LAW CORPORATION

Kenneth Bornholdt

805.786.4302
kbornholdt@kmtg.com

May 7, 2014

VIA HAND DELIVERY

Brian Pedrotti
Project Manager
County of San Luis Obispo
Dept. of Planning & Building
976 Osos St., Room 300
San Luis Obispo, CA 93408-2040

2014 MAY - 7 PM 2:20
SLO COUNTY
PLANNING/BUILDING
DEPT

Re: **Alternatives Analysis for the Environmental Impact Report Prepared for Laetitia Agricultural Cluster Subdivision Tentative Tract Map and Conditional Use Permit SUB2003-00001 (Tract 2606) SCH # 2005041094**

Dear Mr. Pedrotti:

In 2013, the United States Supreme Court published its decision in *Koontz v. St. Johns River Water Management District* (2013) 133 S.Ct. 2586 ("Koontz"). The facts in that case are similar to the facts of the Laetitia Project and the holding also applies. For those reasons, we respectfully request that you consider the *Koontz* decision when drafting the alternatives analysis in the Final Environmental Impact Report (the "EIR").

In *Koontz*, the petitioner purchased an undeveloped 14.9 acre piece of land and later sought to develop 3.7 acres of the property. The petitioner offered to foreclose any possible future development of the remaining 11 acres by deeding it to the St. Johns River Water Management District (the "District") as a conservation easement. In other words, the petitioner offered to develop about 25% of his property and deed the remainder in open space to the District.

The District rejected this plan and offered the petitioner the following alternatives: 1) reduce the size of the development to 1 acre and deed the remaining 13.9 acres, or 2) move forward with the petitioner's proposal as long as he also agreed to pay for improvements to District-owned land several miles away to replace culverts and fill ditches. By comparison to the petitioner's proposal, the District was asking that the petitioner deed about 90% of his property.

The petitioner filed suit on the grounds that the District's demands were "excessive in light of the environmental effects that his building proposal would have caused." After exhausting through the lower courts, the petitioner sought review from the United States Supreme Court.

Brian Pedrotti
May 7, 2014
Page 2

The Supreme Court held that "the government's demand for property from a land-use permit applicant must satisfy the requirements of *Nollan* and *Dolan* even when the government denies the permit and even when its demand is for money." *Koontz*, 133 S.Ct. at 2603. In reaching this holding, the High Court was particularly concerned about the "special vulnerability of land use permit applications to extortionate demands" from local governments. The Court reiterated its prior holdings in *Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825 and *Dolan v. City of Tigard* (1994) 512 U.S. 374 which together "provide important protection against the misuse of the power of land-use regulation. In those cases, we held that a unit of government may not condition the approval of a land-use permit on the owner's relinquishment of a portion of his property unless there is a 'nexus' and 'rough proportionality' between the government's demand and the effects of the proposed land use."

Here, the applicant's Mitigated Project offers to permanently protect approximately 1,411 acres of the roughly 1,522-acre Project site in an open-space easement. Under the Mitigated Project, approximately 93% of the Project site would be permanently conserved and protected, while approximately 7% would be developed into 102 residential lots.

If the law from the *Koontz* decision is applied to the EIR in this case, as it should be, the EIR must conclude that the majority of the project alternatives are not legally feasible because if implemented, they would "impermissibly burden the [property owner's] right not to have property taken without just compensation." *Koontz*, 133 S.Ct. at 2596. The following alternatives would require the extortionate demand that approximately 93% of the Project site be dedicated to the County in an open-space easement as a condition to permitting less development than allowed under the County's Land Use Ordinance: Single Cluster 93% Reduction Alternative; Single Cluster Alternative; Ordinance and General Plan Consistency Alternative; and the Reduced Density Two-Cluster Alternative. Each of these alternatives lacks an essential nexus and rough proportionality to the Project's impacts because they would condition reduced development on dedicating over 90% of the Project site to the public in open-space easements in order to meet the project objectives. The applicant's Mitigated Project can be distinguished because there is a nexus and rough proportionality between what the applicant would be receiving as a benefit from the increased lot density in exchange for the significant land conservation the government is requesting.

Brian Pedrotti
May 7, 2014
Page 3

We urge you to consider the recent *Koontz* decision and its explanation of appropriate land-use regulation in evaluating the project alternatives and finalizing the EIR.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation


KENNETH BORNHOLDT

Enclosures: (1) *Koontz v. St. Johns River Water Management District* (2013) 133 S.Ct. 2586

cc: John Janneck
Victor Montgomery
County Counsel

1102142.2 11929-006

KRONICK
MOSKOVITZ
TIEDEMANN
& GIRARD

400 Capitol Mall, 27th Floor
Sacramento, CA 95814
www.kmtg.com

LV-32
1102142.2 11929-006

133 S.Ct. 2586
Supreme Court of the United States

Coy A. KOONTZ, Jr., Petitioner
v.
ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT.

No. 11-1447. | Argued Jan. 15,
2013. | Decided June 25, 2013.

Synopsis

Background: Landowner brought action in Florida state court against water management district, alleging that district's denial of land use permits unless he funded offsite mitigation projects on public lands amounted to a taking without just compensation. Following remand, 720 So.2d 560, the Circuit Court, Orange County, Joseph P. Baker, J., entered judgment for landowner, and the district appealed. The District Court of Appeal, 5 So.3d 8, affirmed and certified a question as one of great public importance. The Florida Supreme Court, Lewis, J., reversed, 77 So.3d 1220, and certiorari was granted.

Holdings: The Supreme Court, Justice Alito, held that:

[1] district could not evade limitations of the unconstitutional conditions doctrine by conditioning approval of a land use permit on landowner's funding of offsite mitigation projects on public lands, and

[2] "monetary exactions" as a condition of a land use permit must satisfy requirements that government's mitigation demand have an essential nexus and rough proportionality to the impacts of a proposed development, abrogating *McClung v. Sumner*, 548 F.3d 1219.

Reversed and remanded.

Justice Kagan filed a dissenting opinion in which Justices Ginsburg, Breyer, and Sotomayor joined.

West Headnotes (20)

[1] Constitutional Law

⇒ Denial of benefits as constitutional violation

The government may not deny a benefit to a person because he exercises a constitutional right.

1 Cases that cite this headnote

[2] Constitutional Law

⇒ Doctrine of unconstitutional conditions

The "unconstitutional conditions doctrine" vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up.

Cases that cite this headnote

[3] Zoning and Planning

⇒ Conditions and Agreements

The government may choose whether and how a land use permit applicant is required to mitigate the impacts of a proposed development, but it may not leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts.

Cases that cite this headnote

[4] Eminent Domain

⇒ Exactions and conditions

Principles undergirding requirement that government's mitigation demand have an essential nexus and rough proportionality to the impacts of a proposed development do not change depending on whether the government approves a permit on the condition that the applicant turn over property or denies a permit because the applicant refuses to do so. U.S.C.A. Const. Amend. 5.

Cases that cite this headnote

[5] Constitutional Law

↳ Doctrine of unconstitutional conditions

Regardless of whether the government ultimately succeeds in pressuring someone into forfeiting a constitutional right, the unconstitutional conditions doctrine forbids burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them.

1 Cases that cite this headnote

[6] **Eminent Domain**

↳ Exactions and conditions

Water management district could not evade limitations of the unconstitutional conditions doctrine by conditioning approval of a land use permit on landowner's funding of offsite mitigation projects on public lands. U.S.C.A. Const.Amend. 5.

2 Cases that cite this headnote

[7] **Eminent Domain**

↳ Exactions and conditions

Extortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they take property but because they impermissibly burden the right not to have property taken without just compensation; as in other unconstitutional conditions cases in which someone refuses to cede a constitutional right in the face of coercive pressure, the impermissible denial of a governmental benefit is a constitutionally cognizable injury. U.S.C.A. Const.Amend. 5.

3 Cases that cite this headnote

[8] **Eminent Domain**

↳ Exactions and conditions

Where a land use permit is denied and a condition for granting the permit is never imposed, nothing has been taken; while the unconstitutional conditions doctrine recognizes that this burdens a constitutional right, the Fifth Amendment mandates a particular remedy, just compensation, only for takings. U.S.C.A. Const.Amend. 5.

1 Cases that cite this headnote

[9] **Eminent Domain**

↳ Exactions and conditions

In cases where there is an excessive demand as a condition of a land use permit but no taking, whether money damages are available is not a question of federal constitutional law but of the cause of action, whether state or federal, on which the landowner relies. U.S.C.A. Const.Amend. 5.

Cases that cite this headnote

[10] **Eminent Domain**

↳ Appeal and error

Whether landowner's action in state court, under Florida statute allowing a property owner to sue for damages whenever a state agency's action is an unreasonable exercise of the state's police power constituting a taking without just compensation, created a federal obstacle to adjudicating landowner's unconstitutional conditions claim was issue for Florida courts to consider in first instance on remand. U.S.C.A. Const.Amend. 5; West's F.S.A. § 373.617.

Cases that cite this headnote

[11] **Federal Courts**

↳ Takings and eminent domain

Whether Florida statute allowing a property owner to sue for damages whenever a state agency's action is an unreasonable exercise of the state's police power constituting a taking without just compensation covered a landowner's unconstitutional conditions claim was a question of state, rather than federal, law. U.S.C.A. Const.Amend. 5; West's F.S.A. § 373.617.

Cases that cite this headnote

[12] **Eminent Domain**

↳ Exactions and conditions

Water management district's offer to landowner to approve a less ambitious building project without offsite mitigation did not obviate

the need to determine whether its alternative demand for offsite mitigation on public lands satisfied requirement that government's mitigation demand have an essential nexus and rough proportionality to the impacts of a proposed development; although district offered to allow landowner to build on one acre of his 14.9 acre tract as an alternative to offsite mitigation, landowner sought to develop 3.7 acres, and claimed he was wrongfully denied a permit to build on the remaining 2.7 acres. U.S.C.A. Const.Amend. 5.

Cases that cite this headnote

[13] **Eminent Domain**

⇒ Exactions and conditions

So long as a permitting authority offers the landowner at least one alternative that would satisfy requirement that government's demand have an essential nexus and rough proportionality to the impacts of a proposed development, the landowner has not been subjected to an unconstitutional condition. U.S.C.A. Const.Amend. 5.

Cases that cite this headnote

[14] **Constitutional Law**

⇒ Doctrine of unconstitutional conditions

A predicate for any unconstitutional conditions claim is that the government could not have constitutionally ordered the person asserting the claim to do what it attempted to pressure that person into doing.

Cases that cite this headnote

[15] **Eminent Domain**

⇒ Exactions and conditions

Zoning and Planning

⇒ Fees, bonds and in lieu payments

Water management district's request that landowner spend money to fund offsite mitigation projects on public lands, rather than give up an easement on his land, as a condition of a land use permit was subject to requirement that government's mitigation demand have an

essential nexus and rough proportionality to the impacts of a proposed development. U.S.C.A. Const.Amend. 5.

