

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863

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## **APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION**

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**Appeal number**.....A-3-SLO-04-048

**Applicant**.....Gregg Allen Berge

**Appellant**.....Gregg Allen Berge

**Local government**.....San Luis Obispo County (S030125C, C03-0388)

**Local decision** .....Approval of Conditional Certificate of Compliance C2003-0388 (Board of Supervisors Resolution 2004-206, adopted June 22, 2004).

**Project location**.....2255 Adams Street, Cambria (Lots 19, 20 and a portion of 21 of Block 128, Cambria Pines Manor Unit 6)

**Project description** .....The appellant applied for a grant of variance and/or modification to Conditional Certificate of Compliance (CCOC) No.C1989-007. In acting on the application, the County modified the conditions of CCOC C1989-007 by granting a new CCOC (No. C2003-0388).

**File documents**.....San Luis Obispo County Certified Local Coastal Program; Final Local Action Notice 3-SLO-04-232; San Luis Obispo County Department of Planning and Building Staff Report for Subdivision Review Board Hearing of May 3, 2004; San Luis Obispo County Department of Planning and Building Staff Report for Board of Supervisors Hearing on June 22, 2004; San Luis Obispo County Department of Planning and Building Project Referral of March 8, 2004; Periodic Review of the San Luis Obispo County Local Coastal Program adopted by the Coastal Commission on July 12, 2001; Revised Findings for the Commission's January 15, 1998 action on the North Coast Area Plan Update; correspondence to and from applicant.

**Staff recommendation** ...No Substantial Issue

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**California Coastal Commission  
October 14, 2004 Meeting in San Diego**

Staff: SM Approved by: *DJL*

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**Summary of Staff Recommendation:**

The appealed development is the issuance of a Conditional Certificate of Compliance (CCOC) for three lots in Cambria, San Luis Obispo County (Location and parcel maps attached as Exhibit 1). In general, the certificate of compliance process established by the Subdivision Map Act is used to validate the legal status of land divisions. Where land has been divided in a manner that violated the subdivision requirements in effect at that time, the issuance of a certificate of compliance is a discretionary action that must be conditioned to resolve the violation. Because the issuance of a CCOC is a discretionary action to approve development in the form of a land division, the San Luis Obispo County certified Local Coastal Program (LCP) appropriately recognizes that approval of a CCOC constitutes approval of a coastal development permit<sup>1</sup>. Thus, the action of granting the CCOC must be consistent with the LCP.

In 1989, San Luis Obispo issued a CCOC in 1989 for the 3 lots that are the subject of this appeal. This CCOC was not appealed by the Commission and effectively legalized the subject parcel. Development of the parcel was subject to the satisfaction of the conditions attached to the 1989 CCOC, which requires that evidence of community water and sewer service be obtained prior to the issuance of building permit(s). The current owner of the lots has been unable to satisfy these conditions, and after numerous requests for the County and Commission staff to intervene on his behalf, applied for a variance to these requirements in 2003. He has also requested a determination that the parcel is in substantial conformance with the conditions attached to the 1989 CCOC, so he can apply for a building permit. San Luis Obispo County processed these requests as an application to amend the 1989 CCOC, and, on June 22, 2004, approved a new CCOC to replace and supersede the 1989 CCOC. The new CCOC retains similar conditions to the 1989 CCOC, that require water and sewer service to be obtained from the community services district, and that a commitment from the district to provide such services be obtained prior to the application for a building permit.

The appellant contends that these conditions are inconsistent with the LCP provisions requiring new development to demonstrate the availability of adequate public services. The appeal argues that such services *are* available, despite the fact that the Cambria Community Services District has identified that the property is not currently eligible to receive water or sewer service. The appellant's position contradicts the findings adopted by the Commission regarding Cambria's limited water supply, calling for the avoidance of additional withdrawals from Santa Rosa and San Simeon Creeks until the coastal resource impacts of such extractions are effectively addressed.<sup>2</sup> The appeal does not provide any new information, or a reasonable LCP basis, to justify approval of the requested variance or adjustment to the regulations requiring evidence of water and sewer service, which are essential to the protection of riparian habitats, wetlands, coastal agriculture, and priority uses.

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<sup>1</sup> Section 21.01.010 of the San Luis Obispo County Real property Division Ordinance

<sup>2</sup> e.g., findings regarding the North Coast Area Plan Update proposed by San Luis Obispo County in 1989 and findings contained in the Commission's Periodic Review of the San Luis Obispo County LCP



Rather, the concern raised by the appeal, although of no benefit to the appellant/applicant, is that the County appears to have approved a land division despite the fact that sustainable sources of water and wastewater treatment are *not* available. The LCP requires adequate sources of water and sewer to be demonstrated *prior to approval* of land divisions, not as a condition of approval. This case, however, differs from typical land divisions, in that the subject parcel was legalized in 1989 by the first CCOC. The County has simply re-issued a CCOC, containing essentially the same requirements for water and sewer as the CCOC that was issued in 1989 and remains in effect. Thus, the County's action does not change the level of potential development and water demand, and therefore does not raise a substantial issue regarding consistency with the public works standards of the LCP.

