

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

F14b



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original staff report](#)

ADDENDUM

DATE: August 8, 2016
TO: Commissioners and Interested Parties
FROM: South Central Coast District Staff
SUBJECT: Agenda Item 14b on Friday, August 12, 2016
Appeal A-4-STB-16-0046 (McGaughey, Santa Barbara County)

The purpose of this addendum is to attach and respond to correspondence received by Commission staff since publication of the staff report.

A letter dated July 30, 2016 was submitted by Theodore Klein, a property owner in the vicinity of the subject property. The letter is included as **Attachment 1** of this addendum. Mr. Klein's letter expresses support of the staff recommendation to deny the proposed project. Mr. Klein's letter also expresses concern regarding the unpermitted installation of water tanks in the subject neighborhood that are serviced by water delivered by truck several times a week that circumvent County permit requirements and the water use restrictions imposed by the Montecito Water District.

Additionally, a letter dated August 8, 2016 was submitted by Donna Senauer, a Montecito resident (**Attachment 2** of this addendum). This letter expresses support of the staff recommendation and recommends that drought tolerant landscaping be used on the project site.

P.O. Box 50712
S.A. CA 93150

(805) 969-5103

Received

(1970 Jelinda Drive) 007-500-016
(1968 Jelinda Drive) 007-500-018
(295 Sheffield Drive) 007-250-014

AUG 01 2016

7/30/16

California Coastal Commission
South Central Coast District

Mr. Wesley Horn
California Coastal Commission
89 South California Street, Ste 200
Ventura, CA 93001-2801

Re: Permit A-4-STB-16-0046 Items # F132 + F136 (McGaughey H₂O Pans)

Dear Sir:

For my general objections to this permit, refer to my appeal dated 3/30/15.

Here I shall confine myself to one observation and one further objection.

When the Montecito Water District first imposed restrictions, the Board of Ennistbrook Homeowner Association (EOA) colluded with numerous members in the clandestine installation of water tanks, circumventing County permitting. (The McGaughey permit represents the "resolution" of violations reported by me.) Such collusion represents the cynical lawlessness of a rogue Association.

The County conditions of delivery (first, Mon. + Wed., 9:30 a.m. - 12:00; then, only two deliveries on each of those days) represented a cynical abuse of authority, since the County had no intention of enforcing these conditions, and indeed has no effective policing or enforcement mechanism. Moreover, McGaughey had no intention to adhere to them. This is proved by the numerous violations that have subsequently occurred.

(Ennistbrook is a gated community with a guard on duty during all business hours and the McGaughey property is in full view of the guard shack, so that both the installation of the tanks and their constant replenishment must have been observed by the guard, and known to the Board.) Naturally, the Board of EOA refuses to enforce these conditions.

The best way to redress this cynical lawlessness is by revoking this improper permit

Sincerely,
Gladys M. Klein

ATTACHMENT 1

8 August 2016

California Coastal Commission
Ventura Office

RE: A-4-STB-16-0046

Chair Kinsey and Commissioners,

I write to support Staff recommendations to the Commission for Appeal No. A-4-STB-16-0046. I am a Montecito resident and community member living within the Montecito Water District Coastal Zone. Groundwater protection is required to ensure sustainability.

This project will extract and dewater groundwater on a continual weekly basis, week in and week out, just for supplemental landscaping. Montecito Water District metered water supply exists at this residence. Metered allocations were increased last year for non essential use in hopes that groundwater could be protected in some way with this small additional non essential allocation. Drought tolerant landscape would be the correct approach for this property.... not monthly groundwater extractions of 132,000 gallons equaling 184 HCF monthly...in contrast this extraordinary groundwater withdrawal with Montecito Water District metered allocations, this residence for its parcel size would receive probably 30-40HCF per month....

Thank you,

Donna Senauer
1155 Summit Road
Montecito, CA. 93108

Attachment 2
A-4-STB-16-0046
De Novo

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
 89 SOUTH CALIFORNIA ST., SUITE 200
 VENTURA, CA 93001
 (805) 585-1800

F14b



Appeal Filed: 4/5/16
 49th Day: 6/3/16
 SI Found: 5/13/16
 Staff: D.Christensen-V
 Staff Report: 7/21/16
 Hearing Date: 8/12/16

STAFF REPORT: APPEAL DE NOVO REVIEW

APPEAL NUMBER: A-4-STB-16-0046

APPLICANT: Linda McGaughey

APPELLANTS: Commissioners Kinsey and Turnbull-Sanders

LOCAL GOVERNMENT: County of Santa Barbara

LOCAL DECISION: Coastal Development Permit (No. 15CDP-00000-00011) approved with conditions by Montecito Planning Commission on February 17, 2016

PROJECT LOCATION: 1965 Jelinda Drive, Santa Barbara County (APN 007-500-017)

PROJECT DESCRIPTION: Request for after-the-fact approval for installation of two 3,500 gallon water storage tanks and one 1,500 gallon water storage tank used to store water for the irrigation of existing landscaping on the subject residential property, and water delivery service for the proposed tanks by truck up to four times per week. The project also includes request for demolition of an unpermitted 405 sq. ft. pergola that was installed to cover the water storage tanks.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **DENIAL** of the proposed project on the basis that the project is inconsistent with the policies and provisions of Santa Barbara County's certified Local Coastal Program (LCP) regarding existing public services and new development, protection of water resources, and energy consumption and vehicle miles traveled, including Land Use Plan (LUP) Policies 1-4, 2-2, 2-4, 2-5, 2-6, Coastal Act Sections 30231, 30250(a), 30253(d), (as incorporated into the LCP pursuant to Policy 1-1), and Coastal Zoning Ordinance (Article II) Sections 35-60.1, 35-60.3, 35-60.4, and 35-60.5. The **motion** and **resolution** to accomplish this staff recommendation are found on **page 5**.

The proposed project consists of a request for after-the-fact approval for the installation of two (2) 3,500 gallon water storage tanks and one (1) 1,500 gallon water storage tank to store water that is to be delivered by truck up to four times per week and to be used for the irrigation of existing landscaping on the subject residential property. The project also includes a request for demolition of an unpermitted 405 sq. ft. pergola that was installed to cover the water storage tanks. The subject 2.99-acre property is located at 1965 Jelinda Drive within an urban residential neighborhood of Montecito (Santa Barbara County) and is developed with an existing single-family residence constructed in 1988 and a swimming pool and cabana.