Cases that cite this headnote

[16] **Eminent Domain**

⇒ Exactions and conditions

Zoning and Planning

⇒ Fees, bonds and in lieu payments

Government's "monetary exactions" as a condition of a land use permit must satisfy requirements that government's mitigation demand have an essential nexus and rough proportionality to the impacts of a proposed development; abrogating *McClung v. Sumner*, 548 F.3d 1219. U.S.C.A. Const.Amend. 5.

3 Cases that cite this headnote

[17] **Eminent Domain**

⇒ Taxes, licenses, assessments, and users' fees in general

Taxes and user fees are not takings. U.S.C.A. Const.Amend. 5.

3 Cases that cite this headnote

[18] **Eminent Domain**

⇒ Taxes, licenses, assessments, and users' fees in general

The power of taxation should not be confused with the power of eminent domain.

Cases that cite this headnote

[19] **Zoning and Planning**

⇒ Fees and charges

State law normally provides an independent check on excessive land use permitting fees.

Cases that cite this headnote

[20] **Eminent Domain**

⇒ Exactions and conditions

Zoning and Planning

⇒ Fees, bonds and in lieu payments

The government's demand for property from a land-use permit applicant must satisfy the requirement that the demand have an essential nexus and rough proportionality to the impacts of a proposed development, even when the government denies the permit and even when its demand is for money. U.S.C.A. Const.Amend. 5.

Cases that cite this headnote

2588 Syllabus

Coy Koontz, Sr., whose estate is represented here by petitioner, sought permits to develop a section of his property *2589 from respondent St. Johns River Water Management District (District), which, consistent with Florida law, requires permit applicants wishing to build on wetlands to offset the resulting environmental damage. Koontz offered to mitigate the environmental effects of his development proposal by deeding to the District a conservation easement on nearly three-quarters of his property. The District rejected Koontz's proposal and informed him that it would approve construction only if he (1) reduced the size of his development and, *inter alia*, deeded to the District a conservation easement on the resulting larger remainder of his property or (2) hired contractors to make improvements to District-owned wetlands several miles away. Believing the District's demands to be excessive in light of the environmental effects his proposal would have caused, Koontz filed suit under a state law that provides money damages for agency action that is an "unreasonable exercise of the state's police power constituting a taking without just compensation."

The trial court found the District's actions unlawful because they failed the requirements of *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677, and *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304. Those cases held that the government may not condition the approval of a land-use permit on the owner's relinquishment of a portion of his property unless there is a nexus and rough proportionality between the government's demand and the effects of the proposed land use. The District Court of Appeal affirmed, but the State Supreme Court reversed on two grounds. First, it held that petitioner's claim failed because, unlike in *Nollan* or *Dolan*, the District denied the application. Second, the State Supreme Court held that a

demand for money cannot give rise to a claim under *Nollan* and *Dolan*.

Held:

1. The government's demand for property from a land-use permit applicant must satisfy the *Nollan/Dolan* requirements even when it denies the permit. Pp. 2594 – 2598.

(a) The unconstitutional conditions doctrine vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up, and *Nollan* and *Dolan* represent a special application of this doctrine that protects the Fifth Amendment right to just compensation for property the government takes when owners apply for land-use permits. The standard set out in *Nollan* and *Dolan* reflects the danger of governmental coercion in this context while accommodating the government's legitimate need to offset the public costs of development through land use exactions. *Dolan, supra*, at 391. 114 S.Ct. 2309; *Nollan, supra*, at 837, 107 S.Ct. 3141. Pp. 2594 – 2595.

(b) The principles that undergird *Nollan* and *Dolan* do not change depending on whether the government approves a permit on the condition that the applicant turn over property or denies a permit because the applicant refuses to do so. Recognizing such a distinction would enable the government to evade the *Nollan/Dolan* limitations simply by phrasing its demands for property as conditions precedent to permit approval. This Court's unconstitutional conditions cases have long refused to attach significance to the distinction between conditions precedent and conditions subsequent. See, e.g., *Frost & Frost Trucking Co. v. Railroad Comm'n of Cal.*, 271 U.S. 583, 592-593, 46 S.Ct. 605, 70 L.Ed. 1101. It makes no difference that no property was actually taken in this case. Extortionate demands *2590 for property in the land-use permitting context run afoul of the Takings Clause not because they take property but because they impermissibly burden the right not to have property taken without just compensation. Nor does it matter that the District might have been able to deny Koontz's application outright without giving him the option of securing a permit by agreeing to spend money improving public lands. It is settled that the unconstitutional conditions doctrine applies even when the government threatens to withhold a gratuitous benefit. See e.g., *United States v. American Library Assn., Inc.*, 539 U.S. 194, 210, 123 S.Ct. 2297, 156 L.Ed.2d 221. Pp. 2595 – 2597.

(c) The District concedes that the denial of a permit could give rise to a valid *Nollan/Dolan* claim, but urges that this Court should not review this particular denial because Koontz sued in the wrong court, for the wrong remedy, and at the wrong time. Most of its arguments raise questions of state law. But to the extent that respondent alleges a federal obstacle to adjudication of petitioner's claim, the Florida courts can consider respondent's arguments in the first instance on remand. Finally, the District errs in arguing that because it gave Koontz another avenue to obtain permit approval, this Court need not decide whether its demand for offsite improvements satisfied *Nollan* and *Dolan*. Had Koontz been offered at least one alternative that satisfied *Nollan* and *Dolan*, he would not have been subjected to an unconstitutional condition. But the District's offer to approve a less ambitious project does not obviate the need to apply *Nollan* and *Dolan* to the conditions it imposed on its approval of the project Koontz actually proposed. Pp. 2597 – 2598.

2. The government's demand for property from a land-use permit applicant must satisfy the *Nollan/Dolan* requirements even when its demand is for money. Pp. 2598 – 2603.

(a) Contrary to respondent's argument, *Eastern Enterprises v. Apfel*, 524 U.S. 498, 118 S.Ct. 2131, 141 L.Ed.2d 451, where five Justices concluded that the Takings Clause does not apply to government-imposed financial obligations that "d[o] not operate upon or alter an identified property interest," *id.*, at 540, 118 S.Ct. 2131 (KENNEDY, J., concurring in judgment and dissenting in part), does not control here, where the demand for money did burden the ownership of a specific parcel of land. Because of the direct link between the government's demand and a specific parcel of real property, this case implicates the central concern of *Nollan* and *Dolan*: the risk that the government may deploy its substantial power and discretion in land-use permitting to pursue governmental ends that lack an essential nexus and rough proportionality to the effects of the proposed use of the property at issue. Pp. 2598 – 2601.

(b) The District argues that if monetary exactions are subject to *Nollan/Dolan* scrutiny, then there will be no principled way of distinguishing impermissible land-use exactions from property taxes. But the District exaggerates both the extent to which that problem is unique to the land-use permitting context and the practical difficulty of distinguishing between the power to tax and the power to take by eminent domain. It is beyond dispute that "[t]axes and user fees ... are not 'takings,'" *Brown v. Legal Foundation of Wash.*, 538 U.S.

216, 243, n. 2, 123 S.Ct. 1406, 155 L.Ed.2d 376, yet this Court has repeatedly found takings where the government, by confiscating financial obligations, achieved a result that could have been obtained through taxation, *e.g., id.*, at 232, 123 S.Ct. 1406. Pp. 2598 – 2602.

*2591 (c) The Court's holding that monetary exactions are subject to scrutiny under *Nollan* and *Dolan* will not work a revolution in land use law or unduly limit the discretion of local authorities to implement sensible land use regulations. The rule that *Nollan* and *Dolan* apply to monetary exactions has been the settled law in some of our Nation's most populous States for many years, and the protections of those cases are often redundant with the requirements of state law. Pp. 2602 – 2603.

77 So.3d 1220, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C.J., and SCALIA, KENNEDY, and THOMAS, JJ., joined. KAGAN, J., filed a dissenting opinion, in which GINSBURG, BREYER, and SOTOMAYOR, JJ., joined.

Attorneys and Law Firms

Paul J. Beard, II, Sacramento, CA, for Petitioner.

Paul R.Q. Wolfson, for Respondent.

Edwin S. Kneedler, for the United States as amicus curiae, by special leave of the Court, supporting the respondent.

Brian T. Hodges, Pacific Legal Foundation, Bellevue, WA, Michael D. Jones, Michael D. Jones and Associates, P.A., Oviedo, FL, Paul J. Beard II, Counsel of Record, Pacific Legal Foundation, Sacramento, CA, Christopher V. Carlyle, The Carlyle Appellate Law Firm, The Villages, FL, for Petitioner.

William H. Congdon, Jr., Rachel D. Gray, St. Johns River Water Management District, Palatka, FL, Paul R.Q. Wolfson, Counsel of Record, Catherine M.A. Carroll, Steven P. Lehotsky, Albinas Prizgintas, Daniel Winik, Wilmer Cutler Pickering Hale and Dorr LLP, Washington, DC, for Respondent.

Opinion

Justice ALITO delivered the opinion of the Court.

Our decisions in *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), provide important protection against the misuse of the power of land-use regulation. In those cases, we held that a unit of government may not condition the approval of a land-use permit on the owner's relinquishment of a portion of his property unless there is a "nexus" and "rough proportionality" between the government's demand and the effects of the proposed land use. In this case, the St. Johns River Water Management District (District) believes that it circumvented *Nollan* and *Dolan* because of the way in which it structured its handling of a permit application submitted by Coy Koontz, Sr., whose estate is represented in this Court by Coy Koontz, Jr. The District did not approve his application on the condition that he surrender an interest in his land. Instead, the District, after suggesting that he could obtain approval by signing over such an interest, denied his application because he refused to yield. The Florida Supreme Court blessed this maneuver and thus effectively interred those important decisions. Because we conclude that *Nollan* and *Dolan* cannot be evaded in this way, the Florida Supreme Court's decision must be reversed.

I

A

In 1972, petitioner purchased an undeveloped 14.9-acre tract of land on the *2592 south side of Florida State Road 50, a divided four-lane highway east of Orlando. The property is located less than 1,000 feet from that road's intersection with Florida State Road 408, a tolled expressway that is one of Orlando's major thoroughfares.

A drainage ditch runs along the property's western edge, and high-voltage power lines bisect it into northern and southern sections. The combined effect of the ditch, a 100-foot wide area kept clear for the power lines, the highways, and other construction on nearby parcels is to isolate the northern section of petitioner's property from any other undeveloped land. Although largely classified as wetlands by the State, the northern section drains well; the most significant standing water forms in ruts in an unpaved road used to access the power lines. The natural topography of the property's southern section is somewhat more diverse, with a small creek, forested uplands, and wetlands that sometimes have

water as much as a foot deep. A wildlife survey found evidence of animals that often frequent developed areas: raccoons, rabbits, several species of bird, and a turtle. The record also indicates that the land may be a suitable habitat for opossums.