The appeal also asserts that the County improperly processed an application for a variance or adjustment to the terms of a 1989 CCOC as a new CCOC. This contention does not raise a substantial issue because the County appropriately processed the requested change as an amendment to the 1989 CCOC, which, in accordance with LCP procedures, triggers a new CCOC. Moreover, irrespective of the type of procedure used to evaluate the appellant's requests, the same conclusion is reached. That is, that the appellant's desire to be obtain clearance to apply for a building permit without a will serve letter from the local service district is neither within the Commission's jurisdiction, nor consistent with LCP standards for development.

The appeal also challenges the terms of the 1989 CCOC, among other ways, by questioning whether the appropriate standards were applied at the time it was issued. The timeframe for such challenges has long since passed. Contentions that the 1989 CCOC was improperly processed are not valid grounds for appeal, and do not raise a substantial issue regarding the County's action on the current application.

Finally, the appeal asserts that the County and CCSD ordinances and regulations being used to manage growth in Cambria represent a taking of his property, and violations of equal protection, due process, and the rules governing assessments. The appellant's broad challenges to the legality of the ordinances and regulations implemented by the County and the CCSD are beyond the scope of this review, which is limited to issues of LCP consistency. The appellant is one of over 300 Cambria vacant lot owners who have filed "Allocation to Build Requests" with the County since the 1990 closure of the CCSD waiting lists. There are currently 666 property owners desiring to build a single-family residence on the CCSD water waiting list. There are no unique circumstances, or any legal or justifiable basis, for the Commission to grant the applicant's request for special treatment. Therefore, the appeal does not raise a substantial issue regarding LCP compliance.



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### **Exhibits**

Exhibit 1: Location and Parcel Maps

Exhibit 2: SLO County Findings and Conditions of Approval

Exhibit 3: Contentions of Appeal

## **I. Appeal of San Luis Obispo County Decision**

### **A. San Luis Obispo County Action**

On October 24, 2003, the San Luis Obispo County received an application for a variance or adjustment to the terms of CCOC No. C1989-007. The County determined that the request to obtain an exemption from the terms of the CCOC could not be processed as a variance, and therefore processed the application as a request for a Modification or an Adjustment to the requirements of the recorded CCOC. The San Luis Obispo County Subdivision Review Board (SRB) acted on this request by approving a new CCOC (No.C2003-388) to replace CCOC C1989-007 on May 3, 2004. The applicant appealed that decision to the San Luis Obispo County Board of Supervisors, who denied the appeal and upheld the decision of the SRB on June 22, 2004. The locally adopted findings and conditions of approval for CCOC C2003-388 are attached to this report as Exhibit 2.

### **B. Appeal Procedures**

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300



feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. In addition, Section 23.01.043 of the San Luis Obispo County certified LCP states that developments approved within Sensitive Resource Areas (SRAs), such as environmentally sensitive habitats designated by the LCP. This project is appealable because the CCOC is not a principally permitted use, and because the property that is the subject of the CCOC is located in an area mapped as terrestrial habitat (a type of SRA) designated by the LCP.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. The property that is the subject of the CCOC is not located between the first public road and the sea and thus, this additional finding does not need to be made in a de novo review of this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

### **C. Summary of Appellant's Contentions**

The 30-page appeal is attached to this report as Exhibit 3. In summary, the appellant contends:

1. The County's approval of a CCOC without water or sewer service is a violation of the Health And Safety Code, Subdivision Map Act, LCP, and Code of Regulations of the State of California.
2. Conditions 1 and 2 are inconsistent with the LCP, SLO General Plan, and state regulations because they implement ordinances that came into effect after the first condition date of Conditional certificate of Compliance C1989-007.
3. Condition 2 cannot be met because a construction building permit allocation can never be issued by the County pursuant to Title 26 of the county code.
4. The County's decision does not assure sustainable new development as required by Public Works Policy 1, Coastal Zone Land Use Ordinance (CZLUO) Section 23.04.030, and Section 21.03.010 of