In order to assure that new development minimizes impacts to water resources and prevents depletion of ground water supplies, as required by Section 30231 of the Coastal Act, which has been incorporated in the County's certified LCP as a policy, the LCP contains several specific water resource protection policies. These policies include Policy 2-4 of the County's certified Land Use Plan, which requires the water supply for new development within designated urban areas to be provided only by the municipal water district, provided that such service is available. The County's LCP also incorporates Coastal Act Policy 30250(a), which requires that new development be concentrated in existing developed areas with adequate public services. Therefore, new development such as new water wells, or in this case water tanks, intended to provide the property with water from sources other than the municipal water service, would be inconsistent with this policy.

The project site is located within a designated urban area of Montecito and the site already receives municipal water services from the Montecito Water District (MWD). The current drought in California has reduced the MWD's largest local water supplies to their lowest levels ever. The MWD's primary sources of water are Jameson Lake and Lake Cachuma, which, as of July 1, 2016, were both below 15% capacity. To manage its remaining water supplies and reduce customer water usage, the MWD has enacted ordinances that prohibit any wasting of water, impose monthly water supply allocation limits for consumers, and allow for fines or even suspension of service for consumers who exceed their monthly allowance of water. The proposed project includes the installation of water storage tanks to store water that is to be delivered by truck up to four times per week for use in the irrigation of existing residential landscaping.

Given the size of the proposed water tanks and the proposed frequency of water delivery service (up to 4 times per week), the proposed project would allow receipt and storage of up to 136,000 gallons per month. This quantity is approximately three times the maximum water allocation for the subject property by the MWD, which ranges between 33,729 gallons and 57,082 gallons of water per month depending on the season. As such, the proposed project is not consistent with the available public services provided by MWD and would clearly circumvent these MWD water allocation restrictions during a water shortage emergency. This extra water would be obtained for the purpose of supplemental irrigation, even though the site's residential development already receives water district services. While the existing residential landscaping and associated irrigation system on the subject property is not considered new development, the changed circumstances of the Montecito area with regard to water availability has lessened MWD's ability to provide water for the new water storage tank development at the time of this permit. If the MWD was capable of providing the volume of water necessary for the permitted tanks at this time, then the trucking of an alternative water source to the site would not be required. Because

the storage tanks allow delivery of a volume of water that cannot be provided by the MWD at this time, the project is inconsistent with LUP Policy 2-4 and Coastal Act Section 30250(a), as incorporated into the LUP.

The County's LCP also requires that depletion of coastal groundwater supplies shall be minimized (Coastal Act Section 30231 incorporated into the County's LUP) and that the long term integrity of basins and groundwater basins within the coastal zone shall be protected (LUP Policy 2-2 and CZO Section 35-60.1). Further, LUP Policy 2-5 requires new development to utilize water conservation devices. While the County's record for the subject CDP states that RMR Water Truck Services will provide water for the proposed water tanks and that the company's source of water is Lake Castaic in Los Angeles County (which is outside of the coastal zone), the County's permit does not require the applicant to obtain water from that or any other particular water source or location. Given the severe nature of the drought and competing water demands statewide, the applicant may need to obtain off-site water from a variety of potential sources over time, including sources within the coastal zone or sources hydrologically connected to watersheds that replenish groundwater basin supplies within the coastal zone. Additionally, even if the water is sourced from outside of the coastal zone, there is no analysis in the County's record on the subject CDP that demonstrates that this water will not be collected from water courses with high connectivity to watersheds that replenish groundwater basin supplies within the coastal zone. In sum, the County's permit is inconsistent with the LCP's water resource protection policies because it fails to require that the water used to fill the storage tanks will be obtained from sources that do not create significant individual or cumulative impacts to groundwater supplies within the coastal zone. Therefore, the permit must be denied.

Even if the project continued to rely on water trucked to the site from over 70 miles away (and outside the Coastal Zone) in Castaic (Los Angeles County), the project would also be inconsistent with Coastal Act Section 30253, which has been incorporated as part of the County's certified LCP. This provision requires that new development shall minimize energy consumption and vehicle miles traveled. In this case, the approved permit allows a maximum of four deliveries of water per week, or eight total truck trips resulting in an estimated total driving distance of 560 miles per week. Such truck trips would result in unnecessary energy consumption and vehicles miles traveled, inconsistent with this provision of the Coastal Act and LCP. Additionally, large, private water tanks to store water for irrigation of residential land are not water-conserving devices. On the contrary, they allow residential development to avoid conserving water, which would otherwise be required by the MWD.

Therefore, for the reasons described more fully in this staff report, staff recommends that the Commission deny the proposed project because it is inconsistent with the policies and provisions of Santa Barbara County's certified Local Coastal Program (LCP) regarding existing public services and new development, protection of water resources, and energy consumption and vehicle miles traveled.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	5
II. STANDARD OF REVIEW	5
III. FINDINGS AND DECLARATIONS FOR DE NOVO REVIEW	6
A. PROJECT DESCRIPTION AND PHYSICAL SETTING	6
B. APPLICANT CORRESPONDENCE	6
C. CONSISTENCY ANALYSIS	7
1. Existing Public Services and New Development	7
2. Protection of Water Resources and Energy Consumption	11
D. UNPERMITTED DEVELOPMENT	13
E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)	14

APPENDIX A: [Substantive File Documents](#)

EXHIBITS

- Exhibit 1.** [Vicinity Map](#)
- Exhibit 2.** [Site Map](#)
- Exhibit 3.** [Project Plans](#)
- Exhibit 4.** [Applicant Correspondence dated May 11, 2016](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit No. A-4-STB-16-0046 for the development proposed by the applicant.

Staff Recommendation:

Staff recommends a **NO** vote on the following motion. Failure of this motion will result in denial of the CDP and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Deny the CDP:

The Commission hereby **denies** Coastal Development Permit Number A-4-STB-16-0046 and adopts the findings set forth below on grounds that the development does not conform with the policies of the Santa Barbara County certified Local Coastal Program and/or with the public access policies of Chapter 3 of the Coastal Act.

II. STANDARD OF REVIEW

After certification of a Local Coastal Program (LCP), Section 30603 of the Coastal Act provides for appeals to the Coastal Commission of a local government's actions on certain types of coastal development permits. In this case, the proposed development was appealed to the Commission, which found during a public meeting on May 13, 2016 that a substantial issue was raised.

For the Commission's "de novo" review of the application, the standard of review for the proposed development is consistency with the policies and provisions of the County of Santa Barbara Local Coastal Program. Pursuant to Section 30604(c) of the Coastal Act, all proposed development located between the first public road and the sea including those areas where a certified LCP has been prepared, must also be reviewed for consistency with the Chapter 3 policies of the Coastal Act with respect to public access and public recreation. In this case, the project is not located between the first public road and the sea, so this additional standard is not applicable. In addition, all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified LCP as guiding policies pursuant to Policy 1-1 of the LUP.