The same year that petitioner purchased his property, Florida enacted the Water Resources Act, which divided the State into five water management districts and authorized each district to regulate "construction that connects to, draws water from, drains water into, or is placed in or across the waters in the state." 1972 Fla. Laws ch. 72-299, pt. IV, § 1(5), pp. 1115, 1116 (codified as amended at Fla. Stat. § 373.403(5) (2010)). Under the Act, a landowner wishing to undertake such construction must obtain from the relevant district a Management and Storage of Surface Water (MSSW) permit, which may impose "such reasonable conditions" on the permit as are "necessary to assure" that construction will "not be harmful to the water resources of the district." 1972 Fla. Laws § 4(1), at 1118 (codified as amended at Fla. Stat. § 373.413(1)).

In 1984, in an effort to protect the State's rapidly diminishing wetlands, the Florida Legislature passed the Warren S. Henderson Wetlands Protection Act, which made it illegal for anyone to "dredge or fill in, on, or over surface waters" without a Wetlands Resource Management (WRM) permit. 1984 Fla. Laws ch. 84-79, pt. VIII, § 403.905(1), pp. 204-205. Under the Henderson Act, permit applicants are required to provide "reasonable assurance" that proposed construction on wetlands is "not contrary to the public interest," as defined by an enumerated list of criteria. See Fla. Stat. § 373.414(1). Consistent with the Henderson Act, the St. Johns River Water Management District, the district with jurisdiction over petitioner's land, requires that permit applicants wishing to build on wetlands offset the resulting environmental damage by creating, enhancing, or preserving wetlands elsewhere.

Petitioner decided to develop the 3.7-acre northern section of his property, and in 1994 he applied to the District for MSSW and WRM permits. Under his proposal, petitioner would have raised the elevation of the northernmost section of his land to make it suitable for a building, graded the land from the southern edge of the building site down to the elevation of the high-voltage electrical lines, and installed a dry-bed pond for retaining and gradually releasing stormwater runoff from the building and its parking lot. To mitigate the environmental effects of his proposal, petitioner offered to foreclose any possible future development of the approximately 11-acre

southern section of his land by deeding to the District a conservation *2593 easement on that portion of his property.

The District considered the 11-acre conservation easement to be inadequate, and it informed petitioner that it would approve construction only if he agreed to one of two concessions. First, the District proposed that petitioner reduce the size of his development to 1 acre and deed to the District a conservation easement on the remaining 13.9 acres. To reduce the development area, the District suggested that petitioner could eliminate the dry-bed pond from his proposal and instead install a more costly subsurface stormwater management system beneath the building site. The District also suggested that petitioner install retaining walls rather than gradually sloping the land from the building site down to the elevation of the rest of his property to the south.

In the alternative, the District told petitioner that he could proceed with the development as proposed, building on 3.7 acres and deeding a conservation easement to the government on the remainder of the property, if he also agreed to hire contractors to make improvements to District-owned land several miles away. Specifically, petitioner could pay to replace culverts on one parcel or fill in ditches on another. Either of those projects would have enhanced approximately 50 acres of District-owned wetlands. When the District asks permit applicants to fund offsite mitigation work, its policy is never to require any particular offsite project, and it did not do so here. Instead, the District said that it "would also favorably consider" alternatives to its suggested offsite mitigation projects if petitioner proposed something "equivalent." App. 75.

Believing the District's demands for mitigation to be excessive in light of the environmental effects that his building proposal would have caused, petitioner filed suit in state court. Among other claims, he argued that he was entitled to relief under Fla. Stat. § 373.617(2), which allows owners to recover "monetary damages" if a state agency's action is "an unreasonable exercise of the state's police power constituting a taking without just compensation."

B

The Florida Circuit Court granted the District's motion to dismiss on the ground that petitioner had not adequately exhausted his state-administrative remedies, but the Florida District Court of Appeal for the Fifth Circuit reversed. On

remand, the State Circuit Court held a 2-day bench trial. After considering testimony from several experts who examined petitioner's property, the trial court found that the property's northern section had already been "seriously degraded" by extensive construction on the surrounding parcels. App. to Pet. for Cert. D-3. In light of this finding and petitioner's offer to dedicate nearly three-quarters of his land to the District, the trial court concluded that any further mitigation in the form of payment for offsite improvements to District property lacked both a nexus and rough proportionality to the environmental impact of the proposed construction. *Id.*, at D-11. It accordingly held the District's actions unlawful under our decisions in *Nollan* and *Dolan*.

The Florida District Court affirmed, 5 So.3d 8 (2009), but the State Supreme Court reversed, 77 So.3d 1220 (2011). A majority of that court distinguished *Nollan* and *Dolan* on two grounds. First, the majority thought it significant that in this case, unlike *Nollan* or *Dolan*, the District did not approve petitioner's application on the condition that he accede to the District's demands; instead, the District denied his application because he refused to make concessions. 77 So.3d, at 1230. *2594 Second, the majority drew a distinction between a demand for an interest in real property (what happened in *Nollan* and *Dolan*) and a demand for money. 77 So.3d, at 1229-1230. The majority acknowledged a division of authority over whether a demand for money can give rise to a claim under *Nollan* and *Dolan*, and sided with those courts that have said it cannot. 77 So.3d, at 1229-1230. Compare, e.g., *McClung v. Sumner*, 548 F.3d 1219, 1228 (C.A.9 2008), with *Ehrlich v. Culver City*, 12 Cal.4th 854, 876, 50 Cal.Rptr.2d 242, 911 P.2d 429, 444 (1996); *Flower Mound v. Stafford Estates Ltd. Partnership*, 135 S.W.3d 620, 640-641 (Tex.2004). Two justices concurred in the result, arguing that petitioner had failed to exhaust his administrative remedies as required by state law before bringing an inverse condemnation suit that challenges the propriety of an agency action. 77 So.3d, at 1231-1232; see *Key Haven Associated Enterprises, Inc. v. Board of Trustees of Internal Improvement Trust Fund*, 427 So.2d 153, 159 (Fla.1982).

Recognizing that the majority opinion rested on a question of federal constitutional law on which the lower courts are divided, we granted the petition for a writ of certiorari, 568 U.S. —, 133 S.Ct. 420, 184 L.Ed.2d 251 (2012), and now reverse.

II

A

[1] [2] We have said in a variety of contexts that “the government may not deny a benefit to a person because he exercises a constitutional right.” *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 545, 103 S.Ct. 1997, 76 L.Ed.2d 129 (1983). See also, e.g., *Runsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 59–60, 126 S.Ct. 1297, 164 L.Ed.2d 156 (2006); *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 78, 110 S.Ct. 2729, 111 L.Ed.2d 52 (1990). In *Perry v. Sindermann*, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972), for example, we held that a public college would violate a professor’s freedom of speech if it declined to renew his contract because he was an outspoken critic of the college’s administration. And in *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974), we concluded that a county impermissibly burdened the right to travel by extending healthcare benefits only to those indigent sick who had been residents of the county for at least one year. Those cases reflect an overarching principle, known as the unconstitutional conditions doctrine, that vindicates the Constitution’s enumerated rights by preventing the government from coercing people into giving them up.

Nollan and *Dolan* “involve a special application” of this doctrine that protects the Fifth Amendment right to just compensation for property the government takes when owners apply for land-use permits. *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 547, 125 S.Ct. 2074, 161 L.Ed.2d 876 (2005); *Dolan*, 512 U.S., at 385, 114 S.Ct. 2309 (invoking “the well-settled doctrine of ‘unconstitutional conditions’”). Our decisions in those cases reflect two realities of the permitting process. The first is that land-use permit applicants are especially vulnerable to the type of coercion that the unconstitutional conditions doctrine prohibits because the government often has broad discretion to deny a permit that is worth far more than property it would like to take. By conditioning a building permit on the owner’s deeding over a public right-of-way, for example, the government can pressure an owner into voluntarily giving up property for which the Fifth Amendment would otherwise require just compensation. See *id.*, at 384, 114 S.Ct. 2309; *Nollan*, 483 U.S., at 831, 107 S.Ct. 3141. *2595 So long as the building permit is more valuable than any just compensation the owner could hope to receive for the right-of-way, the

owner is likely to accede to the government’s demand, no matter how unreasonable. Extortionate demands of this sort frustrate the Fifth Amendment right to just compensation, and the unconstitutional conditions doctrine prohibits them.

A second reality of the permitting process is that many proposed land uses threaten to impose costs on the public that dedications of property can offset. Where a building proposal would substantially increase traffic congestion, for example, officials might condition permit approval on the owner’s agreement to deed over the land needed to widen a public road. Respondent argues that a similar rationale justifies the exaction at issue here: petitioner’s proposed construction project, it submits, would destroy wetlands on his property, and in order to compensate for this loss, respondent demands that he enhance wetlands elsewhere. Insisting that landowners internalize the negative externalities of their conduct is a hallmark of responsible land-use policy, and we have long sustained such regulations against constitutional attack. See *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926).

[3] *Nollan* and *Dolan* accommodate both realities by allowing the government to condition approval of a permit on the dedication of property to the public so long as there is a “nexus” and “rough proportionality” between the property that the government demands and the social costs of the applicant’s proposal. *Dolan, supra*, at 391, 114 S.Ct. 2309; *Nollan*, 483 U.S., at 837, 107 S.Ct. 3141. Our precedents thus enable permitting authorities to insist that applicants bear the full costs of their proposals while still forbidding the government from engaging in “out-and-out ... extortion” that would thwart the Fifth Amendment right to just compensation. *Ibid.* (internal quotation marks omitted). Under *Nollan* and *Dolan* the government may choose whether and how a permit applicant is required to mitigate the impacts of a proposed development, but it may not leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts.

B

[4] [5] The principles that undergird our decisions in *Nollan* and *Dolan* do not change depending on whether the government approves a permit on the condition that the applicant turn over property or denies a permit because the applicant refuses to do so. We have often concluded

that denials of governmental benefits were impermissible under the unconstitutional conditions doctrine. See, e.g., *Perry*, 408 U.S., at 597, 92 S.Ct. 2694 (explaining that the government “may not deny a benefit to a person on a basis that infringes his constitutionally protected interests” (emphasis added)); *Memorial Hospital*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (finding unconstitutional condition where government denied healthcare benefits). In so holding, we have recognized that regardless of whether the government ultimately succeeds in pressuring someone into forfeiting a constitutional right, the unconstitutional conditions doctrine forbids burdening the Constitution’s enumerated rights by coercively withholding benefits from those who exercise them.

[6] A contrary rule would be especially untenable in this case because it would enable the government to evade the limitations of *Nollan* and *Dolan* simply by phrasing its demands for property as conditions precedent to permit approval. Under the Florida Supreme Court’s approach, *2596 a government order stating that a permit is “approved if” the owner turns over property would be subject to *Nollan* and *Dolan*, but an identical order that uses the words “denied until” would not. Our unconstitutional conditions cases have long refused to attach significance to the distinction between conditions precedent and conditions subsequent. See *Frost & Frost Trucking Co. v. Railroad Comm’n of Cal.*, 271 U.S. 583, 592–593, 46 S.Ct. 605, 70 L.Ed. 1101 (1926) (invalidating regulation that required the petitioner to give up a constitutional right “as a condition precedent to the enjoyment of a privilege”); *Southern Pacific Co. v. Dennon*, 146 U.S. 202, 207, 13 S.Ct. 44, 36 L.Ed. 942 (1892) (invalidating statute “requiring the corporation, as a condition precedent to obtaining a permit to do business within the State, to surrender a right and privilege secured to it by the Constitution”). See also *Flower Mound*, 135 S.W.3d, at 639 (“The government cannot sidestep constitutional protections merely by rephrasing its decision from ‘only if’ to ‘not unless’”). To do so here would effectively render *Nollan* and *Dolan* a dead letter.

