



**COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT
PLANNING COMMISSION**

MEETING DATE, July 24, 2008	CONTACT/PHONE Ted Bench 805-781-5701	APPLICANT County of San Luis Obispo	FILE NO. LRP2006-00003: A, B & C
SUBJECT Hearing to consider a request by the County of San Luis Obispo to amend the Land Use Ordinance and Coastal Zone Land Use Ordinance by adding an inclusionary housing ordinance. The proposed ordinance would place an affordable housing requirement on residential and commercial development. Alternative methods of satisfying the requirement include construction of the affordable housing units on-site or off-site, payment of an in-lieu or commercial linkage fee or dedication of land. Two additional amendments will also be considered: a) an amendment to the long term affordable housing standards of Land Use Ordinance Section 22.12.070 and Coastal Zone Land Use Ordinance Section 23.04.094, and b) creation of an affordable housing fund as part of a new title of the County Code. These ordinance and code amendments will affect all areas of the county that are outside of the jurisdictions of the incorporated cities.			
RECOMMENDED ACTION Adopt the resolution recommending to the Board of Supervisors: <ol style="list-style-type: none"> 1. Certify the Environmental Impact Report in accordance with the applicable provisions of the California Environmental Quality Act, Public Resources Code Section 21000 et seq. 2. Approve Land Use Ordinance and Coastal Zone Land Use Ordinance amendments and Title 29 as shown in Exhibits LRP2006-00003:A, B and C, based on the recommended findings and the statement of over-riding consideration that are attached to this staff report. 			
ENVIRONMENTAL DETERMINATION The Environmental Coordinator, after completion of the initial study, finds that there is evidence that the project may have a significant effect on the environment, and therefore a Final Environmental Impact Report (FEIR) is being prepared (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) for this project. The FEIR addresses potential impacts on: Agricultural Resources, Air Quality, Cultural Resources, Hydrology and Water Quality, Geologic Hazards, Noise, Public Services and Utilities, Transportation and Circulation, and Water Resources. Mitigation measures are proposed to address these impacts & are included as conditions of approval. Overriding considerations were determined necessary based on significant and unavoidable impacts associated with Biological Resources and Water Resources. The section of the draft EIR regarding water shortages in some urban communities has been revised.			
LAND USE CATEGORY <p style="text-align: center;"><u>All</u></p>	COMBINING DESIGNATION <p style="text-align: center;">N/A</p>	ASSESSOR PARCEL NO. <p style="text-align: center;">N/A</p>	SUPERVISOR DISTRICT(S) <p style="text-align: center;">① ② ③ ④ ⑤ <u>All</u></p>
PLANNING AREA STANDARDS: See project description above.			
EXISTING USES: N/A			
SURROUNDING LAND USE CATEGORIES AND USES: N/A			
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was referred to: All Advisory Groups			
TOPOGRAPHY: N/A		VEGETATION: N/A	
PROPOSED SERVICES: Water supply: N/A Sewage Disposal: N/A Fire Protection: N/A		ACCEPTANCE DATE: July 20, 2004	
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER ♦ SAN LUIS OBISPO ♦ CALIFORNIA 93408 ♦ (805) 781-5600 ♦ FAX: (805) 781-1242			

PROJECT BRIEF

On November, 8, 2007, January 10, 2008, January 24, 2008, April 24, 2008 and May 22, 2008, the Planning Commission received staff presentations and public testimony regarding the proposed inclusionary housing ordinance. The Planning Commission has directed staff to take the following actions:

- Bring back the Final EIR (FEIR) for the Commission's consideration. The Planning Commission will withhold its final action on the proposed ordinance until the FEIR has been issued.
- Add the Findings and a Statement of Over-riding Consideration that support the FEIR.
- Provide further information regarding the following topics: HOA fees for affordable units. This staff report has the information.
- Revise the draft ordinance to include the following features: fees deferred for subdivision maps, allowing the County the option to chose an outside entity/nonprofit agency to manage the affordable housing fund. These revisions are shown in the attached draft ordinances as UNDERLINED AND CAPITALIZED text.

Additional time is available at the hearing of August 14, 2008 for this item, if needed.

LEGISLATIVE HISTORY

This ordinance was authorized for processing through the adoption of the Housing Element (as amended on July 20, 2004) of the County of San Luis Obispo's General Plan.

AUTHORITY

Land Use Ordinance Amendment

The Land Use Element sets forth the authority by which the Land Use Ordinance can be amended. The guidelines that the Planning Commission and the Board of Supervisors should use when considering new ordinances are provided in Part I - Framework For Planning, Chapter 6.A - Guidelines for Amendments to Land Use Ordinance.