Furthermore, although the standard of review is provided by the certified Local Coastal Program, the Commission must ensure that the LCP is interpreted in a manner consistent with the Coastal Act. As the Court of Appeal explains:

"The Commission has the ultimate authority to ensure that coastal development conforms to the policies embodied in the state's Coastal Act. In fact, a fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government. ...The Commission applies state law and policies to determine whether the development permit complies with the LCP."

Charles A. Pratt Construction Co., Inc. v. California Coastal Com. (2008) 162 Cal.App.4th 1068, 1075.

III. FINDINGS AND DECLARATIONS FOR DE NOVO REVIEW

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND PHYSICAL SETTING

The project includes a request for after-the-fact approval of the installation of two 3,500 gallon water storage tanks and one 1,500 gallon water storage tank installed by the applicant and used to store water that is delivered by truck up to four times per week for the irrigation of existing landscaping on a property developed with an existing residence. The project also includes a request for demolition of an unpermitted 405 sq. ft. pergola that was installed by the applicant to cover the water storage tanks.

The project site is located at 1965 Jelinda Drive within a developed residential neighborhood of the Montecito area, Santa Barbara County (APN 007-500-017). The subject parcel is 2.99 acres in size and bounded on the east by Jelinda Drive and bounded on all other sides by existing residential development (Exhibit 1). Existing development on the subject site consists of an existing single-family residence constructed in 1988 and a swimming pool and cabana. On July 31, 2014, the County opened a Zoning Violation Case (No. 14ZEV-00000-00168) after discovery of unpermitted development on the subject property consisting of a 405 sq. ft. pergola, two 3,500 gallon water storage tanks, and one 1,500 gallon water storage tank. To resolve the violation, the property owner applied for the subject CDP, requesting after-the-fact authorization to retain the unpermitted water storage tanks and to demolish the unpermitted pergola. The water tanks are situated in the northern portion of the residential property, in an area that was previously developed with retaining walls and other landscaping (Exhibit 2). No grading or native vegetation removal was required to accommodate the water tanks (Exhibit 3). The site is currently served by the Montecito Water District (MWD) and is provided monthly water allotments pursuant to Ordinance No. 94 adopted by the MWD on March 24, 2015.

B. APPLICANT CORRESPONDENCE

Correspondence was received from the applicant's agent, Graham Lyons, on May 11, 2016 (Exhibit 4). In the letter, the applicant's agent asserts that the approved development is considered part of the principal permitted use (single family residence) on the subject residential-zoned property and should not be subject to the Commission's appellate jurisdiction. The agent argues that Section 35-71.3 of the County's certified Coastal Zoning Ordinance allows "uses, buildings, and structures accessory and customarily incidental to the above uses" as a permitted use in the single family residential zone district and that the approved water tank development fits this definition. In response, Commission staff would note that Section 30603(a)(4) of the Coastal Act provides that approval by a coastal county of any development that is not designated in the LCP as "the principal permitted use" is appealable to the Coastal Commission. Santa Barbara County's certified Coastal Zoning Ordinance lists a range of "permitted uses" for each

zone district. In the single family residential zone district where the subject property is located, only a single family residence and related development that is customarily incidental to a single family residence is considered “the principal permitted use”. In this case, the approved water tanks for the storage of nearly 34,000 gallons of delivered water per week from off-site are not customarily incidental to a single family residence and cannot be considered part of the principally permitted use. Furthermore, the property is already connected to a water service line and receives an appropriate supply of water from the Montecito Water District (MWD), and the LCP specifically requires new development in designated urban areas to be serviced by the appropriate public water district. This provides further evidence that water tanks filled by private water companies are not customarily incidental to residential development in the County and therefore are not part of the principally permitted use in residential zones. Thus, the County’s action approving the development is appealable to the Commission, and the County provided proper notification of this fact in their Notice of Final Action.

C. CONSISTENCY ANALYSIS

In this case, for the reasons discussed below, the Commission hereby denies the Coastal Development Permit as it is inconsistent with the policies and provisions of Santa Barbara County’s certified Local Coastal Program (LCP) with regard to existing public services and new development, protection of water resources, and energy consumption and vehicle miles traveled, including Land Use Plan (LUP) Policies 1-4, 2-2, 2-4, 2-5, 2-6, Coastal Act Sections 30231, 30250(a), 30253(d), (as incorporated into the LCP pursuant to Policy 1-1), and Coastal Zoning Ordinance (Article II) Sections 35-60.1, 35-60.3, 35-60.4, and 35-60.5. In interpreting the LCP Policies in a manner that ensures the LCP is consistent with the Coastal Act (see *Pratt, supra*, 162 Cal. App. 4th at 1075-76), the Commission is guided by the general rule of construction contained in the Coastal Act and also applicable to the LCP that its provisions “shall be liberally construed to accomplish its purposes and objectives” (Pub. Res. Code Section 30009). As a corollary, exemptions or exceptions that tend to defeat the application of certified policies must be construed narrowly. The LCP echoes these rules of construction by mandating that in the case of overlap between policies, the policy most protective of coastal resources prevails. (LUP Policy 1-2).

1. Existing Public Services and New Development

Land Use Plan (LUP) Policy 1-1 states that all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified County LUP as guiding policies. The following LUP Policies also address public services and new development:

LUP Policy 1-4 states:

Prior to the issuance of a coastal development permit, the County shall make the finding that the development reasonably meets the standards set forth in all applicable land use plan policies.

LUP Policy 2-4 and Article II CZO Section 35-60.3 state:

Within designated urban areas, new development other than that for agricultural purposes shall be serviced by the appropriate public sewer and water district or an existing mutual water company, if such service is available.

LUP Policy 2-5 and Article II CZO Section 35-60.4 state:

Water-conserving devices shall be used in all new development.

LUP Policy 2-6 and Article II CZO Section 35-60.5 state in relevant part:

Prior to issuance of a development permit, the County shall make the finding based on information provided by environmental documents, staff analysis, and the applicant, that adequate public or private services and resources (i.e. water, sewer, roads, etc.) are available to serve the proposed development. The applicant shall assume full responsibility for costs incurred in service extensions or improvements that are required as a result of the proposed project. Lack of available public or private services or resources shall be the grounds for denial of the project or reduction in the density otherwise indicated in the land use plan...

Coastal Act Policy 30250(a) states in relevant part:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, or contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...

As described above, the approved CDP includes installation of three water storage tanks (two 3,500 gallon water storage tanks and one 1,500 gallon water storage tank) used to store water for irrigating the existing landscaping on the subject property, and water delivery service for the proposed tanks by truck up to four times per week (to provide up to 34,000 gallons of water per week for landscaping). The project site is located within a designated urban area of Montecito and the site already receives municipal water services from the Montecito Water District (MWD).