## Title 21

5. The application was for a grant of variance to the conditions imposed the CCOC issued in 1989, not for a new CCOC.
6. In approving the CCOC in 1989, the County determined that there ia adequate water and sewer capacities to serve the parcels.
7. Lots 19 and 20 were not a part of the violation that triggers the need for a conditional COC, which involved deeding a five-foot strip of the southerly boundary of Lot 21 to the owner of Lot 22 in 1963.
8. The requirements of the new CCOC, requiring the applicant to obtain water and sewer service from the CCSD, are more onerous than the terms of the 1989 CCOC, which, prior to the adoption of Title 26 by the County, could have been met by applying for placement on the allocation wait lists.
9. Condition 1 and 2 are unreasonable and are not feasible pursuant to Pursuant to Public Resources Code Section 30108, 30010, and 30607, because the applicant is unable to obtain a water connection or an intent to serve letter.
10. The CCSD's determination that the property is not eligible for water has taken away the applicant's development rights. By not being able to obtain water or sewer service from the district, the applicant is unable to apply for building permits and land use permits by the LCP. The property is required by the LCP, CCSD regulations, the County Health and Safety Code, and Section 713 of Title 24 of the California Code of Regulations to obtain water and sewer service from the CCSD.
11. The County Health Officer stated that he would not have approved the conditions pursuant to Section 21.03.010 if he had seen the CCSD's response to the project referral.
12. The CCSD was required to adopt Ordinance 14-90 to comply with County Ordinance 2477, which implements Title 26 (Growth Management Ordinance). Contrary to the County and the Commission's positions that Title 26 is not a part of the LCP, Title 26 is imbedded within the LCP because new development must comply with its requirements, and because Title 23 (Coastal Zone Land Use Ordinance) and Title 19 (Building and Construction), are included by reference as part of Title 26.
13. The County finding that there is no authority to request a variance from Title 26, because Title 26 is not a part of the Coastal Zone Land Use Ordinance is false and self-serving. The applicant requested a variance to the conditions of CCOC C1989-007, and a determination by the County of substantial conformance with the CCOC pursuant to Section 21.04.040, based upon his inability and hardship in obtaining the will serve letters required pursuant to Section 23.04.430 of the CZLUO. The request for a variance was fraudulently altered by the County, without the appellant's consent, to an application for a new certificate of compliance. The applicant has a right to seek a variance as administrative remedy. The County has circumvented this constitutional right in order to keep the



applicant from meeting the threshold to seek a taking of private property in court.

14. The County has failed to respond to issues raised by the appellant regarding the legality of Title 26. Title 26 establishes the process for allotting construction permits, and, as applied to Cambria, requires such allocations to be issued in accordance with the provisions of CCSD's wait list, which is frozen by the terms of Title 26. The provisions of Title 26 constitutes a building restriction for any property not on the CCSD's wait list, and therefore is a violation of the Equal Protection provision of the Constitution of the State of California. It is the opportunity to build a project that is precluded and debarred by Section 26.01.070 of title 26 and Section 8.04/070 of the CSD compliance ordinance to SLO County Ordinance No. 2477.
15. The State Division of Water Rights would not approve of the selling of wait list positions, and the transferring of water from other parcels, because the water permit for the CCSD is only an appropriative right to pump water owned by the State
16. The conditions of the 1989 CCOC cannot be amended because the CCOC was issued in 1989, and the Public Health Department will not accept an intent to serve letter from the CCSD to satisfy the original conditions.
17. The provisions of CCSD ordinance 8.04.080 closed the waiting list for residential development in 1990. This violates the due process provision for district members who are precluded from the water and sewer allocation list. The provisions of this ordinance do not provide any basis for future access to the waiting list for residential development. As such, the CSD ordinance eliminates all future development of appellants property. This is a taking of private property by the government pursuant to a building restriction that is definite, punitive, and goes too far by overregulation. It is also a breach of benefit unit assessment contracts.
18. The applicant's request for a determination of substantial conformance with the 1989 CCOC is supported by the findings of the SRB's approval and the Board of Supervisor's consent, which established that there were adequate water and sewer capacities available to serve the property, as required by Public Works Policy 1. The appellant has provided proof that there are sewer and water mains fronting and abutting the site.
19. The installation and upgrade of water and sewer pipelines was paid for by the proceeds of Cambria Assessment Districts 01 and 02 funded by the Municipal Bond Act of 1913 and 1915 pursuant to the Streets and Highway Code of the State of California. District members within the boundaries of the original assessment districts have grandfathered rights to water and sewer pursuant to Resolution 76-753 of the Board of Supervisors and Resolution 76-8 of the Local Agency Formation Commission.
20. Appellant seeks the approval and determination from the Commission that CCOC 1989-007 is in substantial conformance with the provisions of Section 21.04.040, order the County to issue a certificate of compliance to the subject property, and instruct the CCSD to issue an intent to serve letter in order for the County to issue an authorization to file a construction permit.