The proposed inclusionary housing ordinance is consistent with these guidelines. The proposed ordinances would implement Housing Element Program HE 1.9: Require Development of Affordable Housing.

COMMUNITY ADVISORY GROUP COMMENTS:

On February 28, 2008 staff met with 14 commercial development and business representatives to discuss the proposed commercial linkage fees. Staff has met with the Farm Bureau (April 2008), the Creston Advisory Board (February 2008), the Santa Margarita Area Advisory Group (January 2008), the Oceano Advisory Council (October 2007), the Los Osos Community Advisory Council (May & October, 2007), the Workforce Housing Coalition (October, 2007), the Home Builders Association of the Central Coast (October, November & December, 2007), and Save the Mesa (January, 2008). Staff has received letters from the Los Osos Community Advisory Council, Nipomo Community Service District, the Paso Robles Association of Realtors, plus citizens and developers (see attached exhibits). Staff continues to meet with community advisory groups and stakeholder groups and to receive both verbal and written comments.

STAFF COMMENTS

The attached exhibits show the proposed ordinance text in under-line format. The most recent revisions are in UNDERLINED AND CAPITALIZED text. The exhibits are arranged as follows:

- LRP2006-00003:A - Land Use Ordinance (LUO)
- LRP2006-00003:B - Coastal Zone Land Use Ordinance (CZLUO)
- LRP2006-00003:C - Title 29 – Affordable Housing Fund (draft)

Background

On January 10, 2008 and January 24, 2008 the Planning Commission reviewed an ordinance with the following features:

- Four year phase-in schedule (5%, 10%, 15% and 20% affordability requirement)
- Sliding scale for in-lieu fees (smaller units pay less).
- Commercial linkage fees based on the type of commercial use.
- Incentive for on-site affordable housing (15% affordability requirement instead of 20%)
- An alternative long-term affordability requirement to be applied when the price gap is small (10% or less between market priced and affordable units).
- Residential subdivisions shall pay in-lieu fees at time of map recordation.

On May 22, 2008 the Commission requested more information, which is provided below:

CEQA Required Findings and Statement of Over-riding Considerations

Staff has prepared the necessary findings, the statement of overriding considerations and the MMRP (mitigation monitoring and reporting program) to support the County's approval of the proposed ordinances. The findings and statement give consideration to the Class I environmental impacts that are documented in the project's revised, final environmental impact report. The findings and statement are attached to this staff report (see Exhibits D and E).

Clarification Language for the CEQA Documents

Staff suggests adding the underlined text (appearing below) to Exhibit D to clarify that the water resource mitigation measures apply specifically to areas with a water resource Level of Severity III or worst:

Exhibit D – CEQA Required Findings and Statement of Overriding Considerations

(see pages D-31 & D-32)

B. Water Resources (Class I)

WR-1(b) Water Conservation Measures. For residential development in areas experiencing a water resource Level of Severity III or worst, Future applicants subject to the Affordable Housing Ordinances shall implement water conservation measures, including, but not limited to:

- Use of low-flush (1.6-gallon per flush) toilets shall be required in all new construction;
- Installation of low flow (2 gpm) shower heads shall be required on all new residential units;
- Drought tolerant plants shall be used in landscaping;
- Landscaping shall use drip irrigation where feasible;
- Plant material shall be grouped by water needs;

- Extensive mulching (2-inch minimum depth) shall be used in landscaped areas, where feasible, to improve the water holding capacity of the soil by reducing evaporation and compaction; and/or
- Permeable surfaces such as turf block or intermittent permeable surfaces such as French drains shall be used for parking areas and driveways, where feasible and practical.

Staff also suggests inserting the correct title number for the Affordable Housing Fund (it is now Title 29 instead of Title 27) into the Final Revised Affordable Housing Ordinances EIR. Specifically, page CR-2 of the Final Revised EIR should be corrected as follows:

The proposed project includes ~~Title 27~~ **Title 29** of the San Luis Obispo County Code...

Staff recommends that the Commission accept the ordinances and project EIR with the attached CEQA findings and statement of over-riding considerations (and the word clarifications shown above).