The State of California is currently facing one of the most severe droughts on record. In January 2014, the Governor declared a drought State of Emergency and asked that officials throughout the state take all necessary actions to prepare for water shortages. The Governor then declared a Continued State of Emergency in April 2014 due to the ongoing drought. The Governor has also issued Executive Order Nos. B-29-15 (on April 1, 2015) and B-37-16 (on May 9, 2016) that mandate substantial water reductions across the state, and mandate that the reductions be permanent even after the drought ends in order to prepare for more frequent and persistent periods of limited water supply. The current drought in California has reduced the MWD's largest local water supplies to their lowest levels ever. The MWD's primary sources of water are Jameson Lake and Lake Cachuma, which, as of July 1, 2016, were both below 15% capacity. Jameson Lake will provide only twenty percent of its average yield in 2016, and if dry conditions continue into 2017 Jameson Lake will provide no water for the first time in its 86-year history. And for the first time in its 60 year operating history, water deliveries from Lake Cachuma (considered and planned as a 7-year drought water supply) currently consist only of remaining

carryover water from previous years with no State Water Project annual water allocation in 2016. In addition to the decreasing levels at Jameson Lake and Lake Cachuma, the loss of private water wells in the Montecito area due to decreased groundwater levels through the lack of groundwater recharge and continuing dry weather conditions has led to a significant increase in water demand from the MWD. The MWD also depends on water deliveries from the State Water Project; however, even with state water deliveries the MWD only has a water supply balance that is sufficient until the middle of 2017.¹

To manage remaining water supplies and reduce customer water usage the MWD enacted Ordinance No. 92 on February 11, 2014, which declared a stage 3 water shortage emergency and mandated water use regulations, including encouraging MWD customers to reduce water consumption by 30%. The regulations adopted under Ordinance No. 92 were not significant enough to lessen the stress on water supplies and in response the MWD declared a stage 4 water emergency and enacted Ordinance No. 93 on February 21, 2014 which imposed monthly water supply allocation limits on each property and monetary penalties for those customers who exceeded their monthly water allocation. The conservation measures of Ordinance No. 93 proved successful in alleviating the stress on local water supplies. The MWD passed Ordinance No. 94 on March 24, 2015, which updated monthly allocations to customers and prohibited any waste of water. Pursuant to Section 8.2 of Ordinance No. 94, any consumption of water that is in excess of 25% of the mandated monthly allocations shall result in the installation of a flow restriction device on the service lines for the account. Additionally, any account that is fitted with a flow restriction device, that continues to exceed the allowable monthly allocation, shall be subject to discontinuation of water service. Water service for the account will not be restored until a water management plan is implemented to ensure that future consumption will not exceed the allowable monthly allocations.

Single Family Residential (SFR) accounts serviced by the MWD under Ordinance No. 94 are allocated 25 Hundred Cubic Feet (HCF) per month for essential health and sanitation purposes. In addition, SFR accounts are provided monthly water allocations for non-essential uses. The total water allocation for a SFR, including non-essential uses, is determined by multiplying the adjusted annual total of 140 HCF by the Monthly Allocation Factor (MAF) for the SFR class of development by the acreage of the parcel.

$$\text{Monthly Water Allocation} = 25 \text{ HCF} + (140 \text{ HCF})(\text{MAF})(\text{acreage})$$

Table 1. Single Family Residential Monthly Allocation Factors

<i>Month</i>	<i>Jul</i>	<i>Aug</i>	<i>Sep</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>
<i>MAF</i>	.115	.113	.107	.095	.067	.048	.055	.046	.068	.081	.102	.103

Using this equation, monthly municipal water allocations for the existing single family residence on the subject 2.99-acre parcel is shown in the following table in both HCF² and gallons.

¹ Montecito Water District website at <http://www.montecitowater.com/latest-news> (accessed July 11, 2016)

² 1 HCF equals 748 gallons.

Table 2. Total Monthly Water Allocation per Single Family Residential Account

<i>Month</i>	<i>Jul</i>	<i>Aug</i>	<i>Sep</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>
<i>Monthly Allocation Factor (MAF)</i>	.115	.113	.107	.095	.067	.048	.055	.046	.068	.081	.102	.103
<i>Monthly Allocation (HCF)</i>	73.1	72.3	69.8	64.8	53.0	45.1	48.0	44.3	53.5	58.9	67.7	68.1
<i>Monthly Allocation (Gallons)</i>	54,708	57,082	52,203	48,446	39,679	33,729	35,951	33,103	33,992	44,062	50,638	50,951

As indicated in the table above, the total municipal water allocation (for essential and non-essential uses) from MWD for the subject residential property ranges from 33,103 to 57,082 gallons per month, depending on the time of year. In the subject CDP, the County authorized three new water storage tanks on the property that have a total capacity of 8,500 gallons. In addition, the tanks are permitted to receive water from a trucking service up to a maximum of four times per week. Specifics on the amount of water to be refilled during each trucking trip are not provided in the project description; however, it is possible that the entire 8,500 gallon capacity of the tanks could be expended and refilled up to four times per week, resulting in a potential maximum consumption of up to 34,000 gallons of water per week. With approximately four weeks in each month, the storage capacity of the tanks could result in a potential maximum consumption of up to 136,000 gallons of water per month. This total is in addition to, and nearly three times the 33,103 to 57,082 gallons per month of water that is already being allocated to the property from the MWD for residential use pursuant to the water preserving restrictions of Ordinance No. 94.

LUP Policy 2-4 and Coastal Zoning Ordinance (CZO) Section 35-60.3 of the County's certified LCP require that new development within urban areas be serviced by the appropriate water district or existing mutual water company. The intent of LUP Policy 2-4 and CZO Section 35-60.3 is to ensure that new development is serviced by existing public water services if they are available. Further, LUP Policy 2-5 requires new development to utilize water conservation devices and LUP Policy 2-6 and CZO Section 35-60.5 require that new development is served by adequate public or private services. Although Policy 2-6 states that new development may be served by public *or* private services, that policy is more broad and applies to sewer, road, and other services in addition to water. While this section may allow development to be served by private roads or sewer systems, its more general provisions regarding water are subordinate to the more specific requirement in Policy 2-4 that development in designated urban areas obtain water from *public* water districts.