21. The limitations on water withdrawals established by coastal development permits issued to the CCSD by the Coastal Commission, and the restrictions on future development established by the LCP to address concerns regarding the adequacy of local water supplies, are inconsistent with the State of California Health and Safety Code requirements that public works facilities be designed to accommodate the existing project plan and buildout of the service area.
22. It is the fault of the County that the water and sewer system was designed poorly and cannot serve the areas eligible for urban services.
23. The wastewater treatment plant has been expanded by permit to 1.5 mpd drywater average, and can be expanded to 2.5 mpd drywater average.
24. The CCSD has not completed the three performance standards regarding further water withdrawals from Santa Rosa and San Simeon Creeks established by the suggested modifications to the North Coast Update adopted by the Commission in 1998, which were never accepted by the County.
25. The Periodic Review adopted by the Coastal Commission in 2001 states that substantial progress has been made by the County and the CCSD on achieving implementation of a buildout reduction plan for Cambria. Given the fact that the lot reduction plan continues to be discussed, the appellant believes that the CCC was referring to Title 26 (San Luis Obispo County's Growth Management Ordinance) and CCSD Ordinance 8.04.070 (which closed the CCSD's water and sewer waiting lists), when it adopted this statement. These are punitive measures that place a disparate impact of the restriction, allocates unequally the benefits and burdens of people of same rights, and provides a substantial impairment of existing contracts by modifying one parties contractual rights to the benefit of another within the same class or standing.
26. By declaring a water emergency under State Water Code Section 354, the CCSD must make immediate strides to eliminate the emergency, which would include solving the water shortage emergency for the complete urban services line/urban reserve line, and not just those who are on CCSD wait list.
27. The CCSD has not exceeded the threshold for an emergency because they have not been close to extracting the maximum amount of water that are allowed to withdraw from Santa Rosa and San Simeon Creeks.
28. The CCSD has not accounted for the additional water supplies it has obtained as a result of settlement agreements and water diversions related to MTBE contamination in Santa Rosa Creek.
29. The County refuses to certify the Level of Severity as required by the LCP and the Resource Management System (RMS). San Luis Obispo County has never implemented the requires steps and conditions for a Level of Services of 2 or 3 pursuant to the LCP's Resource Management System.
30. The only purpose for Title 26 was to implement general provisions for the issuance of construction permit allocations and construction permits based on the provisions of Growth Management





Ordinance No. 2477.

31. The County's action is a taking by regulation.

## **II. Recommended Motion and Resolution**

**MOTION:** I move that the Commission determine that Appeal No. A-3-SLO-04-048 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

### **STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:**

Staff recommends a YES vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

### **RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:**

The Commission finds that Appeal No. A-3-SLO-04-048 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

## **III. Recommended Findings and Declarations**

Note: numbers of appeal contentions correspond to numbering in Section I.C of this report (Summary of Appellant's Contentions).

### **A. Public Service Capacities**

#### **1. Appellant's Contentions**

The following contentions assert that the County's action is inconsistent with LCP requirements relevant to the provision of public services for new development:

1. The County's approval of a CCOC without water or sewer service is a violation of the Health And Safety Code, Subdivision Map Act, LCP, and Code of Regulations of the State of California.
4. The County's decision does not assure sustainable new development as required by Public Works Policy 1, Coastal Zone Land Use Ordinance (CZLUO) Section 23.04.430, and Section 21.03.010 of Title 21.



6. In approving the CCOC in 1989, the County determined that there adequate water and sewer capacities to serve the parcels.
18. The applicant's request for a determination of substantial conformance with the 1989 CCOC is supported by the findings of the SRB's approval and the Board of Supervisor's consent, which established that there were adequate water and sewer capacities available to serve the property, as required by Public Works Policy 1. The appellant has provided proof that there are sewer and water mains fronting and abutting the site.
19. The installation and upgrade of water and sewer pipelines was paid for by the proceeds of Cambria Assessment Districts 01 and 02 funded by the Municipal Bond Act of 1913 and 1915 pursuant to the Streets and Highway Code of the State of California. District members within the boundaries of the original assessment districts have grandfathered rights to water and sewer pursuant to Resolution 76-753 of the Board of Supervisors and Resolution 76-8 of the Local Agency Formation Commission.
20. Appellant seeks the approval and determination from the Commission that CCOC 1989-007 is in substantial conformance with the provisions of Section 21.04.040, order to County to issue a certificate of compliance to the subject property, and instruct the CCSD to issue an intent to serve letter in order for the County to issue an authorization to file a construction permit.
23. The wastewater treatment plant has been expanded by permit to 1.5 mpd drywater average, and can be expanded to 2.5 mpd drywater average.
26. By declaring a water emergency under State Water Code Section 354, the CCSD must make immediate strides to eliminate the emergency, which would include solving the water shortage emergency for the complete urban services line/urban reserve line, and not just those who are on CCSD wait list.
27. The CCSD has not exceeded thee threshold for an emergency because they have not been close to extracting the maximum amount of water that are allowed to withdraw from Santa Rosa and San Simeon Creeks.
28. The CCSD has not accounted for the additional water supplies it has obtained as a result of settlement agreements and water diversions related to MTBE contamination in Santa Rosa Creek.
29. The County refuses to certify the Level of Severity as required by the LCP and the Resource Management System (RMS). San Luis Obispo County has never implemented the requires steps and conditions for a Level of Services of 2 or 3 pursuant to the LCP's Resource Management System.



**2. Applicable Policies**

Public Works Policy 1 states:

New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable. Permitted development outside the urban services line shall be allowed only if it can be served by adequate private on-site water and waste disposal systems.

The applicant shall assume responsibility in accordance with county ordinances or the rules and regulations of the applicable service district or other providers of services for costs of service extensions or improvements that are required as a result of the project. Lack of proper arrangements for guaranteeing service is grounds for denial of the project or reduction of the density that could otherwise be approved consistent with available resources. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.021C OF THE CZLUO.]