[7] The Florida Supreme Court puzzled over how the government’s demand for property can violate the Takings Clause even though “no property of any kind was ever taken,” 77 So.3d, at 1225 (quoting 5 So.3d, at 20 (Griffin, J., dissenting)); see also 77 So.3d, at 1229–1230, but the unconstitutional conditions doctrine provides a ready answer. Extortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they

take property but because they impermissibly burden the right not to have property taken without just compensation. As in other unconstitutional conditions cases in which someone refuses to cede a constitutional right in the face of coercive pressure, the impermissible denial of a governmental benefit is a constitutionally cognizable injury.

Nor does it make a difference, as respondent suggests, that the government might have been able to deny petitioner’s application outright without giving him the option of securing a permit by agreeing to spend money to improve public lands. See *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978). Virtually all of our unconstitutional conditions cases involve a gratuitous governmental benefit of some kind. See, e.g., *Regan*, 461 U.S. 540, 103 S.Ct. 1997, 76 L.Ed.2d 129 (tax benefits); *Memorial Hospital*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (healthcare); *Perry*, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (public employment); *United States v. Butler*, 297 U.S. 1, 71, 56 S.Ct. 312, 80 L.Ed. 477 (1936) (crop payments); *Frost, supra* (business license). Yet we have repeatedly rejected the argument that if the government need not confer a benefit at all, it can withhold the benefit because someone refuses to give up constitutional rights. E.g., *United States v. American Library Assn., Inc.*, 539 U.S. 194, 210, 123 S.Ct. 2297, 156 L.Ed.2d 221 (2003) (“[T]he government may not deny a benefit to a person on a basis that infringes his constitutionally protected ... freedom of speech even if he has no entitlement to that benefit” (emphasis added and internal quotation marks omitted)); *Wieman v. Updegraff*, 344 U.S. 183, 191, 73 S.Ct. 215, 97 L.Ed. 216 (1952) (explaining in unconstitutional conditions case that to focus on “the facile generalization that there is no constitutionally protected right to public employment is to obscure the issue”). Even if respondent would have been entirely within its rights in denying the permit for some other reason, that greater authority does not imply a lesser power to condition permit approval on petitioner’s forfeiture of his constitutional rights. See *2597 *Nollan*, 483 U.S., at 836–837, 107 S.Ct. 3141 (explaining that “[t]he evident constitutional propriety” of prohibiting a land use “disappears ... if the condition substituted for the prohibition utterly fails to further the end advanced as the justification for the prohibition”).

[8] [9] That is not to say, however, that there is no relevant difference between a consummated taking and the denial of a permit based on an unconstitutionally extortionate demand. Where the permit is denied and the condition is never imposed, nothing has been taken. While

the unconstitutional conditions doctrine recognizes that this *burdens* a constitutional right, the Fifth Amendment mandates a particular *remedy*—just compensation—only for takings. In cases where there is an excessive demand but no taking, whether money damages are available is not a question of federal constitutional law but of the cause of action—whether state or federal—on which the landowner relies. Because petitioner brought his claim pursuant to a state law cause of action, the Court has no occasion to discuss what remedies might be available for a *Nollan/Dolan* unconstitutional conditions violation either here or in other cases.

C

[10] At oral argument, respondent conceded that the denial of a permit could give rise to a valid claim under *Nollan and Dolan*. Tr. of Oral Arg. 33–34, but it urged that we should not review the particular denial at issue here because petitioner sued in the wrong court, for the wrong remedy, and at the wrong time. Most of respondent's objections to the posture of this case raise questions of Florida procedure that are not ours to decide. See *Mullaney v. Wilbur*, 421 U.S. 684, 691, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975); *Murlock v. Memphis*, 20 Wall. 590, 626, 22 L.Ed. 429 (1875). But to the extent that respondent suggests that the posture of this case creates some federal obstacle to adjudicating petitioner's unconstitutional conditions claim, we remand for the Florida courts to consider that argument in the first instance.

Respondent argues that we should affirm because, rather than suing for damages in the Florida trial court as authorized by Fla. Stat. § 373.617, petitioner should have first sought judicial review of the denial of his permit in the Florida appellate court under the State's Administrative Procedure Act, see §§ 120.68(1), (2) (2010). The Florida Supreme Court has said that the appellate court is the “proper forum to resolve” a “claim that an agency has *applied* a ... statute or rule in such a way that the aggrieved party's constitutional rights have been violated.” *Key Haven Associated Enterprises*, 427 So.2d, at 158, and respondent has argued throughout this litigation that petitioner brought his unconstitutional conditions claim in the wrong forum. Two members of the Florida Supreme Court credited respondent's argument, 77 So.3d, at 1231–1232, but four others refused to address it. We decline respondent's invitation to second-guess a State Supreme Court's treatment of its own procedural law.

[11] Respondent also contends that we should affirm because petitioner sued for damages but is at most entitled to an injunction ordering that his permit issue without any conditions. But we need not decide whether *federal* law authorizes plaintiffs to recover damages for unconstitutional conditions claims predicated on the Takings Clause because petitioner brought his claim under *state* law. Florida law allows property owners to sue for “damages” whenever a state agency's action is “an unreasonable exercise of the state's police power constituting a taking *2598 without just compensation.” Fla. Stat. Ann. § 373.617. Whether that provision covers an unconstitutional conditions claim like the one at issue here is a question of state law that the Florida Supreme Court did not address and on which we will not opine.

For similar reasons, we decline to reach respondent's argument that its demands for property were too indefinite to give rise to liability under *Nollan and Dolan*. The Florida Supreme Court did not reach the question whether respondent issued a demand of sufficient concreteness to trigger the special protections of *Nollan and Dolan*. It relied instead on the Florida District Court of Appeals' characterization of respondent's behavior as a demand for *Nollan/Dolan* purposes. See 77 So.3d, at 1224 (quoting 5 So.3d, at 10). Whether that characterization is correct is beyond the scope of the questions the Court agreed to take up for review. If preserved, the issue remains open on remand for the Florida Supreme Court to address. This Court therefore has no occasion to consider how concrete and specific a demand must be to give rise to liability under *Nollan and Dolan*.

[12] Finally, respondent argues that we need not decide whether its demand for offsite improvements satisfied *Nollan and Dolan* because it gave petitioner another avenue for obtaining permit approval. Specifically, respondent said that it would have approved a revised permit application that reduced the footprint of petitioner's proposed construction site from 3.7 acres to 1 acre and placed a conservation easement on the remaining 13.9 acres of petitioner's land. Respondent argues that regardless of whether its demands for offsite mitigation satisfied *Nollan and Dolan*, we must separately consider each of petitioner's options, one of which did not require any of the offsite work the trial court found objectionable.

[13] Respondent's argument is flawed because the option to which it points—developing only 1 acre of the site and granting a conservation easement on the rest—involves

the same issue as the option to build on 3.7 acres and perform offsite mitigation. We agree with respondent that, so long as a permitting authority offers the landowner at least one alternative that would satisfy *Nollan* and *Dolan*, the landowner has not been subjected to an unconstitutional condition. But respondent's suggestion that we should treat its offer to let petitioner build on 1 acre as an alternative to offsite mitigation misapprehends the governmental benefit that petitioner was denied. Petitioner sought to develop 3.7 acres, but respondent in effect told petitioner that it would not allow him to build on 2.7 of those acres unless he agreed to spend money improving public lands. Petitioner claims that he was wrongfully denied a permit to build on those 2.7 acres. For that reason, respondent's offer to approve a less ambitious building project does not obviate the need to determine whether the demand for offsite mitigation satisfied *Nollan* and *Dolan*.

III

[14] [15] We turn to the Florida Supreme Court's alternative holding that petitioner's claim fails because respondent asked him to spend money rather than give up an easement on his land. A predicate for any unconstitutional conditions claim is that the government could not have constitutionally ordered the person asserting the claim to do what it attempted to pressure that person into doing. See *Rumsfeld*, 547 U.S., at 59–60, 126 S.Ct. 1297. For that reason, we began our analysis in both *Nollan* and *Dolan* by observing that if the government had directly *2599 seized the easements it sought to obtain through the permitting process, it would have committed a *per se* taking. See *Dolan*, 512 U.S., at 384, 114 S.Ct. 2309; *Nollan*, 483 U.S., at 831, 107 S.Ct. 3141. The Florida Supreme Court held that petitioner's claim fails at this first step because the subject of the exaction at issue here was money rather than a more tangible interest in real property. 77 So.3d, at 1230. Respondent and the dissent take the same position, citing the concurring and dissenting opinions in *Eastern Enterprises v. Apfel*, 524 U.S. 498, 118 S.Ct. 2131, 141 L.Ed.2d 451 (1998), for the proposition that an obligation to spend money can never provide the basis for a takings claim. See *post*, at 2605–2607 (opinion of KAGAN, J.).

[16] We note as an initial matter that if we accepted this argument it would be very easy for land-use permitting officials to evade the limitations of *Nollan* and *Dolan*. Because the government need only provide a permit applicant

with one alternative that satisfies the nexus and rough proportionality standards, a permitting authority wishing to exact an easement could simply give the owner a choice of either surrendering an easement or making a payment equal to the easement's value. Such so-called “in lieu of” fees are utterly commonplace, Rosenberg, *The Changing Culture of American Land Use Regulation: Paying for Growth with Impact Fees*, 59 S.M.U. L.Rev. 177, 202–203 (2006), and they are functionally equivalent to other types of land use exactions. For that reason and those that follow, we reject respondent's argument and hold that so-called “monetary exactions” must satisfy the nexus and rough proportionality requirements of *Nollan* and *Dolan*.

A

In *Eastern Enterprises*, *supra*, the United States retroactively imposed on a former mining company an obligation to pay for the medical benefits of retired miners and their families. A four-Justice plurality concluded that the statute's imposition of retroactive financial liability was so arbitrary that it violated the Takings Clause. *Id.*, at 529–537, 118 S.Ct. 2131. Although Justice KENNEDY concurred in the result on due process grounds, he joined four other Justices in dissent in arguing that the Takings Clause does not apply to government-imposed financial obligations that “d[o] not operate upon or alter an identified property interest.” *Id.*, at 540, 118 S.Ct. 2131 (opinion concurring in judgment and dissenting in part); see *id.*, at 554–556, 118 S.Ct. 2131 (BREYER, J., dissenting) (“The ‘private property’ upon which the [Takings] Clause traditionally has focused is a specific interest in physical or intellectual property”). Relying on the concurrence and dissent in *Eastern Enterprises*, respondent argues that a requirement that petitioner spend money improving public lands could not give rise to a taking.

