

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

**April 19, 2022**

Trevor Keith, Director
San Luis Obispo County Department of Planning and Building
976 Osos Street, Room 200
San Luis Obispo, CA 93408

Subject: **New Development in Los Osos**

Dear Mr. Keith:

The purpose of this letter is to highlight issues of mutual concern as they relate to proposed development in the community of Los Osos. As the County is well aware, including from the County's designation of an LCP Resource Management System Alert Level III for water supply (i.e., where demand exceeds existing supply, and still does) and from the 2015 designation by the California Department of Water Resources of the Los Osos Valley Groundwater Basin as a high priority basin due to its "condition of critical overdraft", there is insufficient water supply to serve even existing development in Los Osos without coastal resource harm (including where an over-drafted groundwater basin can adversely impact sensitive natural resources such as wetlands and marshes, coastal streams and adjacent riparian areas, and marine habitats, as well as adversely impact coastal priority uses such as agriculture and lower-cost visitor-serving development), let alone adding to it new water using development. In addition, much of Los Osos is considered environmentally sensitive habitat area (ESHA) by the LCP within which most development, including residential development, is prohibited. This alone trips up most all residential development in Los Osos at varying levels. And finally, the County's wastewater treatment plant is prohibited from providing wastewater service to anything but existing development (and not to new development on existing lots)¹ unless and until the Estero Area Plan is amended to "identify appropriate and sustainable buildout limits, and any appropriate mechanisms to stay within such limits, based on conclusive evidence indicating that adequate water is available to support development of such properties without adverse impacts to ground and surface waters, including wetlands and all related habitats" as required by the Commission in Special

¹ As we have previously noted, the County is prohibited by CDP A-3-SLO-09-055/069 from providing wastewater services to new development on vacant lots, and that prohibition extends to intensifications of use. Specifically, the Commission has found that the CDP's prohibition on new wastewater service does not only apply to new development on completely vacant parcels, but also to projects that include significant intensifications of use and significant expansions on already-developed properties. The Commission has verified this understanding in multiple Los Osos appeal cases (see adopted findings for A-3-SLO-19-0180 (Shear Development LLC SFDs), A-3-SLO-21-0005 (Kimbell Second Unit), A-3-SLO-21-0004 (Wise Second Unit), A-3-SLO-21-0007 (Bodine Second Unit), and A-3-SLO-21-0008 (Robertson Second Unit)). In short, the County is prohibited by the CDP from providing wastewater services to such development, including intensifications of use, and if the County were to provide such services, the County would be in violation of that CDP and subject to potential Commission enforcement action.

New development in Los Osos

Condition 6 of CDP A-3-SLO-09-055/069. We are currently reviewing the Los Osos Community Plan that the County has submitted for this purpose and hope to bring that to hearing and Commission action by this summer. In the meantime, and with the goal of avoiding any additional appeals of County CDP actions in Los Osos and ultimately better protecting the Los Osos Groundwater Basin and related resources, we have the following observations and suggestions for the County.

First, please do not accept any CDP applications for filing that cannot demonstrate that they have legal access to both a sustainable water source and wastewater treatment services. To be clear, such applications should not be accepted for review unless and until such water and wastewater is available for use, as availability of these public services reflects a fundamental prerequisite for considering proposed development and must be considered at the filing stage. On this point, we do not believe that a will serve from a local water purveyor satisfies LCP and CDP requirements, including as the LCP finding that is required on this point is not for water purveyors to make, rather it is the County's independent responsibility. To this point, recent Commission's adopted findings on this issue state:²

The County, as the initial CDP decision-making body for CDP applications that include new water use in Cambria [same as Los Osos], needs to consider these perhaps inconvenient facts, and stop approving or even considering such projects unless and until measurable steps are taken that improve water supply issues in Cambria [same as Los Osos]. The County should not be even accepting applications for development in Cambria [same as Los Osos] that cannot show evidence of an adequate water supply. A will-serve letter does not provide such evidence, and the County under the LCP is required to make its own finding that an adequate water supply is available to serve a proposed development, and cannot abrogate that responsibility to the CCSD [or here in Los Osos to any of the water purveyors]. The County is giving applicants a sense of 'false hope' when it does, and is doing a disservice to these applicants and the broader community. It is also leading to a significant number of appeals to, and subsequent CDP denials by, the Commission, each of which require an expenditure of scarce public resources to process.