Section 23.04.021C of the CZLUO states:

Overriding land division requirements. All applications for land division within the Coastal Zone (except condominium conversion) shall satisfy the following requirements, as applicable, in addition to all applicable provisions of Sections 23.04.024 through 23.04.036. In the event of any conflict between the provisions of this section and those of Sections 23.04.024 through 23.04.036, this section shall prevail.

- (1) Water and sewer capacities - urban areas: In communities with limited water or sewage disposal service capacity as defined by Resource Management System alert level II or III:
  - (i) Within an urban services line, new land divisions shall not be approved unless the approval body first finds that sufficient water and sewage disposal capacities are available to accommodate both existing development and development that would be allowed on presently vacant parcels.

...

Section 23.04.430 of the CZLUO states:

A land use permit for new development that requires water or disposal of sewage shall



not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as provided by this section. Subsections a. and b. of this section give priority to infilling development within the urban service line over development proposed between the USL and URL. In communities with limited water and sewage disposal service capacities as defined by Resource Management System alert levels II or III:

a. A land use permit for development to be located between an urban services line and urban reserve line shall not be approved unless the approval body first finds that the capacities of available water supply and sewage disposal services are sufficient to accommodate both existing development, and allowed development on presently vacant parcels within the urban services line.

b. Development outside the urban services line shall be approved only if it can be served by adequate on site water and sewage disposal systems, except that development of a single family dwelling on an existing parcel may connect to a community water system if such service exists adjacent to the subject parcel and lateral connection can be accomplished without trunk line extension.

Section 21. 03.010 states:

The planning commission and the subdivision review board, as the advisory agency, shall not approve a tentative tract map or tentative parcel map unless it determines that all of the following criteria are satisfied: ....

### **3. Analysis**

Appeal contentions 1, and 4 assert that the County's approval of the CCOC violates the requirements of LCP, including Public Works Policy 1 and Implementing Ordinances 23.04.030 and 21.030.010, by approving a land division without water and sewer services. Other contentions indicate that the appellant believes public services *are* available and must be provided. The appeal therefore appears to argue that the certificate of compliance should not be conditioned to require evidence that the community services district will provide water and sewer service. Indeed, as discussed later in the analysis of the appellant's procedural contentions, the appellant has requested that the Commission take action to eliminate this step, and instead instruct the CCSO to issue an intent to serve letter (see Contention 20 in summary, paragraph 4, page 12 of appeal).

In support of the position that water and sewer services are and must be made available, the appeal alleges:

- a. **The County previously determined that public services are available when it issued a CCOC for the three lots in 1989. (Contentions 6 and 18.)**

**Response:** This argument does not account for the fact that the conditions of the 1989 CCOC that



requires evidence of public service availability before building permits can be issued. In contrast to the appellant's assertions, these conditions indicate that the County could **not** determine that adequate public services were available in 1989, and therefore conditioned the CCOC to ensure that this issue would be addressed prior to residential development.

The re-issuance of a similarly conditioned CCOC does not raise a substantial issue regarding public service availability because the development potential of the property remains the same; no residential development may occur until the availability of public services can be documented. This approach is consistent with the intent of Public Works Policy 1.

**b. The availability of public services is demonstrated by the presence of water and sewer mains fronting the property. (Contention 18.)**

**Response:** The presence of a pipeline does not equate to the availability of water

**c. Public services must be made available because the property has been assessed to receive such services. (Contention 19.)**

**Response:** Service District assessments do not have a direct bearing on the analysis of available public service capacities required by the LCP. The levying of an assessment by a service district does not obviate the need for new development to demonstrate that adequate services are available.

**d. The wastewater treatment plant has been expanded by permit to 1.5 mpd drywater average, and can be expanded to 2.5 mpd drywater average. (Contention 23)**

**Response:** While there may be wastewater treatment capacity to serve the appellant's property, it is clear that water service is not available, as discussed further below. The potential availability of one needed public service does not imply that all needed services are available.

**e. The CCSD's declaration of a water emergency necessitates that immediate steps be taken to address the water shortage. (Contention 26)**

**Response:** The CCSD's responsibilities to resolve the declared emergency pursuant to the water code are beyond the scope of this appeal. To the degree this contention implies that the emergency declaration will result in an imminent solution to the water shortage, it is inappropriate to rely on unknown future actions as an effective means of compliance with Public Works Policy 1.

**f. The CCSD has inappropriately declared a water emergency because data from the State Water Board indicate that the CCSD is not withdrawing the amount of water the State Water Board allows. (Contention 27)**

**Response:** The fact that the CCSD is not withdrawing the maximum amount of water allowed by the State Water Board does not invalidate the CCSD's declaration of a water emergency or effectively demonstrate the availability of a sustainable water supply. The Commission has previously found that withdrawing the maximum amount of water allowed by these allocations poses significant adverse



impacts to the environmentally sensitive habitats supported by Santa Rosa and San Simeon Creeks.<sup>3</sup>

**g. Additional sources of water have been obtained in response to MTBE contamination. (Contention 28.)**

**Response:** No evidence has been provided to demonstrate that the methods used to resolve MTBE contamination issues in Santa Rosa creek have provided a sustainable source of water for new development. The objective of these is efforts to protect existing water supplies, not to identify a source of water for new development.