Reduced HOA fees for affordable units

The following language could be inserted into the attached ordinances:

LUO Section 22.12.080 H. 7. & CZLUO 23.04.096 Section h. (7) – Homeowners' Association Fees. For common interest development projects where the inclusionary housing unit(s) are sold as ownership unit(s), to the extent allowed by Civil Code section 1365 et. seq., the homeowner's association shall include the size of individual unit(s) as a factor when determining the amount of regular (annual) assessment fee(s) that will be applied to the project's residential units, but only when determining that portion of the regular assessment fee that will be collected to pay for the cost of maintaining the residential structure(s).

Prior to recordation of the subdivision map, this requirement shall be incorporated into the project's covenants, conditions and requirements, to the satisfaction of the County. This requirement be on-going, and shall not be amended or removed without prior written approval of the County.

Staff does not recommend adding this requirement. While Civic Code section 1365 allows the HOA annual assessments to be based on unit size and other factors, a "blanket HOA fee" is easier to create and maintain. Complex HOA fee formulas are more time consuming for everyone. The Commission considered requiring the portion of the HOA fees that covers building maintenance to be based on the unit size, since affordable units may be smaller. The smaller units take less roof area and exterior wall space in a multi-family building, although all of the units in the building could be affordable units. The Commission concluded that it would be unfair to require lower fees for common area maintenance since all of the housing units may have the same average household size. Staff suggests that the savings in HOA fees may not be worth the efforts. For example:

- In a six-plex building, the unit sizes may be similar. A market rate unit may be 1,400 s.f., and an affordable unit may be 1,200 s.f. In that case there's little difference in maintenance costs since the units have a size difference of just 200 s.f. All of the units would pay the same fee for common area maintenance. For projects with numerous amenities, such as a playground with game courts, a clubhouse and parking areas, the common area maintenance fees may be substantially higher than the fees for the residential buildings. In that case the difference in HOA fees for smaller units would be insignificant.

- In a common interest development with single family units and a small common area, the homeowner would maintain his own unit. The HOA fee would pay only for maintenance of the common area.

Again, staff does not recommend adding this requirement.

In-Lieu fees for residential subdivisions.

During the May 22, 2008 hearing, the Commission asked that inclusionary housing fees be deferred to a time after the subdivision maps are recorded, until the lots are sold. Staff suggests deferring the fees further, until the sale or occupancy of the units. Other sections of the draft ordinances have this requirement, so there would be ordinance consistency. Please see the revisions to the following sections:

LUO Sections 22.12.080:

- E.2 – In-lieu fee (page 4)
- F.1 – Payment of housing impact fee (page 4)
- J.3 & J.4 – Compliance Procedures (pages 9 & 10)

CZLUO Sections 23.04.096:

- e.(2) – In-lieu fee (page 4)
- f.(1) – Payment of housing impact fee (page 4)
- j.(3) & j.(4) – Compliance Procedures (pages 9 & 10)

The changes include the following provisions for both residential and commercial development:

1. Fee payment will be:
 - a) Prior to occupancy of new units, or
 - b) Prior to sale of ownership units, or
 - c) For vacant lots, prior to sale or occupancy of future units on the lots.

When there are no construction permits or subdivision maps, then the inclusionary housing fees must be paid prior to approval of any land use permits that create converted units.

2. Calculate the fee amounts at the time of:
 - a) Permit issuance or map recordation, or
 - b) For vacant lots, at the time of permit issuance for future units, and pay the fees when the units are occupied or sold.
3. Compliance will be secured by:
 - a) Fee payment at time of permit issuance or subdivision map recordation, or
 - b) Inclusionary housing agreement for projects with new units or subdivisions selling new units, or
 - c) Trust deed(s) for subdivisions with vacant lots with no units

Staff suggests that the Commission accept these revisions.

Title 29 - Affordable Housing Fund

This draft code was previously called "Title 27" but has been correctly relabeled to be "Title 29." After receiving public testimony on May 22, 2008, the Commission directed staff to amend the draft Title 29 to give the County the option to choose an outside entity/ nonprofit agency to administer the fund.

Please see the CAPITALIZED TEXT that appears below and on page 4 of the draft Title 29:

29.02.020 Administration

- a. The Affordable Housing Fund and all accounts within the Affordable Housing Fund shall be administered by the Director of Planning and Building (Planning Director), who shall have the authority to govern the Fund consistent with this Title, the appropriate ordinances and applicable county policies. The Director shall prescribe procedures for said purpose, subject to approval by the County Board of Supervisors. **THE COUNTY HAS THE OPTION TO SELECT AND CONTRACT WITH AN OUTSIDE ENTITY/NONPROFIT AGENCY TO ADMINISTER A PORTION OR ALL OF THE AFFORDABLE HOUSING FUND. THE RESPONSIBILITIES, TASKS, AND PERFORMANCE STANDARDS TO BE ASSUMED BY THE ENTITY SHALL BE DESCRIBED IN AN EXECUTED AGREEMENT BETWEEN THE ENTITY AND THE COUNTY.**

Staff recommends that the Commission accept Title 29 with the revisions.