Respondent's argument rests on a mistaken premise. Unlike the financial obligation in *Eastern Enterprises*, the demand for money at issue here did “operate upon ... an identified property interest” by directing the owner of a particular piece of property to make a monetary payment. *Id.*, at 540, 118 S.Ct. 2131 (opinion of KENNEDY, J.). In this case, unlike *Eastern Enterprises*, the monetary obligation burdened petitioner's ownership of a specific parcel of land. In that sense, this case bears resemblance to our cases holding that the government must pay just compensation when it takes a lien—a right to receive money that is secured by a particular piece of property. See *Armstrong v. United States*, 364 U.S.

40, 44-49, 80 S.Ct. 1563, 4 L.Ed.2d 1554 (1960); *2600 *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 601-602, 55 S.Ct. 854, 79 L.Ed. 1593 (1935); *United States v. Security Industrial Bank*, 459 U.S. 70, 77-78, 103 S.Ct. 407, 74 L.Ed.2d 235 (1982); see also *Palm Beach Cty. v. Cove Club Investors Ltd.*, 734 So.2d 379, 383-384 (Fla.1999) (the right to receive income from land is an interest in real property under Florida law). The fulcrum this case turns on is the direct link between the government's demand and a specific parcel of real property.² Because of that direct link, this case implicates the central concern of *Nollan* and *Dolan*: the risk that the government may use its substantial power and discretion in land-use permitting to pursue governmental ends that lack an essential nexus and rough proportionality to the effects of the proposed new use of the specific property at issue, thereby diminishing without justification the value of the property.

In this case, moreover, petitioner does not ask us to hold that the government can commit a *regulatory* taking by directing someone to spend money. As a result, we need not apply *Penn Central's* "essentially ad hoc, factual inquiry[.]" 438 U.S. at 124, 98 S.Ct. 2646, at all, much less extend that "already difficult and uncertain rule" to the "vast category of cases" in which someone believes that a regulation is too costly. *Eastern Enterprises*, 524 U.S., at 542, 118 S.Ct. 2131 (opinion of KENNEDY, J.). Instead, petitioner's claim rests on the more limited proposition that when the government commands the relinquishment of funds linked to a specific, identifiable property interest such as a bank account or parcel of real property, a "*per se* [takings] approach" is the proper mode of analysis under the Court's precedent. *Brown v. Legal Foundation of Wash.*, 538 U.S. 216, 235, 123 S.Ct. 1406, 155 L.Ed.2d 376 (2003).

Finally, it bears emphasis that petitioner's claim does not implicate "normative considerations about the wisdom of government decisions." *Eastern Enterprises*, 524 U.S. at 545, 118 S.Ct. 2131 (opinion of KENNEDY, J.). We are not here concerned with whether it would be "arbitrary or unfair" for respondent to order a landowner to make improvements to public lands that are nearby. *Id.* at 554, 118 S.Ct. 2131 (BREYER, J., dissenting). Whatever the wisdom of such a policy, it would transfer an interest in property from the landowner to the government. For that reason, any such demand would amount to a *per se* taking similar to the taking of an easement or a lien. Cf. *Dolan*, 512 U.S., at 384, 114 S.Ct. 2309; *Nollan*, 483 U.S., at 831, 107 S.Ct. 3141.

B

Respondent and the dissent argue that if monetary exactions are made subject to scrutiny under *Nollan* and *Dolan*, then there will be no principled way of distinguishing impermissible land-use exactions from property taxes. See *post*, at 2607-2608. We think they exaggerate both the extent to which that problem is unique to the land-use permitting context and the practical difficulty of distinguishing between the power to tax and the power to take by eminent domain.

[17] It is beyond dispute that "[t]axes and user fees ... are not 'takings.'" *2601 *Brown, supra*, at 243, n. 2, 123 S.Ct. 1406 (SCALIA, J., dissenting). We said as much in *County of Mobile v. Kimball*, 102 U.S. 691, 703, 26 L.Ed. 238 (1881), and our cases have been clear on that point ever since. *United States v. Sperry Corp.*, 493 U.S. 52, 62, n. 9, 110 S.Ct. 387, 107 L.Ed.2d 290 (1989); see *A. Magnano Co. v. Hamilton*, 292 U.S. 40, 44, 54 S.Ct. 599, 78 L.Ed. 1109 (1934); *Dane v. Jackson*, 256 U.S. 589, 599, 41 S.Ct. 566, 65 L.Ed. 1107 (1921); *Henderson Bridge Co. v. Henderson City*, 173 U.S. 592, 614-615, 19 S.Ct. 553, 43 L.Ed. 823 (1899). This case therefore does not affect the ability of governments to impose property taxes, user fees, and similar laws and regulations that may impose financial burdens on property owners.

At the same time, we have repeatedly found takings where the government, by confiscating financial obligations, achieved a result that could have been obtained by imposing a tax. Most recently, in *Brown, supra*, at 232, 123 S.Ct. 1406, we were unanimous in concluding that a State Supreme Court's seizure of the interest on client funds held in escrow was a taking despite the unquestionable constitutional propriety of a tax that would have raised exactly the same revenue. Our holding in *Brown* followed from *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 118 S.Ct. 1925, 141 L.Ed.2d 174 (1998), and *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 101 S.Ct. 446, 66 L.Ed.2d 358 (1980), two earlier cases in which we treated confiscations of money as takings despite their functional similarity to a tax. Perhaps most closely analogous to the present case, we have repeatedly held that the government takes property when it seizes liens, and in so ruling we have never considered whether the government could have achieved an economically equivalent result through taxation. *Armstrong*, 364 U.S. 40, 80 S.Ct. 1563, 4 L.Ed.2d 1554; *Louisville Joint Stock Land Bank*, 295 U.S. 555, 55 S.Ct. 854, 79 L.Ed. 1593.

Two facts emerge from those cases. The first is that the need to distinguish taxes from takings is not a creature of our holding today that monetary exactions are subject to scrutiny under *Nollan* and *Dolan*. Rather, the problem is inherent in this Court's long-settled view that property the government could constitutionally demand through its taxing power can also be taken by eminent domain.

Second, our cases show that teasing out the difference between taxes and takings is more difficult in theory than in practice. *Brown* is illustrative. Similar to respondent in this case, the respondents in *Brown* argued that extending the protections of the Takings Clause to a bank account would open a Pandora's Box of constitutional challenges to taxes. Brief for Respondents Washington Legal Foundation et al. 32 and Brief for Respondent Justices of the Washington Supreme Court 22, in *Brown v. Legal Foundation of Wash.*, O.T. 2002, No. 01-1325. But also like respondent here, the *Brown* respondents never claimed that they were exercising their power to levy taxes when they took the petitioners' property. Any such argument would have been implausible under state law; in Washington, taxes are levied by the legislature, not the courts. See 538 U.S., at 242, n. 2, 123 S.Ct. 1406 (SCALIA, J., dissenting).

The same dynamic is at work in this case because Florida law greatly circumscribes respondent's power to tax. See Fla. Stat. Ann. § 373.503 (authorizing respondent to impose ad valorem tax on properties within its jurisdiction); § 373.109 (authorizing respondent to charge permit application fees but providing that such fees "shall not exceed the *2602 cost ... for processing, monitoring, and inspecting for compliance with the permit"). If respondent had argued that its demand for money was a tax, it would have effectively conceded that its denial of petitioner's permit was improper under Florida law. Far from making that concession, respondent has maintained throughout this litigation that it considered petitioner's money to be a substitute for his deeding to the public a conservation easement on a larger parcel of undeveloped land.³

[18] This case does not require us to say more. We need not decide at precisely what point a land-use permitting charge denominated by the government as a "tax" becomes "so arbitrary ... that it was not the exertion of taxation but a confiscation of property." *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1, 24-25, 36 S.Ct. 236, 60 L.Ed. 493 (1916). For present purposes, it suffices to say that despite having long recognized that "the power of taxation should not be confused

with the power of eminent domain," *Houck v. Little River Drainage Dist.*, 239 U.S. 254, 264, 36 S.Ct. 58, 60 L.Ed. 266 (1915), we have had little trouble distinguishing between the two.

C

[19] Finally, we disagree with the dissent's forecast that our decision will work a revolution in land use law by depriving local governments of the ability to charge reasonable permitting fees. *Post*, at 2606 - 2607. Numerous courts—including courts in many of our Nation's most populous States—have confronted constitutional challenges to monetary exactions over the last two decades and applied the standard from *Nollan* and *Dolan* or something like it. See, e.g., *Northern Ill. Home Builders Assn. v. County of Du Page*, 165 Ill.2d 25, 31-32, 208 Ill.Dec. 328, 649 N.E.2d 384, 388-389 (1995); *Home Builders Assn. v. Beavercreek*, 89 Ohio St.3d 121, 128, 729 N.E.2d 349, 356 (2000); *Flower Mound*, 135 S.W.3d, at 640-641. Yet the "significant practical harm" the dissent predicts has not come to pass. *Post*, at 2607. That is hardly surprising, for the dissent is correct that state law normally provides an independent check on excessive land use permitting fees. *Post*, at 2608 - 2609.

The dissent criticizes the notion that the Federal Constitution places any meaningful limits on "whether one town is overcharging for sewage, or another is setting the price to sell liquor too high." *Post*, at 2607. But only two pages later, it identifies three constraints on land use permitting fees that it says the Federal Constitution imposes and suggests that the additional protections of *Nollan* and *Dolan* are not needed. *Post*, at 2608 - 2609. In any event, the dissent's argument that land use permit applicants need no further protection when the government demands money is really an argument for overruling *Nollan* and *Dolan*. After all, the Due Process Clause protected the *Nollans* from an unfair allocation of public burdens, and they too could have argued that the government's demand for property amounted to a taking under the *Penn Central* framework. See *Nollan*, 483 U.S., at 838, 107 S.Ct. 3141. We have repeatedly rejected the dissent's contention that other constitutional doctrines *2603 leave no room for the nexus and rough proportionality requirements of *Nollan* and *Dolan*. Mindful of the special vulnerability of land use permit applicants to extortionate demands for money, we do so again today.

[20] We hold that the government's demand for property from a land-use permit applicant must satisfy the requirements of *Nollan* and *Dolan* even when the government denies the permit and even when its demand is for money. The Court expresses no view on the merits of petitioner's claim that respondent's actions here failed to comply with the principles set forth in this opinion and those two cases. The Florida Supreme Court's judgment is reversed, and this case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice KAGAN, with whom Justice GINSBURG, Justice BREYER, and Justice SOTOMAYOR join, dissenting. In the paradigmatic case triggering review under *Nollan v. California Coastal Comm'n.*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), the government approves a building permit on the condition that the landowner relinquish an interest in real property, like an easement. The significant legal questions that the Court resolves today are whether *Nollan* and *Dolan* also apply when that case is varied in two ways. First, what if the government does not approve the permit, but instead demands that the condition be fulfilled before it will do so? Second, what if the condition entails not transferring real property, but simply paying money? This case also raises other, more fact-specific issues I will address: whether the government here imposed any condition at all, and whether petitioner Coy Koontz suffered any compensable injury.