In this case, the MWD is an existing public water district providing appropriate levels of water to development with respect to the current drought. The LCP requires new development to be served by existing public water providers and does not contain any policies that allow the installation of on-site water storage to circumvent the MWD's water use restrictions during a water shortage emergency for the purpose of supplemental irrigation where the site's residential development already receives water district services. Thus, the project, which does not utilize water conservation devices or assist in water conservation, is inconsistent with Policies 2-4, 2-5, and 2-6 of the County's certified LUP. The County's certified Coastal Land Use Plan (LUP)

also incorporates Coastal Act Policy 30250(a). This policy requires that new development be concentrated in existing developed areas with adequate public services. Considering the limited water available to the MWD and the restrictions imposed by Ordinance No. 94, the capacity of the subject water storage tanks and potential rate of refill are not consistent with the available public services provided by MWD. While the existing residential landscaping and associated irrigation system on the subject property are not considered new development, the new water tanks are considered new development. The changed circumstances of the Montecito area with regard to water availability has lessened the ability of MWD to provide water for the new water storage tank development at the time of this permit. If the MWD was capable of providing the volume of water necessary for the permitted tanks at this time, then the trucking of an alternative water source to the site would not be required. Because the storage tanks allow delivery of a volume of water that cannot be provided by the MWD at this time, the project is inconsistent with Coastal Act Section 30250(a), as incorporated into the LUP. Therefore, the project must be denied because it is inconsistent with the Santa Barbara County certified LCP policies regarding existing public services and new development.

In addition, there are feasible alternatives to the proposed development that would ensure consistency with the public service and new development policies of the LCP. In particular, the no project alternative (in other words to not truck water to the project site or store it onsite) is feasible given that the existing development is already served by a water district, as required by the LCP. Additionally, if public water supplies are insufficient to irrigate the subject landscaping, the property owner could modify a portion of the property's landscaping—which consists largely of turf grass—to be drought-tolerant so that less water is required for maintenance. The state offers rebates to help property owners replace turf grass with more drought-tolerant plants. See <http://www.saveourwaterrebates.com/turf-replacement-rebates.html>. Accordingly, there are feasible alternatives that would ensure consistency with the LCP.

2. Protection of Water Resources and Energy Consumption

LUP Policy 2-2 and Article II CZO Section 35-60.1 states, in relevant part:

The long term integrity of groundwater basins or sub-basins located wholly within the coastal zone shall be protected. To this end, the safe yield as determined by competent hydrologic evidence of such a groundwater basin or sub-basin shall not be exceeded except on a temporary basis as part of a conjunctive use or other program managed by the appropriate water district. If the safe yield of a groundwater basin or sub-basin is found to be exceeded for reasons other than a conjunctive use program, new development, including land division and other use dependent upon private wells, shall not be permitted if the net increase in water demand for the development causes basin safe yield to be exceeded, but in no case shall any existing lawful parcel be denied development of one single family residence...

LUP Policy 2-5 and Article II CZO Section 35-60.4 state:

Water-conserving devices shall be used in all new development.

Coastal Act Section 30231 states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Coastal Act Section 30253(d) states, in relevant part:

New development shall do all of the following...

Minimize energy consumption and vehicle miles traveled.

Coastal Act Section 30231, incorporated into the County's certified LUP, requires that depletion of coastal groundwater supplies shall be minimized. Similarly, LUP Policy 2-2 and CZO Section 35-60.1 require that the long term integrity of basins and groundwater basins within the coastal zone shall be protected. Further, LUP Policy 2-5 requires new development to utilize water conservation devices. Finally, Coastal Act Section 30253(d), which is incorporated into the County's certified LUP, requires, in part, that new development minimize energy consumption and vehicle miles traveled.

The County's record for the subject CDP includes a "Water Availability Certification" form that was completed by the applicant and designates RMR Water Truck Services as the entity providing water for the proposed water tanks and states that their source of water is a location in Castaic (Los Angeles County). RMR Water Truck Services is located in Castaic, Los Angeles County and sources water for its projects from nearby Lake Castaic (which is outside of the coastal zone). While RMR has indicated in a phone conversation with Commission staff that the source of water for the project is currently Lake Castaic, the County's permit does not assure that the source of off-site water for the proposed storage tanks is limited to a specific location. Given the severe nature of the drought and competing water demands statewide, the source of off-site water could come from a variety of potential sources over time, including sources within the coastal zone or sources hydrologically connected to watersheds that replenish groundwater basin supplies within the coastal zone. Additionally, even if the water is sourced from outside of the coastal zone, there is no analysis in the County's record on the subject CDP that demonstrates that this water is not collected from water courses with high connectivity to watersheds that replenish groundwater basin supplies within the coastal zone. Further, should RMR and the applicant need to obtain a new source of water for the project within or connected to basins within the coastal zone, the high volume of water required could have significant effects on the long term integrity of those basins, particularly when considered cumulatively with other past, present and reasonably foreseeable projects. As such, given that the proposed project lacks adequate specificity and enforceability regarding where the water used to fill the storage tanks will be sourced to ensure that it will not create significant individual or cumulative impacts to groundwater supplies within the coastal zone, it cannot be found consistent with the water resource protection policies of the County's LCP and must be denied. Additionally, large, private water tanks to store water for irrigation of residential land are not water-conserving devices. On the contrary, they allow residential development to avoid conserving water, which would otherwise be required by the MWD.

Further, the proposed project description states that water delivery service for the proposed storage tanks would occur by truck up to four times per week and be limited to no more than twice on Monday and twice on Wednesday. Specifics regarding the amount of water that would be transported to refill the 8,500 gallon storage tanks during each trucking trip were not provided in the project description. However, the County's staff report dated January 28, 2016 states that the proposed project would generate eight (8) new traffic trips weekly for the delivery of water to the site. RMR Water Truck Services is located in Castaic, Los Angeles County and verified in a phone conversation with Commission staff that water for the project is sourced from nearby Lake Castaic. The route from RMR Water Truck Services headquarters in Castaic to the project location is approximately 70 miles one way. As discussed earlier, the maximum permitted water deliveries for the project is a total of 8 truck trips per week. Multiplying the approximate trip length for a single truck trip (70 miles) by the number of truck trips permitted weekly to refill the tanks (eight) yields an estimated total driving distance of 560 miles per week. In contrast, no extra vehicle miles would need to be traveled if the property obtained all of its water from the MWD. Considering the long distances driven weekly to provide water for the water storage tanks over an indefinite time period, the proposed project would not minimize energy consumption and vehicle miles traveled, inconsistent with Coastal Act Section 30253(d) that is incorporated into the County's LCP as a policy.

Therefore, for the reasons described above, the project is inconsistent with the Santa Barbara County certified LCP policies regarding water resource protection and energy consumption for new development and must be denied. There are feasible alternatives to the proposed development that would ensure consistency with the water resource protection and energy consumption policies of the LCP. In particular, the no project alternative (in other words to not truck water to the project site or store it onsite) is feasible given that the existing development is already served by a water district that ensures that customers conserve water, as required by the LCP. Additionally, if public water supplies are insufficient to irrigate the subject landscaping, the property owner could modify a portion of the property's landscaping—which consists largely of turf grass—to be drought-tolerant so that less water is required for maintenance. The state offers rebates to help property owners replace turf grass with more drought-tolerant plants. See <http://www.saveourwaterrebates.com/turf-replacement-rebates.html>. Accordingly, there are feasible alternatives that would ensure consistency with the LCP.