Port San Luis Harbor District – Exception for Marine Terrace

After meeting with staff, the Port San Luis Harbor Master Steve McGrath has withdrawn his request for the ordinance to exempt future development in the Harbor Terrace area of the Harbor master plan. This is because:

1. The public facilities portion of new Harbor Terrace development would be exempt. This includes harbor district offices, public meeting facilities, and harbor district equipment storage and maintenance facilities.
2. The proposed ordinance would apply only to commercial structures such as the retail store and hotel units. It would not apply to outdoor use areas such as outdoor boat storage, public parking, or RV/tent camping sites.
3. The ordinance would apply to the floor area of all commercial/profit-making structures.

Miscellaneous Items

Throughout the documents there are additional changes or clarifications that are highlighted in CAPITALIZED TEXT. These changes include:

LUO Changes:

- Density Bonus – rewording – Subsection G.1 (see page 5)
- Timing of Construction (on-site units) – re-arrangement – Subsection J.5.a (see page 10)
- Added definition – Implementation Guidelines Manual – Subsection M.9 (see page 12)

CZLUO Changes:

- Density Bonus – rewording – Subsection g.(1) (see page 5)
- Timing of Construction (on-site units) – re-arrangement – Subsection j.(5)(a) (page 10)
- Added definition – Implementation Guidelines Manual – Subsection m.(9) (see page 12)

Title 29 Changes:

- Change the linkage fee amount from 10% to 5% – Table 29.2 (see page 8)
- Different fee schedule for vacant lot subdivisions – Section 29.04.030 (see page 8)
- Change the linkage fee amount from 10% to 5% – Table 29.4 (see page 9)
- Annual fee adjustment to be done concurrently with other fee adjustments, and approved by the Board – Section 29.04.040.b (see page 9)

- Funding priorities for Annual Action Plan – Section 29.05.020.b (see page 11)

SUMMARY

This draft inclusionary housing ordinance has been prepared for your consideration. The Final Environmental Impact Report (FEIR) has been completed. Staff recommends that the Commission consider the FEIR, draft Inclusionary Housing Ordinances (LUO & CZLUO) and Title 29, and recommend approval of these documents to the Board of Supervisors. The Commission may also continue this item to August 14, 2008 and give staff further instructions.

FINDINGS

Environmental Determination

- A. The Environmental Coordinator, after completion of the initial study, finds that there is evidence that the project may have a significant effect on the environment, and therefore a Final Environmental Impact Report (FEIR) was prepared (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) for this project. The FEIR addresses potential impacts on: Agricultural Resources, Air Quality, Cultural Resources, Hydrology and Water Quality, Geologic Hazards, Noise, Public Services and Utilities, Transportation and Circulation, and Water Resources. Mitigation measures are proposed to address these impacts and are included as conditions of approval. Overriding considerations were determined necessary based on significant and unavoidable impacts associated with Biological Resources. Please see the attachment entitled "Submittal of CEQA-Required Findings and Statement of Overriding Considerations for Affordable Housing Ordinances; State Clearinghouse No. 2006021100" and also the attached "Mitigation Monitoring and Reporting Program."

General Plan Conformity

- B. The proposed land use ordinance and fee code are consistent with the Land Use Element, Housing Element and other adopted elements of the general plan because they are consistent with the general goals of the Land Use Element and Housing Element.
- C. The proposed land use ordinance and fee code are consistent with, and implement Housing Element Program HE 1.9: Require Development of Affordable Housing.
- D. The proposed ordinance and fee code are consistent with the guidelines for amendments to the Land Use Ordinance because the ordinance will implement the County's housing policies by ensuring that future development assists in reducing the shortage of affordable housing within the County.
- E. The proposed ordinance and fee code will protect the public health, safety and welfare of the area residents by increasing the availability of affordable housing within the County.
- F. The proposed ordinance and fee code are necessary because other existing housing programs have not provided the amount of new affordable housing needed by county residents, with the following results:
1. Most locally-employed persons cannot afford to purchase their first home.
 2. The number of homeless persons in the county is increasing.
 3. Local businesses have left the county, closed or failed to expand because of the lack of high quality employees.
 4. Traffic levels are increasing faster than population growth.