**h. The County has not certified a Level of Severity of 2 or 3 pursuant to the LCP resource Management System (RMS). (Contention 29.)**

**Response:** As detailed by the Coastal Commission's 2001 Periodic Review of the SLO LCP, the RMS evaluations for Cambria completed by the County have failed to provide an effective means of addressing the areas critical water supply issue. The fact that there has been disagreement regarding the severity of the water supply situation in Cambria does not provide the evidence of adequate public services required by Public Works Policy 1.

Overall, the appellant's position that water is available directly conflicts with the many analyses conducted by this Commission. The Commission has consistently expressed serious concern about the impacts of withdrawals from Santa Rosa and San Simeon Creeks. As discussed in the Commission's actions on appeals (e.g., single family residences and subdivisions), LCP amendments (e.g., 1998 North Coastal Area Plan Update), and LCP Implementation Reviews (i.e., 2001 Periodic Review), it is the position of the Commission that new development that places additional demands on the water supply should not be approved until the coastal resource impacts of existing extractions are effectively addressed. The appeal does not provide any new information, or a reasonable LCP basis, to justify approval of the requested variance or adjustment to the regulations requiring evidence of water and sewer service, which are essential to the protection of riparian habitats, wetlands, coastal agriculture, and priority uses

With respect to the appeal's references to LCP Implementing Ordinances 23.04.030 and 21.030.010, it is noted that these sections of the LCP apply the issuance of a land use permit (Section 23.04.430) and approval of a tentative tract map or tentative parcel map (Sections 21.03.010). Such actions are distinct from County actions on a CCOC. Public Works Policy 1 and CZLUO Section 23.04.021C are the LCP standards for water and sewer service most directly applicable to the issuance of CCOC's. These requirements have been appropriately addressed by the terms of the County's approval, given the fact that, as conditioned, the CCOC does not increase potential development densities or demands for public services.

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<sup>3</sup> E.g., findings regarding the North Coast Area Plan Update proposed by San Luis Obispo County in 1989 and findings contained in the Commission's Periodic Review of the San Luis Obispo County LCP



#### **4. Conclusion**

In contrast to the appellant's position that public services are available, the Commission has consistently expressed concern that the water demand in Cambria exceeds the levels of withdrawals that can be sustained without damage to the riparian resources of Santa Rosa and San Simeon creeks. The appellant is essentially seeking an exemption to the regulatory standards that have been carefully crafted by the CCSD, the County, and the Commission to protect the health and safety of the area's water supply and natural resources, with which all development must comply.

The issue of concern indirectly raised by the appeal is that the County has approved a land division despite the fact that sustainable sources of water and wastewater treatment are **not** available. In this case, the County has approved a **revised** CCOC (as opposed to a new land division) that contains essentially the same requirements for water and sewer as the CCOC issued in 1989. The 1989 CCOC was not challenged and legitimized the parcel at that time. Thus, the County's action does not result in a change in potential development densities or affect levels of water and sewer service demand. As a result, the revised CCOC does not raise a substantial issue regarding consistency with the public works standards of the LCP cited by the appeal.

### **B. Coastal Development Permit Procedures**

#### **1. Appellant's Contentions**

The appeal contends that the County has improperly processed both the 1989 CCOC, as well as the appellant's application, as follows:

2. Conditions 1 and 2 are inconsistent with the LCP, SLO General Plan, and state regulations because they implement ordinances that came into effect after the first condition date of Conditional certificate of Compliance C1989-007.

5. The application was for a grant of variance to the conditions imposed the CCOC issued in 1989, not for a new CCOC.

7. Lots 19 and 20 were not a part of the violation that triggers the need for a conditional CCOC, which involved deeding a five-foot strip of the southerly boundary of Lot 21 to the owner of Lot 22 in 1963.

13. The County finding that there is no authority to request a variance from Title 26, because Title 26 is not a part of the Coastal Zone Land Use Ordinance is false and self-serving. The applicant requested a variance to the conditions of CCOC C1989-007, and a determination by the County of substantial conformance with the CCOC pursuant to Section 21.04.040, based upon his inability and hardship in obtaining the will serve letters required pursuant to Section 23.04.430 of the CZLUO. The request for a variance was fraudulently altered by the County, without the appellant's consent, to an application for a new certificate of compliance. The applicant has a right to seek a variance as administrative remedy. The County has circumvented this constitutional right in order to keep the applicant from meeting the



threshold to seek a taking of private property in court.

16. The conditions of the 1989 CCOC cannot be amended because the CCOC was issued in 1989, and the Public Health Department will not accept an intent to serve letter from the CCSD to satisfy the original conditions.

20. Appellant seeks the approval and determination from the Commission that CCOC 1989-007 is in substantial conformance with the provisions of Section 21.04.040, order to County to issue a certificate of compliance to the subject property, and instruct the CCSD to issue an intent to serve letter in order for the County to issue an authorization to file a construction permit.