D. UNPERMITTED DEVELOPMENT

As described in the background section above, this CDP application requests after-the-fact authorization for the installation of two 3,500 gallon water storage tanks and one 1,500 gallon water storage tank used to store water obtained from a water truck delivery service for the irrigation of existing landscaping on the subject residential property. The application also requests approval for demolition of an unpermitted 405 sq. ft. pergola that was installed to cover the water storage tanks. For the reasons outlined above, the after-the-fact approval of the water storage tank development described above must be denied as it is inconsistent with the County's certified LCP. Although the proposed removal of the unpermitted pergola is unlikely to result in any adverse impacts to coastal resources, the project as a whole is inconsistent with the County's certified LCP and must be denied. Although unpermitted development has occurred on site, consideration of this application by the Commission is based solely on policies of the County's

LCP. The Commission's enforcement staff will work with the County's staff to consider options to address the ongoing violations at the subject site, including, with regard to the unpermitted pergola, authorization for removal.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Santa Barbara County determined that the proposed development is exempt from further environmental review requirements of the CEQA pursuant to State CEQA Guidelines Sections 15301(l) and 15303(e). Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects. A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed

Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication. ... (b) This division does not apply to any of the following activities: ... (5) Projects which a public agency rejects or disapproves.

CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved. (a) CEQA does not apply to projects which a public agency rejects or disapproves.

Section 13096 (14 CCR) requires that a specific finding be made in conjunction with coastal development permit applications about the consistency of the application with any applicable requirements of CEQA. This report has discussed the relevant coastal resource issues with the proposed project. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 "a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed." Section 21080(b)(5) of the CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the project was approved as proposed. Accordingly, the Commission's denial of the project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

APPENDIX A

Substantive File Documents

Certified Santa Barbara County Local Coastal Program; California Coastal Commission Staff Report for Appeal No. A-4-STB-16-0046 - Substantial Issue Hearing, dated April 28, 2016; Addendum to the California Coastal Commission Staff Report for Appeal No. A-4-STB-16-0046 - Substantial Issue Hearing, dated May 11, 2016; Santa Barbara County Montecito Planning Commission Findings and Conditions dated January 19, 2016 (Appeal No. 15APL-00000-00007 and Case No. 15CDP-00000-00011); Memorandum to the Santa Barbara County Montecito Planning Commission Findings and Conditions dated January 28, 2016; Santa Barbara County Notice of Violation (Case No. 14ZEV-00000-00168) dated December 2, 2014; Letter from Graham Lyons of Mullen & Hanzell, LLP to the Montecito Planning Commission dated January 15, 2016; Santa Barbara County Planning & Development Department Water Availability Certification Form dated March 20, 2015; Montecito Water District Board of Supervisors Ordinance No. 92 dated February 11, 2014; Montecito Water District Board of Supervisors Ordinance No. 93 dated February 21, 2014; Montecito Water District Board of Supervisors Ordinance No. 94 dated March 24, 2015; Montecito Water District Newsletter dated March 23, 2016; Montecito Water District Newsletter dated April 22, 2016.