Unless development can meet the water and wastewater tests above, please do not make any CDP decisions where water supply, wastewater access, and ESHA are issues unless and until the LCP's Estero Area Plan is updated (via the pending Los Osos Community Plan) and those changes are certified by the Coastal Commission. Importantly, those LCP changes are at their core required to provide direction on sustainable growth and buildout in Los Osos as it is affected by these constraints, and it is not appropriate to be making CDP decisions that aren't based in that sort of assessment. As is, Los Osos-area water purveyors are raising their own questions about the sustainability of the Los Osos Groundwater Basin to serve development, and sustainable buildout has not been determined and certified into the LCP, including as it relates to ESHA (and the USFWS Habitat Conservation Plan that is currently in draft

² See adopted Commission findings at <https://documents.coastal.ca.gov/reports/2022/3/F15b/F15b-3-2022-report.pdf>.

New development in Los Osos

form and still under development). In fact, the Commission has repeatedly determined that LCP consistency cannot be found for any new water using development in Los Osos at the current time, irrespective of any will-serve letter, finding most recently that:³

...the LCP includes a series of provisions which require adequate water and wastewater services for new development, yet the community still does not have an adequate water supply at this time, including as evidenced by the Los Osos Basin Plan 2020 report. Until and unless there is conclusive evidence that adequate water services exist, public services remain a constraint to new development in Los Osos under the LCP.

On this point we would note that in the last few years there have been ten appeals to the Coastal Commission of County CDP approvals for new residential projects in Los Osos. Of those appeals, the Commission took jurisdiction over the CDP applications for five of them (and denied one such application thus far) and five others withdrew their CDP applications after appeal, all for issues having to do with the water supply, wastewater service, and ESHA issues described above. We do not believe it is good planning or good public policy for the County to continue to take in and process CDP applications for projects that lead to an increase in water use on a site, and/or that require County wastewater services that cannot be provided, especially when the outcome is appeal to the Commission. This is exactly the sort of ‘false hope’ that the Commission alludes to in its findings quoted above. We believe that some certainty on these issues will be coming when the Commission considers the County’s proposed Los Osos Community Plan in the near term, and that it is appropriate to wait for that outcome.

In order to provide as much clarity as possible in the meantime, please note that we consider guesthouses, hotel/motel expansions, and large use/structural intensifications associated with existing development to constitute such “new water-using” development. Unless and until conclusive evidence is provided showing that these types of development do not lead to an increase in water use on a given site, we believe that the precautionary principle should be applied, and that CDP applications for such development should not be accepted (because they cannot demonstrate the availability of an adequate and sustainable water source). At the same time we believe that it is likely that small home additions and renovations are not likely to increase water use on a property. Toward this end, we would suggest that an important threshold concept to be applied to the latter such CDP applications is to require applicants to demonstrate, with actual evidence, that the development they propose will not lead to an increase in water use at the site in question.⁴ Such an evaluation demands water-use data and

³ See recent adopted Commission findings for an appeal of a County CDP decision in Los Osos from November 17, 2021 at <https://documents.coastal.ca.gov/reports/2021/11/W14a/w14a-11-2021-report.pdf>.

⁴ To be clear, this is different than trying to demonstrate that one can “back out” or “offset” new water use through some sort of offsite mechanisms, and rather is focused on ensuring that the development in question, by itself, will not lead to the need for additional water use at a site.