I think the Court gets the first question it addresses right. The *Nollan-Dolan* standard applies not only when the government approves a development permit conditioned on the owner's conveyance of a property interest (*i.e.*, imposes a condition subsequent), but also when the government denies a permit until the owner meets the condition (*i.e.*, imposes a condition precedent). That means an owner may challenge the denial of a permit on the ground that the government's condition lacks the "nexus" and "rough proportionality" to the development's social costs that *Nollan* and *Dolan* require. Still, the condition-subsequent and condition-precedent situations differ in an important way. When the government grants a permit subject to the relinquishment of real property, and that condition does not satisfy *Nollan* and *Dolan*, then the government has taken the property and must pay just compensation under the

Fifth Amendment. But when the government denies a permit because an owner has refused to accede to that same demand, nothing has actually been taken. The owner is entitled to have the improper condition removed; and he may be entitled to a monetary remedy created by state law for imposing such a condition; but he cannot be entitled to constitutional compensation for a taking of property. So far, we all agree.

Our core disagreement concerns the second question the Court addresses. The majority extends *Nollan* and *Dolan* to cases in which the government conditions a permit not on the transfer of real property, but instead on the payment or expenditure of money. That runs roughshod over *Eastern Enterprises v. Apfel*, 524 U.S. 498, 118 S.Ct. 2131, 141 L.Ed.2d 451 (1998), which held that the government may impose *2604 ordinary financial obligations without triggering the Takings Clause's protections. The boundaries of the majority's new rule are uncertain. But it threatens to subject a vast array of land-use regulations, applied daily in States and localities throughout the country, to heightened constitutional scrutiny. I would not embark on so unwise an adventure, and would affirm the Florida Supreme Court's decision.

I also would affirm for two independent reasons establishing that Koontz cannot get the money damages he seeks. First, respondent St. Johns River Water Management District (District) never demanded *anything* (including money) in exchange for a permit; the *Nollan-Dolan* standard therefore does not come into play (even assuming that test applies to demands for money). Second, no taking occurred in this case because Koontz never acceded to a demand (even had there been one), and so no property changed hands; as just noted, Koontz therefore cannot claim just compensation under the Fifth Amendment. The majority does not take issue with my first conclusion, and affirmatively agrees with my second. But the majority thinks Koontz might still be entitled to money damages, and remands to the Florida Supreme Court on that question. I do not see how, and expect that court will so rule.

I

Claims that government regulations violate the Takings Clause by unduly restricting the use of property are generally "governed by the standards set forth in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978)." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538, 125 S.Ct. 2074, 161 L.Ed.2d 876 (2005). Under

Penn Central, courts examine a regulation's "character" and "economic impact," asking whether the action goes beyond "adjusting the benefits and burdens of economic life to promote the common good" and whether it "interfere[s] with distinct investment-backed expectations." *Penn Central*, 438 U.S., at 124, 98 S.Ct. 2646. That multi-factor test balances the government's manifest need to pass laws and regulations "adversely affect[ing] ... economic values," *ibid.* with our longstanding recognition that some regulation "goes too far," *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415, 43 S.Ct. 158, 67 L.Ed. 322 (1922).

Our decisions in *Nollan* and *Dolan* are different: They provide an independent layer of protection in "the special context of land-use exactions." *Lingle*, 544 U.S., at 538, 125 S.Ct. 2074. In that situation, the "government demands that a landowner dedicate an easement" or surrender a piece of real property "as a condition of obtaining a development permit." *Id.*, at 546, 125 S.Ct. 2074. If the government appropriated such a property interest outside the permitting process, its action would constitute a taking, necessitating just compensation. *Id.*, at 547, 125 S.Ct. 2074. *Nollan* and *Dolan* prevent the government from exploiting the landowner's permit application to evade the constitutional obligation to pay for the property. They do so, as the majority explains, by subjecting the government's demand to heightened scrutiny: The government may condition a land-use permit on the relinquishment of real property only if it shows a "nexus" and "rough proportionality" between the demand made and "the impact of the proposed development." *Dolan*, 512 U.S., at 386, 391, 114 S.Ct. 2309; see *ante*, at 2595. *Nollan* and *Dolan* thus serve not to address excessive regulatory burdens on land use (the function of *Penn Central*), but instead to stop the government from imposing an "unconstitutional condition"—a requirement that a person give up his constitutional right to receive just compensation *2605 "in exchange for a discretionary benefit" having "little or no relationship" to the property taken. *Lingle*, 544 U.S., at 547, 125 S.Ct. 2074.

Accordingly, the *Nollan-Dolan* test applies only when the property the government demands during the permitting process is the kind it otherwise would have to pay for—or, put differently, when the appropriation of that property, outside the permitting process, would constitute a taking. That is why *Nollan* began by stating that "[h]ad California simply required the Nollans to make an easement across their beachfront available to the public ..., rather than conditioning their permit to rebuild their house on their agreeing to do so,

we have no doubt there would have been a taking" requiring just compensation. 483 U.S., at 831, 107 S.Ct. 3141. And it is why *Dolan* started by maintaining that "had the city simply required petitioner to dedicate a strip of land ... for public use, rather than conditioning the grant of her permit to [d]evelop her property on such a dedication, a taking would have occurred." 512 U.S., at 384, 114 S.Ct. 2309. Even the majority acknowledges this basic point about *Nollan* and *Dolan*: It too notes that those cases rest on the premise that "if the government had directly seized the easements it sought to obtain through the permitting process, it would have committed a *per se* taking." *Ante*, at 2598 – 2599. Only if that is true could the government's demand for the property force a landowner to relinquish his constitutional right to just compensation.

Here, Koontz claims that the District demanded that he spend money to improve public wetlands, not that he hand over a real property interest. I assume for now that the District made that demand (although I think it did not, see *infra*, at 2609 – 2611.) The key question then is: Independent of the permitting process, does requiring a person to pay money to the government, or spend money on its behalf, constitute a taking requiring just compensation? Only if the answer is yes does the *Nollan-Dolan* test apply.

But we have already answered that question no. *Eastern Enterprises v. Apfel*, 524 U.S. 498, 118 S.Ct. 2131, 141 L.Ed.2d 451, as the Court describes, involved a federal statute requiring a former mining company to pay a large sum of money for the health benefits of retired employees. Five Members of the Court determined that the law did not effect a taking, distinguishing between the appropriation of a specific property interest and the imposition of an order to pay money. Justice KENNEDY acknowledged in his controlling opinion that the statute "impose[d] a staggering financial burden" (which influenced his conclusion that it violated due process). *Id.*, at 540, 118 S.Ct. 2131 (opinion concurring in judgment and dissenting in part). Still, Justice KENNEDY explained, the law did not effect a taking because it did not "operate upon or alter" a "specific and identified propert[y] or property right []." *Id.*, at 540–541, 118 S.Ct. 2131. Instead, "[t]he law simply imposes an obligation to perform an act, the payment of benefits. The statute is indifferent as to how the regulated entity elects to comply or the property it uses to do so." *Id.*, at 540, 118 S.Ct. 2131. Justice BREYER, writing for four more Justices, agreed. He stated that the Takings Clause applies only when the government appropriates a "specific interest in physical or intellectual property" or "a

specific, separately identifiable fund of money"; by contrast, the Clause has no bearing when the government imposes "an ordinary liability to pay money." *Id.*, at 554-555, 118 S.Ct. 2131 (dissenting opinion).

*2606 Thus, a requirement that a person pay money to repair public wetlands is not a taking. Such an order does not affect a "specific and identified propert[y] or property right[]"; it simply "imposes an obligation to perform an act" (the improvement of wetlands) that costs money. *Id.*, at 540-541, 118 S.Ct. 2131 (opinion of KENNEDY, J.). To be sure, when a person spends money on the government's behalf, or pays money directly to the government, it "will reduce [his] net worth"—but that "can be said of any law which has an adverse economic effect" on someone. *Id.*, at 543, 118 S.Ct. 2131. Because the government is merely imposing a "general liability" to pay money, *id.*, at 555, 118 S.Ct. 2131 (BREYER, J., dissenting)—and therefore is "indifferent as to how the regulated entity elects to comply or the property it uses to do so," *id.*, at 540, 118 S.Ct. 2131 (opinion of KENNEDY, J.)—the order to repair wetlands, viewed independent of the permitting process, does not constitute a taking. And that means the order does not trigger the *Nollan-Dolan* test, because it does not force Koontz to relinquish a constitutional right.

The majority tries to distinguish *Apfel* by asserting that the District's demand here was "closely analogous" (and "bears resemblance") to the seizure of a lien on property or an income stream from a parcel of land. *Ante*, at 2599, 2601. The majority thus seeks support from decisions like *Armstrong v. United States*, 364 U.S. 40, 80 S.Ct. 1563, 4 L.Ed.2d 1554 (1960), where this Court held that the government effected a taking when it extinguished a lien on several ships, and *Palm Beach Cty. v. Cove Club Investors Ltd.*, 734 So.2d 379 (Fla.1999), where the Florida Supreme Court held that the government committed a taking when it terminated a covenant entitling the beneficiary to an income stream from a piece of land.

But the majority's citations succeed only in showing what this case is *not*. When the government dissolves a lien, or appropriates a determinate income stream from a piece of property—or, for that matter, seizes a particular "bank account or [the] accrued interest" on it—the government indeed takes a "specific" and "identified property interest." *Apfel*, 524 U.S., at 540-541, 118 S.Ct. 2131 (opinion of KENNEDY, J.). But nothing like that occurred here. The District did not demand any particular lien, or bank account,

or income stream from property. It just ordered Koontz to spend or pay money (again, assuming it ordered anything at all). Koontz's liability would have been the same whether his property produced income or not—e.g., even if all he wanted to build was a family home. And similarly, Koontz could meet that obligation from whatever source he chose—a checking account, shares of stock, a wealthy uncle; the District was "indifferent as to how [he] elect[ed] to [pay] or the property [he] use[d] to do so." *Id.*, at 540, 118 S.Ct. 2131. No more than in *Apfel*, then, was the (supposed) demand here for a "specific and identified" piece of property, which the government could not take without paying for it. *Id.*, at 541, 118 S.Ct. 2131.