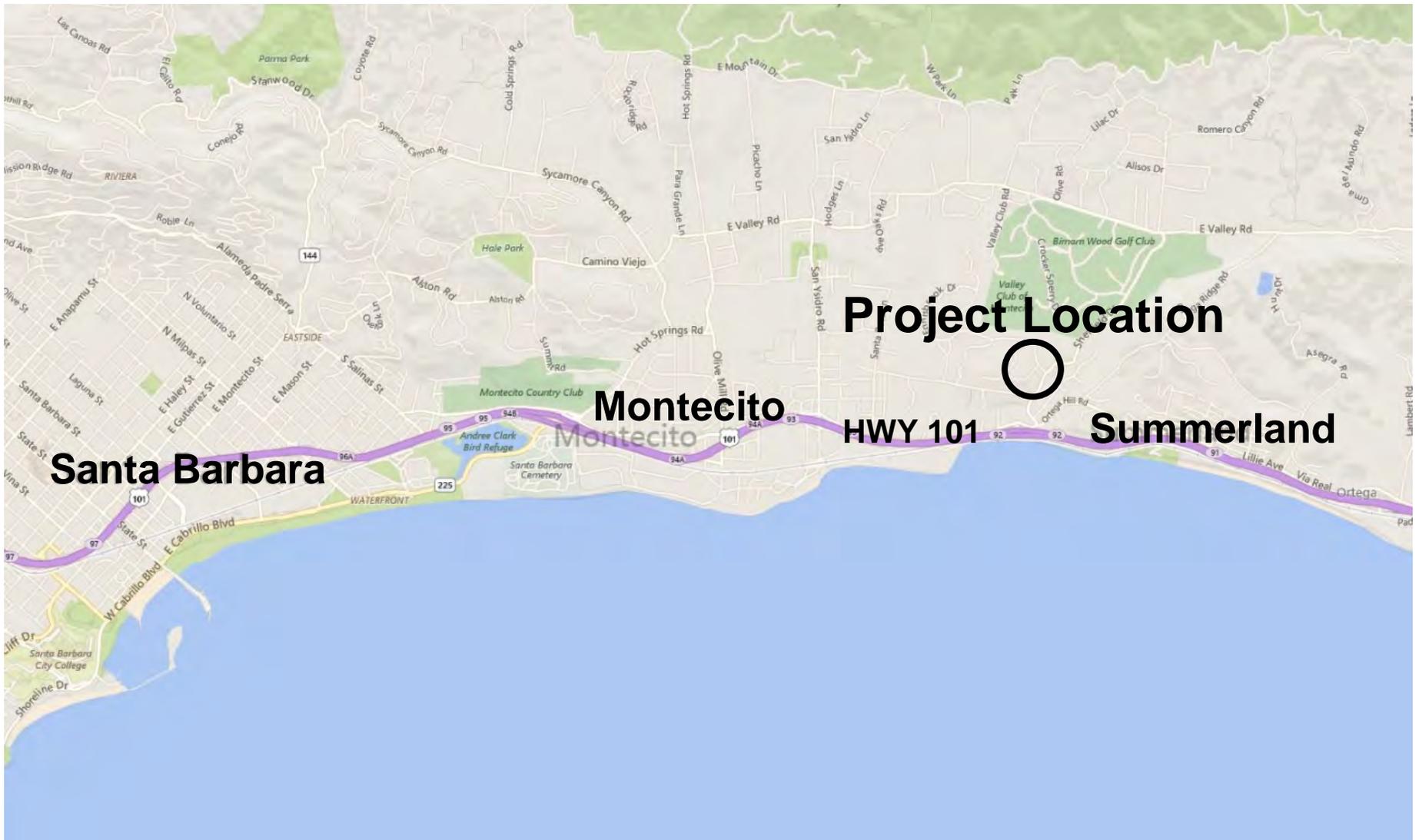
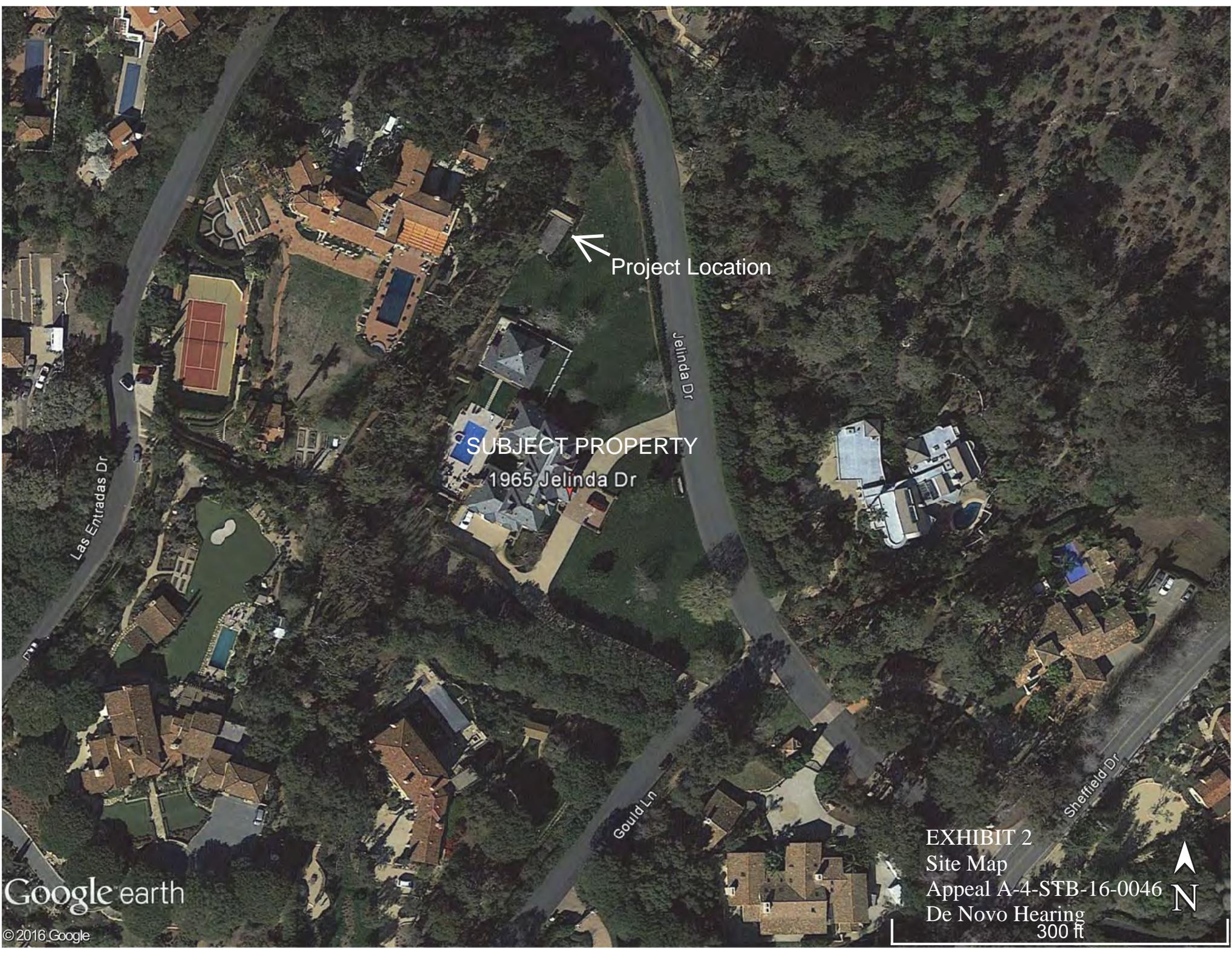


EXHIBIT 1
Vicinity Map
Appeal A-4-STB-16-0046 (McGaughey)
De Novo Hearing



Project Location

SUBJECT PROPERTY
1965 Jelinda Dr

Las Entradas Dr

Jelinda Dr

Gould Ln

Sheffield Dr

Google earth

© 2016 Google

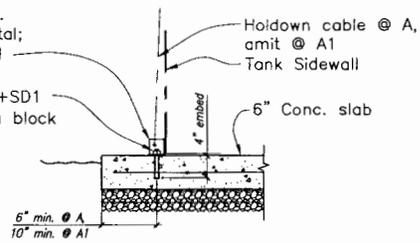
EXHIBIT 2
Site Map
Appeal A-4-STB-16-0046
De Novo Hearing
300 ft



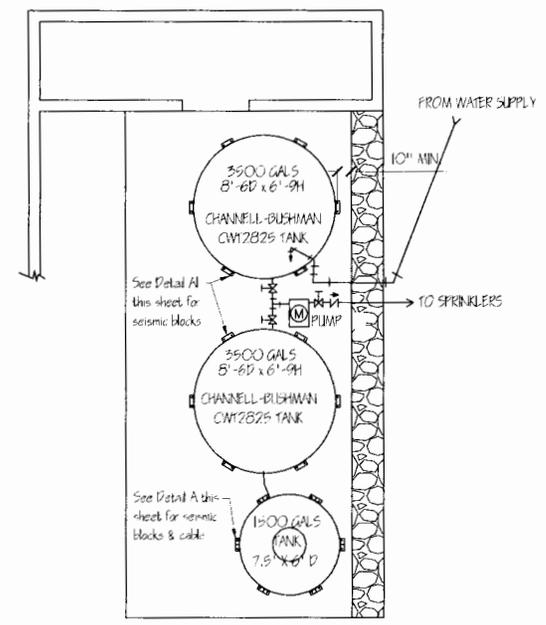
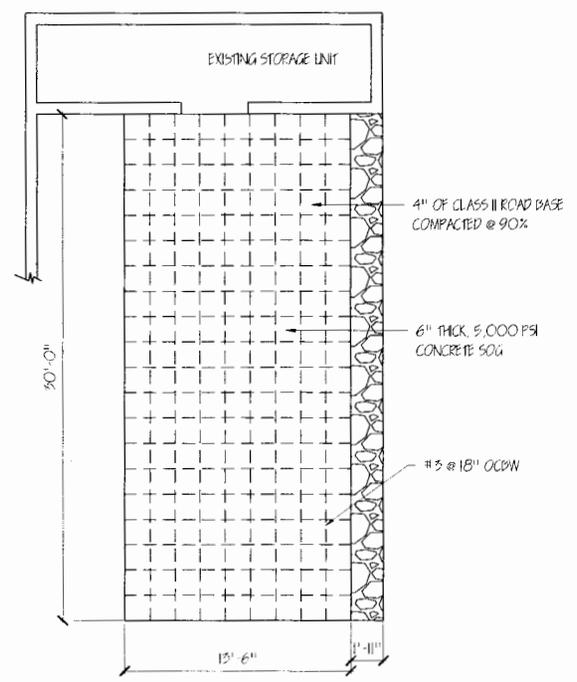
REVISIONS	BY