## **2. Applicable Policies**

Section 23.010.030e(2) of the CZLUO addresses the applicability of the CZLUO to permits approved prior to its effective date as follows:

Completion of existing uses: Nothing in the title shall require any change in the plans, construction or approved use of a building or structure for which a permit has been issued before the effective date of this title or any amendment to the Land Use Element/Local Coastal Plan or this title which changes allowable uses of land, land use permit requirements or other applicable provisions of this title, as follows:

(i) Coastal Development Permit. Where construction or establishment of the use has not been commenced or completed as of the effective date of this title, provided the coastal development permit required by the Coastal Act has been obtained or the proposed development was subject to a categorical exclusion or other exemption from the permit requirements of the Coastal Act.

(ii) Building Permit. Construction is commenced and substantial site work (Section 23.02.042) has been completed or the time period for construction of the proposed development has not yet expired pursuant to the terms of a valid county permit.

Procedures for interpreting the content or application of the CZLUO are contained in Section 23.01.041e, which states:

- e. Procedure for interpretation: If questions arise from persons or bodies charged with administering this title about its content or application, the Planning Commission shall ascertain all pertinent facts, and by resolution set forth its findings and interpretation. The resolution is to be forwarded to the Board of Supervisors, which is to consider the findings and interpretation of the Planning Commission and render a final decision and interpretation on the matter. Thereafter the interpretation of the Board of Supervisors shall prevail.

LCP provisions for obtaining adjustments to the regulations for land divisions is found in Section





21.03.020, which states:

- (a) In performing its responsibilities pursuant to this title, the planning commission and the subdivision review board may consider, and in cases where undue hardship would result from the application of the regulations established in this title, approve adjustments or conditional adjustments to these regulations.
- (b) Requests for adjustments to the standards set forth in Section 21.03.010 of this title shall be submitted in writing to the planning department at the time the applicant submits the application for land division. If the request is for an adjustment to the requirements of the standard improvement specifications and drawings or for required offers of dedication, the adjustment may be requested at the time the applicant submits the application for land division or may be requested after the tentative parcel or tract map has been approved but before recordation of the parcel or tract map. When the regulation from which the applicant is seeking relief is prescribed in Title 22 or Title 23 of this code, the applicant shall seek relief pursuant to that title.
- (c) Neither the planning commission nor the subdivision review board shall approve any adjustment request to the standards set forth in Section 21.03.010 of this title or for required offers of dedication unless it makes each of the following findings:
  - (1) That there special circumstances or conditions affecting the subdivision; and
  - (2) That the granting of the adjustment will not have a material adverse effect upon the health or safety of persons residing or working in the neighborhood of the subdivision; and
  - (3) That the granting of the adjustment will not be materially detrimental to the public welfare or injurious to other property or improvements in the neighborhood of the subdivision.
- (d) If the request is for an adjustment to the requirements of the standard improvement specifications and drawings, neither the planning commission nor the subdivision review board shall approve the adjustment unless it makes each of the following findings:
  - (1) That there are special circumstances or conditions affecting the property being subdivided; and
  - (2) That the granting of the adjustment will not be detrimental to the traffic circulation system, the public utility and storm drainage systems, or vehicular or pedestrian safety; and
  - (3) That the granting of the adjustment will not result in any unreasonable costs in the



maintenance of the improvement by the entity charged with such maintenance responsibility; and

- (4) That the granting of the adjustment will not be detrimental to, nor degrade, any portion of the improvement work involved in the subdivision.

Section 21.04.040 addresses the relationship between land division review procedures and building and land use permits as follows:

21.04.040 - Building and land use permits.

- (a) Compliance with this title is a condition precedent to the issuance of a building permit or land use permit by any person authorized to issue such permits in the unincorporated territory of the county.
- (b) This title shall be deemed complied with if the parcel map or tract map is in substantial compliance with the conditions of approval of the tentative parcel map or tentative tract map approved by the subdivision review board or planning commission and the parcel map or tract map satisfies the requirements of Section 21.03.010 of this title.

The following rules regarding the use of variances are established by Section 23.01.045 of the CZLUO:

A variance from the strict application of the requirements of this title may be requested as provided by this section. For the purposes of this title, a variance is a land use permit.

a. Limitations on the use of a variance. A variance shall not be used to:

- (1) Reduce the minimum parcel size required for a new land division by Chapters 23.04 or 23.08 of this title below the range of parcel sizes specified by Chapter 6, Part I of the Land Use Element for the land use category in which the subject site is located; or
- (2) Authorize land uses other than those normally identified as allowable in a particular land use category by Coastal Table O, Part I of the Land Use Element, planning area standards of the Land Use Element, Chapter 22.08 or other chapter of this title, pursuant to Government Code Section 65906.

- b. Application: A written application for variance shall be filed with the Planning Department on the form provided, accompanied by all graphic information required for Plot Plans by Section 23.02.030b (Plot Plan Content), and any additional information necessary to explain the request. Acceptance of the application is subject to Section 23.01.033a (Consistency with the Land Use Element Required), and 23.02.022 (Determination of Completeness).