The majority thus falls back on the sole way the District's alleged demand related to a property interest: The demand arose out of the permitting process for Koontz's land. See *ante*, at 2599 - 2600. But under the analytic framework that *Nollan* and *Dolan* established, that connection alone is insufficient to trigger heightened scrutiny. As I have described, the heightened standard of *Nollan* and *Dolan* is not a freestanding protection for land-use permit applicants; rather, it is "a special application of the doctrine of unconstitutional conditions, which provides that the government may not require a person to give up a constitutional right—here the right to receive *2607 just compensation when property is taken"—in exchange for a land-use permit. *Lingle*, 544 U.S., at 547, 125 S.Ct. 2074 (internal quotation marks omitted); see *supra*, at 2604 - 2605. As such, *Nollan* and *Dolan* apply only if the demand at issue would have violated the Constitution independent of that proposed exchange. Or put otherwise, those cases apply only if the demand would have constituted a taking when executed *outside* the permitting process. And here, under *Apfel*, it would not.¹

The majority's approach, on top of its analytic flaws, threatens significant practical harm. By applying *Nollan* and *Dolan* to permit conditions requiring monetary payments—with no express limitation except as to taxes—the majority extends the Takings Clause, with its notoriously "difficult" and "perplexing" standards, into the very heart of local land-use regulation and service delivery. 524 U.S., at 541, 118 S.Ct. 2131. Cities and towns across the nation impose many kinds of permitting fees every day. Some enable a government to mitigate a new development's impact on the community, like increased traffic or pollution—or destruction of wetlands. See, e.g., *Olympia v. Drebbick*, 156 Wash.2d 289, 305, 126 P.3d 802, 809 (2006). Others cover the direct costs of

providing services like sewage or water to the development. See, e.g., *Krupp v. Breckenridge Sanitation Dist.*, 19 P.3d 687, 691 (Colo.2001). Still others are meant to limit the number of landowners who engage in a certain activity, as fees for liquor licenses do. See, e.g., *Phillips v. Mobile*, 208 U.S. 472, 479, 28 S.Ct. 370, 52 L.Ed. 578 (1908); *BFA Investments, Inc. v. Idaho*, 138 Idaho 348, 63 P.3d 474 (2003). All now must meet *Nollan* and *Dolan*'s nexus and proportionality tests. The Federal Constitution thus will decide whether one town is overcharging for sewage, or another is setting the price to sell liquor too high. And the flexibility of state and local governments to take the most routine actions to enhance their communities will diminish accordingly.

That problem becomes still worse because the majority's distinction between monetary "exactions" and taxes is so hard to apply. *Ante*, at 2600. The majority acknowledges, as it must, that taxes are not takings. See *ibid.* (This case "does not affect the ability of governments to impose property taxes, user fees, and similar laws and regulations that may impose financial burdens on property owners"). But once the majority decides that a simple demand to pay money—the sort of thing often viewed as a tax—can count as an impermissible "exaction," how is anyone to tell the two apart? The question, as Justice BREYER's opinion in *Apfel* noted, "bristles with conceptual difficulties." 524 U.S., at 556, 118 S.Ct. 2131. And practical ones, too: How to separate orders to pay money from ... well, orders to pay money, so that a locality knows what it can (and cannot) do. State courts sometimes must *2608 confront the same question, as they enforce restrictions on localities' taxing power. And their decisions—contrary to the majority's blithe assertion, see *ante*, at 2601 – 2602 —struggle to draw a coherent boundary. Because "[t]here is no set rule" by which to determine "in which category a particular" action belongs, *Eastern Diversified Properties, Inc. v. Montgomery Cty.*, 319 Md. 45, 53, 570 A.2d 850, 854 (1990), courts often reach opposite conclusions about classifying nearly identical fees. Compare, e.g., *Coulter v. Rawlins*, 662 P.2d 888, 901–904 (Wyo.1983) (holding that a fee to enhance parks, imposed as a permit condition, was a regulatory exaction), with *Home Builders Assn. v. West Des Moines*, 644 N.W.2d 339, 350 (Iowa 2002) (rejecting *Coulter* and holding that a nearly identical fee was a tax).² Nor does the majority's opinion provide any help with that issue: Perhaps its most striking feature is its refusal to say even a word about how to make the distinction that will now determine whether a given fee is subject to heightened scrutiny.

Perhaps the Court means in the future to curb the intrusion into local affairs that its holding will accomplish; the Court claims, after all, that its opinion is intended to have only limited impact on localities' land-use authority. See *ante*, at 2595, 2602. The majority might, for example, approve the rule, adopted in several States, that *Nollan* and *Dolan* apply only to permitting fees that are imposed ad hoc, and not to fees that are generally applicable. See, e.g., *Ehrlich v. Culver City*, 12 Cal.4th 854, 50 Cal.Rptr.2d 242, 911 P.2d 429 (1996). *Dolan* itself suggested that limitation by underscoring that there "the city made an adjudicative decision to condition petitioner's application for a building permit on an individual parcel," instead of imposing an "essentially legislative determination [] classifying entire areas of the city." 512 U.S., at 385, 114 S.Ct. 2309. Maybe today's majority accepts that distinction; or then again, maybe not. At the least, the majority's refusal "to say more" about the scope of its new rule now casts a cloud on every decision by every local government to require a person seeking a permit to pay or spend money. *Ante*, at 2601.

At bottom, the majority's analysis seems to grow out of a yen for a prophylactic rule: Unless *Nollan* and *Dolan* apply to monetary demands, the majority worries, "land-use permitting officials" could easily "evade the limitations" on exaction of real property interests that those decisions impose. *Ante*, at 2599. But that is a prophylaxis in search of a problem. No one has presented evidence that in the many States declining to apply heightened scrutiny to permitting fees, local officials routinely short-circuit *Nollan* and *Dolan* to extort the surrender of real property interests having no relation to a development's costs. See, e.g., *Krupp v. Breckenridge Sanitation Dist.*, 19 P.3d, at 697; *Home Builders Assn. of Central Arizona v. Scottsdale*, 187 Ariz. 479, 486, 930 P.2d 993, 1000 (1997); *McCarthy v. Leanwood*, 257 Kan. 566, 579, 894 P.2d 836, 845 (1995). And if officials were to impose a fee as a contrivance to take an easement (or other real property right), then a court could indeed apply *Nollan* and *Dolan*. See, e.g., *Norwood v. Baker*, 172 U.S. 269, 19 S.Ct. 187, 43 L.Ed. 443 (1898) (preventing circumvention of the Takings Clause by prohibiting the government from imposing a special assessment for the full value of a *2609 property in advance of condemning it). That situation does not call for a rule extending, as the majority's does, to all monetary exactions. Finally, a court can use the *Penn Central* framework, the Due Process Clause, and (in many places) state law to protect against monetary demands, whether or not imposed to evade *Nollan* and *Dolan*, that simply "go[]

too far." *Mahon*, 260 U.S., at 415, 43 S.Ct. 158; see *supra*, at 2604.³

In sum, *Nollan* and *Dolan* restrain governments from using the permitting process to do what the Takings Clause would otherwise prevent—i.e., take a specific property interest without just compensation. Those cases have no application when governments impose a general financial obligation as part of the permitting process, because under *Appel* such an action does not otherwise trigger the Takings Clause's protections. By extending *Nollan* and *Dolan*'s heightened scrutiny to a simple payment demand, the majority threatens the heartland of local land-use regulation and service delivery, at a bare minimum depriving state and local governments of "necessary predictability." *Appel*, 524 U.S., at 542, 118 S.Ct. 2131 (opinion of KENNEDY, J.). That decision is unwarranted—and deeply unwise. I would keep *Nollan* and *Dolan* in their intended sphere and affirm the Florida Supreme Court.

II

I also would affirm the judgment below for two independent reasons, even assuming that a demand for money can trigger *Nollan* and *Dolan*. First, the District never demanded that Koontz give up anything (including money) as a condition for granting him a permit.⁴ And second, because (as everyone agrees) no actual taking occurred, Koontz cannot claim just compensation even had the District made a demand. The majority nonetheless remands this case on the theory that Koontz might still be entitled to money damages. I cannot see how, and so would spare the Florida courts.

A

Nollan and *Dolan* apply only when the government makes a "demand[]" that a "2610 landowner turn over property in exchange for a permit." *Lingle*, 544 U.S., at 546, 125 S.Ct. 2074. I understand the majority to agree with that proposition: After all, the entire unconstitutional conditions doctrine, as the majority notes, rests on the fear that the government may use its control over benefits (like permits) to "coerc[e]" a person into giving up a constitutional right. *Ante*, at 2606; see *ante*, at 2610. A *Nollan*–*Dolan* claim therefore depends on a showing of government coercion, not relevant in an ordinary challenge to a permit denial. See *Monterey v. Del*

Monte Dunes at Monterey, Ltd., 526 U.S. 687, 703, 119 S.Ct. 1624, 143 L.Ed.2d 882 (1999) (*Nollan* and *Dolan* were "not designed to address, and [are] not readily applicable to," a claim based on the mere "denial of [a] development" permit). Before applying *Nollan* and *Dolan*, a court must find that the permit denial occurred because the government made a demand of the landowner, which he rebuffed.

And unless *Nollan* and *Dolan* are to wreck land-use permitting throughout the country—to the detriment of both communities and property owners—that demand must be unequivocal. If a local government risked a lawsuit every time it made a suggestion to an applicant about how to meet permitting criteria, it would cease to do so; indeed, the government might desist altogether from communicating with applicants. That hazard is to some extent baked into *Nollan* and *Dolan*; observers have wondered whether those decisions have inclined some local governments to deny permit applications outright, rather than negotiate agreements that could work to both sides' advantage. See W. Fischel, *Regulatory Takings* 346 (1995). But that danger would rise exponentially if something less than a clear condition—if each idea or proposal offered in the back-and-forth of reconciling diverse interests—triggered *Nollan*–*Dolan* scrutiny. At that point, no local government official with a decent lawyer would have a conversation with a developer. Hence the need to reserve *Nollan* and *Dolan*, as we always have, for reviewing only what an official demands, not all he says in negotiations.

With that as backdrop, consider how this case arose. To arrest the loss of the State's rapidly diminishing wetlands, Florida law prevents landowners from filling or draining any such property without two permits. See *ante*, at 2591–2592. Koontz's property qualifies as a wetland, and he therefore needed the permits to embark on development. His applications, however, failed the District's preliminary review: The District found that they did not preserve wetlands or protect fish and wildlife to the extent Florida law required. See App. Exh. 19–20, 47. At that point, the District could simply have denied the applications; had it done so, the *Penn Central* test—not *Nollan* and *Dolan*—would have governed any takings claim Koontz might have brought. See *Del Monte Dunes*, 526 U.S., at 702–703, 119 S.Ct. 1624.

Rather than reject the applications, however, the District suggested to Koontz ways he could modify them to meet legal requirements. The District proposed reducing the development's size or modifying its design to lessen

the impact on wetlands. See App. Exh. 87–88, 91–92. Alternatively, the District raised several options for “off-site mitigation” that Koontz could undertake in a nearby nature preserve, thus compensating for the loss of wetlands his project would cause. *Id.*, at 90–91. The District never made any particular demand respecting an off-site project (or anything else); as Koontz testified at trial, that possibility was presented only in broad strokes, “[n]ot in any great detail.” App. 103. And the District made clear that it welcomed additional proposals *2611 from Koontz to mitigate his project’s damage to wetlands. See *id.*, at 75. Even at the final hearing on his applications, the District asked Koontz if he would “be willing to go back with the staff over the next month and renegotiate this thing and try to come up with” a solution. *Id.*, at 37. But Koontz refused, saying (through his lawyer) that the proposal he submitted was “as good as it can get.” *Id.*, at 41. The District therefore denied the applications, consistent with its original view that they failed to satisfy Florida law.