New development in Los Osos

evidence to support any conclusions drawn, and it will be important to collect such information before any applications are filed.⁵

In sum, in our view brand new water-using development (such as a new single-family dwelling or an ADU) cannot meet LCP water supply tests, and CDP applications for such development should not be accepted for processing nor approved. Similarly, CDP applications for development that increases water use on a site (including explicitly guesthouses, hotel/motel expansions, and large use/structural intensifications (at least until a body of evidence is provided to demonstrate that such development does not actually lead to additional water use on such sites)) should also not be accepted for processing nor approved for similar reasons. We would expect that any County approvals of CDPs for such development are likely to be appealed to the Commission, which would likely lead to the Commission taking CDP jurisdiction or denying such applications, based on past recent cases. And finally, any CDP applications for other development needs to clearly demonstrate that such development will not lead to increased water use on the site in the manner described above. In sum, our intent with these observations is not to suggest that no CDP applications for development in Los Osos be accepted; rather, with respect to water, and in the interim as more community-scale water supply improvements are pursued, we believe it is important that proposed new development (whether on vacant or developed lots) does not exacerbate water supply-related problems.

Further, and with all due respect, please be advised that the terms and conditions of Commission-issued CDPs are enforceable. The County needs to take its continuing obligations, commitments and requirements from CDP A-3-SLO-09-055/069 more seriously. The Commission has thus far exercised restraint as it has tried to work with the County as it relates to cases where the County has committed to providing wastewater service to new development when to do so is prohibited by the CDP. However, the ten recent aforementioned appeals where this is and was an issue makes it clear that there is a pattern of disregard as pertains to the requirements of CDP A-3-SLO-09-055/069. Moreover, the County was previously informed of these issues in a letter to Mark Hutchinson dated August 3, 2017 (enclosed). Thus, it appears that the County's disregard of permit requirements is "knowing and intentional." Therefore, going forward, we will have to consider County intent to serve in such cases, including approval of CDPs for projects that require such wastewater service from the County, to be knowing and intentional violations of the CDP, to which the Coastal Act's enforcement provisions could be applied. If there are any questions of CDP interpretation in that regard, the County is advised to discuss such issues with our staff well before taking action that would provide such wastewater services.

In conclusion, it is clear to us that the constraints to development in Los Osos require an honest assessment of the ways in which such development can and cannot be sustainably accommodated in terms of water supply, wastewater service, and ESHA.

⁵ And, where the evidence provided demonstrates that the development will not lead to new water use on a site, pre- and post-monitoring reports for water use on the site should also be considered as a condition of approval, and if the development results in an increase in water use on-site, mitigation measures to bring water use on the site to the pre-development level should also be implemented.

New development in Los Osos

This is not a new conclusion, and simply continues to reflect the Commission's 2010 action in approving the County's wastewater treatment plant and system, and the terms and conditions pertaining thereto. These issues demand a planning solution that can provide clear LCP direction to all parties moving forward, and we recommend that the County allow that LCP process to be brought to conclusion and completion through the proposed Los Osos Community Plan. When, instead, the County accepts CDP applications and approves them under the current set of circumstances as described above, it simply leads to appeals of such actions to the Commission, each of which takes scarce staff resources away from moving that planning decision forward to fruition. We respectfully request that the County discontinue this practice, including so that we can collectively focus our limited time and resources on the LCP planning task at hand.

Thank you for your attention to these matters, and your requested assistance. I hope that you will share our view that it is simply not good public policy or good planning for there to be any more appeals of County CDP approvals for such development in Los Osos. We strongly believe that our mutual goals associated with adherence to the LCP and the coastal resource protections it requires are better served by recognizing and squarely addressing the issues described through the LCP, as opposed a continuing series of CDP approvals and appeals. I welcome a discussion on these issues when it is convenient for you.

Sincerely,

DocuSigned by:

E6E6330F9F9C4F4...

Dan Carl, Director
Central Coast District
California Coastal Commission

Enclosure: August 3, 2017 Letter to Mark Hutchinson

cc: Bruce Gibson, San Luis Obispo County Second District Supervisor
John Diodati, San Luis Obispo County Public Works Director
Stephen P. Henry, USFWS
Ron Munds, Los Osos Community Services District
Mark Zimmer, Golden State Water Company
Charlie Cote, S&T Mutual Water Company