Seismic Block @ A:
 L3 x 3 x 1/4 x 0'-9 w 1/4"
 gusset w 1/2" Ø for 1/8" cable.
 (6) blocks & (6) cables total;
 Omit gusset & cables @ A1

(2)-3/4"Ø Powers StudBolt+SD1
 Wedge Anchors @ 6" oc ea block



SECT. A A1 No Sale!
 6' Dia. Tank Anchorage



McCaughey Residence
 1965 Jetinda Drive
 Santa Barbara, CA 93108

1855 Sunset Ave
 Santa Barbara, CA 93101
 P: (805) 864-4788
www.breathtakinglandscaping.com

BREATHTAKING LANDSCAPING

DRAWN BY
 J.S.H.
 CHECKED BY

DATE
 8-23-14
 SCALE
 AS NOTED
 DWG. NO.
 Landsc.1965JD



A-2

Mullen & Henzell L.L.P.

ATTORNEYS AT LAW

Agenda Item No. F14.5a
Appeal No. A-4-STB-16-0046
Applicant: Linda McGaughey
Opposing Appeal



e-mail: glyons@mullenlaw.com

May 11, 2016

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California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, CA 93001

Re: Appeal – Substantial Issue
Appeal No. A-4-STB-16-0046 – McGaughey Water Tanks Project
1965 Jelinda Drive, Montecito, CA 93108

Dear Commissioners and Staff:

We represent Linda Page McGaughey, the owner of 1965 Jelinda Drive, Montecito, California (the “Property”). As you know, Santa Barbara County (the “County”) granted Ms. McGaughey approval for a Coastal Development Permit to make certain improvements on the Property, including the installation of water tanks (Case No. 15CDP-00000-00011) (the “McGaughey CDP”). We now write regarding the pending appeal of the McGaughey CDP (the “Appeal”) brought by Commissioners Steve Kinsey and Effie Turnbull-Sanders. As discussed below, the development contemplated by the McGaughey CDP constitutes a “principal permitted use” pursuant to Santa Barbara County’s Coastal Zoning Ordinance, and as a result, falls outside the Commission’s appellate jurisdiction. We therefore request that the Commission find there is no substantial issue based on lack of jurisdiction.

1. The Coastal Commission Has Limited Appellate Jurisdiction After Certificate of a Local Coastal Plan

After certification of a Local Coastal Plan, the Commission has appellate jurisdiction only over Coastal Development Permits (CDPs) issued for those developments described in Public Resources Code section 30603(a). Under that section, unless a development is located within specified geographic areas (including a “sensitive coastal resource area”) or constitutes a “major public works project or a major energy facility,” the Commission’s appellate jurisdiction is limited to developments that are “not designated as the principal permitted use” under the zoning ordinance or zoning district map. (Pub. Res. Code, § 30603(a)(4).)

EXHIBIT 4
Applicant Correspondence
Appeal A-4-STB-16-0046
De Novo Hearing



In other words, if a county has a certified local coastal plan, “[the] county’s approval of a ‘principal permitted use’ development within a coastal zone is not appealable to the California Coastal Commission.” (*DeCicco v. California Coastal Com.* (2011) 199 Cal.App.4th 947, 949.) Since Santa Barbara County has certified a local coastal plan, these rules apply.

2. The Water Tanks Called for by the McGaughey CDP Constitute a “Principal Permitted Use” Under the Coastal Zoning Ordinance

The Commission’s Staff Report states that “the County’s CDP approval is appealable to the Coastal Commission because the permitted development does not constitute a principal permitted use.” (Staff Report, Appeal No. A-4-STB-16-0046, p.4.) However, Section 35-71.3 of the Coastal Zoning Ordinance for Santa Barbara County, which sets forth the principal permitted uses for land zoned E-1 (such as the Property), expressly permits the uses contemplated by the McGaughey CDP.

Section 35-71.3 provides a specific list of permitted uses within the E-1 zone. Among the permitted uses are “[u]ses, buildings, and structures accessory and customarily incidental to the above uses.” (Section 35-71.3, subd. 1, 10.). The improvements contemplated in the McGaughey CDP fall squarely within this permitted use and do not require a conditional use permit or any variance to the zoning ordinance.

Section 35-71.3 does not differentiate between or prioritize any of the listed permitted uses; all uses are all equally characterized as “permitted uses”. It is not within the Coastal Commission’s purview to arbitrarily designate certain permitted uses as principal, and others as not. The County’s Coastal Zoning Ordinance, which was certified by the Coastal Commission, makes no such distinction and it is not appropriate for the Commission to try and do so now.

3. The Circumstances of the County’s Issuance of the CDP Are Consistent With the County’s Understanding That the Water Tanks Constitute Principal Permitted Uses

Based on the circumstances surrounding the issuance of the McGaughey CDP, the County clearly understood that the contemplated improvement constituted a principal permitted use under the Coastal Zoning Ordinance. The County did not issue a Notice of Final Action until seven weeks after its decision became final, and even then, it is our understanding County staff issued the Notice of Final Action only because the Coastal Commission specifically requested it. During the seven-week

California Coastal Commission
May 11, 2016
Page 3

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period after the decision became final, the County was moving forward with the procedural steps required to issue the final permit. These actions show that not even the County believed the McGaughey CDP was appealable to the Coastal Commission.

4. Conclusion

Because the McGaughey CDP only contemplates uses that are “principal permitted uses” under the Coastal Zoning Ordinance, the Commission is barred from hearing the Appeal and has no basis to determine that a substantial issue exists. For the foregoing reasons, we respectfully request on behalf of Ms. McGaughey that the Commission refuse to hear the Appeal and allow the County to continue processing issuance of the final permit.

We appreciate your attention to this matter. Please contact us with any questions. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Graham M. Lyons', with a long horizontal flourish extending to the right.

Graham M. Lyons of
Mullen & Henzell L.L.P

GML:rpl
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