In short, the District never made a demand or set a condition—not to cede an identifiable property interest, not to undertake a particular mitigation project, not even to write a check to the government. Instead, the District suggested to Koontz several non-exclusive ways to make his applications conform to state law. The District’s only hard-and-fast requirement was that Koontz do something—anything—to satisfy the relevant permitting criteria. Koontz’s failure to obtain the permits therefore did not result from his refusal to accede to an allegedly extortionate demand or condition; rather, it arose from the legal deficiencies of his applications, combined with his unwillingness to correct them *by any means*. *Nollan* and *Dolan* were never meant to address such a run-of-the-mill denial of a land-use permit. As applications of the unconstitutional conditions doctrine, those decisions require a condition; and here, there was none.

Indeed, this case well illustrates the danger of extending *Nollan* and *Dolan* beyond their proper compass. Consider the matter from the standpoint of the District’s lawyer. The District, she learns, has found that Koontz’s permit applications do not satisfy legal requirements. It can deny the permits on that basis; or it can suggest ways for Koontz to bring his applications into compliance. If every suggestion could become the subject of a lawsuit under *Nollan* and *Dolan*, the lawyer can give but one recommendation: Deny the permits, without giving Koontz any advice—even if he asks for guidance. As the Florida Supreme Court observed of this case: Were *Nollan* and *Dolan* to apply, the District would

“opt to simply deny permits outright without discussion or negotiation rather than risk the crushing costs of litigation”; and property owners like Koontz then would “have no opportunity to amend their applications or discuss mitigation options.” 77 So.3d 1220, 1231 (2011). Nothing in the Takings Clause requires that folly. I would therefore hold that the District did not impose an unconstitutional condition—because it did not impose a condition at all.

B

And finally, a third difficulty: Even if (1) money counted as “specific and identified property” under *Apfel* (though it doesn’t), and (2) the District made a demand for it (though it didn’t), (3) Koontz never paid a cent, so the District took nothing from him. As I have explained, that third point does not prevent Koontz from suing to invalidate the purported demand as an unconstitutional condition. See *supra*, at 2603–2604. But it does mean, as the majority agrees, that Koontz is not entitled to just compensation under the Takings Clause. See *ante*, at 2597. He may obtain monetary relief under the Florida statute he invoked only if it authorizes damages *beyond* just compensation for a taking.

The majority remands that question to the Florida Supreme Court, and given how it disposes of the other issues here, I can understand why. As the majority indicates, a State could decide to create a damages remedy not only for a taking, but also for an unconstitutional conditions *2612 claim predicated on the Takings Clause. And that question is one of state law, which we usually do well to leave to state courts.

But as I look to the Florida statute here, I cannot help but see yet another reason why the Florida Supreme Court got this case right. That statute authorizes damages only for “an unreasonable exercise of the state’s police power constituting a taking without just compensation.” Fla. Stat. § 373.617 (2010); see *ante*, at 2597. In what legal universe could a law authorizing damages only for a “taking” also provide damages when (as all agree) no taking has occurred? I doubt that inside-out, upside-down universe is the State of Florida. Certainly, none of the Florida courts in this case suggested that the majority’s hypothesized remedy actually exists; rather, the trial and appellate courts imposed a damages remedy on the mistaken theory that there *had* been a taking (although of exactly what neither was clear). See App. to Pet. for Cert. C–2; 5 So.3d 8, 8 (2009). So I would, once more, affirm the Florida Supreme Court, not make it say again

what it has already said—that Koontz is not entitled to money damages.

III

Nollan and *Dolan* are important decisions, designed to curb governments from using their power over land-use permitting to extract for free what the Takings Clause would otherwise require them to pay for. But for no fewer than three independent reasons, this case does not present that problem. First and foremost, the government commits a taking only when it appropriates a specific property interest, not when it requires a person to pay or spend money. Here, the District never took or threatened such an interest; it tried to extract from Koontz solely a commitment to spend money to repair public wetlands. Second, *Nollan* and *Dolan* can operate only when the government makes a demand of the permit applicant; the decisions' prerequisite, in other words, is a condition. Here, the District never made such a demand: It informed Koontz that his applications did not meet legal requirements; it offered suggestions for bringing those applications into compliance; and it solicited further

proposals from Koontz to achieve the same end. That is not the stuff of which an unconstitutional condition is made. And third, the Florida statute at issue here does not, in any event, offer a damages remedy for imposing such a condition. It provides relief only for a consummated taking, which did not occur here.

The majority's errors here are consequential. The majority turns a broad array of local land-use regulations into federal constitutional questions. It deprives state and local governments of the flexibility they need to enhance their communities—to ensure environmentally sound and economically productive development. It places courts smack in the middle of the most everyday local government activity. As those consequences play out across the country, I believe the Court will rue today's decision. I respectfully dissent.

Parallel Citations

76 ERC 1649, 186 L.Ed.2d 697, 81 USLW 4606, 13 Cal. Daily Op. Serv. 6557, 2013 Daily Journal D.A.R. 8221, 24 Fla. L. Weekly Fed. S 435

Footnotes

- * The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.
- 1 For ease of reference, this opinion refers to both men as "petitioner."
- 2 Thus, because the proposed offsite mitigation obligation in this case was tied to a particular parcel of land, this case does not implicate the question whether monetary exactions must be tied to a particular parcel of land in order to constitute a taking. That is so even when the demand is considered "outside the permitting process." *Post*, at 2607 (KAGAN, J., dissenting). The unconstitutional conditions analysis requires us to set aside petitioner's *permit application*, not his ownership of a particular parcel of real property.
- 3 Citing cases in which state courts have treated similar governmental demands for money differently, the dissent predicts that courts will "struggle to draw a coherent boundary" between taxes and excessive demands for money that violate *Nollan* and *Dolan*. *Post*, at 2608. But the cases the dissent cites illustrate how the frequent need to decide whether a particular demand for money qualifies as a tax under state law, and the resulting state statutes and judicial precedents on point, greatly reduce the practical difficulty of resolving the same issue in federal constitutional cases like this one.
- 1 The majority's sole response is that "the unconstitutional conditions analysis requires us to set aside petitioner's *permit application*, not his ownership of a particular parcel of real property." *Ante*, at 2600, n. 1. That mysterious sentence fails to make the majority's opinion cohere with the unconstitutional conditions doctrine, as anyone has ever known it. That doctrine applies only if imposing a condition directly—i.e., independent of an exchange for a government benefit—would violate the Constitution. Here, *Aptel* makes clear that the District's condition would not do so: The government may (separate and apart from permitting) require a person—whether Koontz or anyone else—to pay or spend money without effecting a taking. The majority offers no theory to the contrary: It does not explain, as it must, why the District's condition was "unconstitutional."
- 2 The majority argues that existing state-court precedent will "greatly reduce the practical difficulty" of developing a uniform standard for distinguishing taxes from monetary exactions in federal constitutional cases. *Ante*, at 2602, n. 2. But how are those decisions to perform that feat if they themselves are all over the map?
- 3 Our *Penn Central* test protects against regulations that unduly burden an owner's use of his property: Unlike the *Nollan–Dolan* standard, that framework fits to a T a complaint (like Koontz's) that a permitting condition makes it inordinately expensive to develop land. And the Due Process Clause provides an additional backstop against excessive permitting fees by preventing a government

from conditioning a land-use permit on a monetary requirement that is "basically arbitrary." *Eastern Enterprises v. Apfel*, 524 U.S. 498, 557-558, 118 S.Ct. 2131, 141 L.Ed.2d 431 (1998) (BREYER, J., dissenting). My point is not, as the majority suggests, that these constraints do the same thing as *Nollan* and *Dolan*, and so make those decisions unnecessary. See *ante*, at 2602. To the contrary, *Nollan* and *Dolan* provide developers with enhanced protection (and localities with correspondingly reduced flexibility). See *supra*, at 2607. The question here has to do not with "overruling" those cases, but with extending them. *Ante*, at 2602. My argument is that our prior caselaw struck the right balance: heightened scrutiny when the government uses the permitting process to demand property that the Takings Clause protects, and lesser scrutiny, but a continuing safeguard against abuse, when the government's demand is for something falling outside that Clause's scope.

- 4 The Court declines to consider whether the District demanded anything from Koontz because the Florida Supreme Court did not reach the issue. See *ante*, at 2597. But because the District raised this issue in its brief opposing certiorari, Brief in Opposition 14-18, both parties briefed and argued it on the merits, see Brief for Respondent 37-43; Reply Brief 7-8, Tr. of Oral Arg. 7-12, 27-28, 52-53, and it provides yet another ground to affirm the judgment below, I address the question.

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THE RESERVE AT LAETITIA

John Janneck, Managing Partner
1124 Tower Road, Beverly Hills, CA 90210
(310) 273-8232/(310) 351-1555
sun9155@aol.com

April 23, 2015

Brian Pedrotti, Project Manager
County of San Luis Obispo
Dept. of Planning & Building
976 Osos St., Room 300
San Luis Obispo, CA 93408-2040

Via Federal Express

Re: Laetitia Agricultural Cluster
Final Environmental Impact (FEIR) Summary

Dear Brian:

As we discussed this afternoon on the phone, I am forwarding to you two copies of my single sheet summary of the FEIR describing key project facts and project benefits, mitigated project design issues, and Class I impacts.

We believe that there is only one Class I impact, not fifteen. The reasoning is laid out in the aforementioned summary.

We are available to assist you in any and all tasks you deem appropriate to ensure a successful hearing process leading to project approval in the near future.

Yours sincerely,



John Janneck

JCJ/so
Enclosure

August 12, 2015

San Luis Obispo County Planning Commission
Planning & Building Department
976 Osos St.
San Luis Obispo, CA 93408

Re: Laetitia Agricultural Cluster

Dear Commissioners,

The San Luis Obispo Chamber of Commerce submits the following comments in regards to the County's Agricultural Clustering Ordinance, which has historically provided successful and unique opportunities for land owners in meeting local housing needs, and we continue to support its implementation as a way to preserve our natural resources. Since its adoption in 1984, more than 10,000 acres of agricultural land and open space have been preserved.

Our Chamber recognizes the importance of thoughtful strategic growth, and of careful consideration of both the economic and environmental impacts of future development. We continue to encourage the County to consistently apply the program's requirements as outlined - this consistency allows for thoughtful community engagement, planning and a reliability of what developers can expect when submitting proposals for housing development projects.

The San Luis Obispo Chamber of Commerce is the largest business organization on the Central Coast, representing over 1,440 businesses that employ more than 34,000 people regionally. Allowing for a wide range of housing options in our local communities is consistently one of the top priorities expressed by the businesses we represent. Thoughtful planning and the preservation of our agricultural lands is not only a key part of our economic vision, but of a countywide heritage in balancing the prevention of sprawl while meeting the needs of available housing.

Thank you for the opportunity to comment.

Sincerely,



Charlene Rosales
Director of Governmental Affairs