- c. Notice and hearing. After acceptance of a variance application and completion of a staff report, the Planning Commission will conduct a public hearing on the variance request. The notice and scheduling of the hearing shall be pursuant to Section 23.01.060 (Public Hearing).
- d. Action on a variance. The Planning Commission shall approve, approve subject to conditions, or disapprove a variance as set forth in this subsection. Such decision may be appealed to the Board of Supervisors as set forth in Section 23.01.042 (Appeal).
  - (1) Findings. Approval or conditional approval may be granted only when the Planning Commission first determines that the variance satisfies the criteria set forth in Government Code Section 65906 by finding that:
    - (i) The variance authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and land use category in which such property is situation; and
    - (ii) There are special circumstances applicable to the property, related only to size, shape, topography, location, or surroundings, and because of these circumstances, the strict application of this title would deprive the property of privileges enjoyed by other property in the vicinity that is in the same land use category; and
    - (iii) The variance does not authorize a use that is not otherwise authorized in the land use category; and
    - (iv) The variance is consistent with the provisions of the Local Coastal Program; and
    - (v) The granting of such application does not, under the circumstances and conditions applied in the particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.
  - (2) Conditions of approval. In approving an application for variance, such conditions shall be adopted as are deemed necessary to enable making the findings set forth in Section 23.01.045d(1).
  - (3) Notice of Final Action. Where the variance request is appealable to the Coastal Commission pursuant to Section 23.01.043, a Notice of Final Action on the variance shall be provided as set forth in Section 23.02.036d.
- e. Effective date of variance. Except where otherwise provided by Section 23.01.043c



for projects that may be appealed to the Coastal Commission, an approved variance shall become effective for the purposes of construction permit issuance or establishment of a non structural use, on the 15th day after the act of Planning Commission approval; unless an appeal to the Board of Supervisors is filed as set forth in Section 23.01.042.

- f. Time limits and extensions. An approved variance is subject to the time limits, extension criteria and other provisions of Sections 23.02.040 through 23.02.052 of this title.

Section 21.02.020 of the LCP establishes the following rules for processing certificates of compliance:

21.02.020 - Certificates of compliance and conditional certificates of compliance. Certificates of compliance and conditional certificates of compliance are issued under the provisions of Government Code section 66499.35. A certificate of compliance application is filed to request the county to determine as a matter of record whether the real property which is the subject of the application is a legally created parcel which complies with the provisions of the Subdivision Map Act and this title. If the county determines that the parcel of real property is not legally created in compliance with the provisions of the Subdivision Map Act and this title, it shall issue a certificate of compliance or a conditional certificate of compliance in accordance with the provisions of Government Code section 66499.35(b). If the applicant is the original subdivider of the subdivision which was not in compliance with the law, conditions may be imposed which would be applicable to a current division of the property. If the applicant is a subsequent purchaser from the subdivider of the subdivision which was not in compliance with the law, conditions may be imposed which would have been applicable at the time the applicant acquired his or her interest in the property.

When a certificate of compliance or a conditional certificate of compliance is requested, application preparation and processing shall include the following:

- (a) Application. Certificate of compliance and conditional certificate of compliance applications shall include four copies of a completed application form as required by the planning department in addition to the information listed in subsection (b) below.
- (b) Content. Except as otherwise provided, certificate of compliance and conditional certificate of compliance applications shall include all of the following:
  - (1) Chain of title. Provide legible copies of all deeds affecting the property beginning with the deed that described the property prior to its current configuration from that time to the present, unless the parcels were created through a recorded tract map, parcel map, or official map or unless waived by the planning director. A typed copy of all handwritten deeds shall be prepared by the applicant along with all copies of handwritten deeds and copies of earlier deeds in the chain of title or



deeds describing adjacent property shall be submitted by the applicant if requested by the planning director. [Amended 1993, Ord. 2602]

- (2) Preliminary title report. Two copies of a preliminary title report concerning the property, showing current property owners, and which is not more than six months old.
  - (3) Other information. Any maps or other supporting documents to support and clarify when and how the parcel in question was created.
  - (4) Coastal zone. For conditional certificates of compliance within the coastal zone, include two copies of a list of names and addresses of all residents and property owners within one hundred feet of the exterior boundaries of property. The names and addresses shall be typed on gummed labels, and submitted to the planning department. [Added 1992, Ord 2582]
- (c) Review and approval. The planning director is delegated the authority to approve and issue certificates of compliance. The subdivision review board is delegated the authority to approve and issue conditional certificates of compliance. The decision of the planning director or subdivision review board shall be final unless appealed to the board of supervisors pursuant to Section 21.04.020 of this title. [Amended 1993, Ord. 2602]
- (1) Staff report. The planning department shall prepare a staff report for each application that includes the following:
    - (i) A description of the history of the creation of the parcel;
    - (ii) A reference to applicable state law and county ordinances and regulations; and
    - (iii) In the case of a conditional certificate of compliance, recommend appropriate conditions to be imposed.
  - (2) Notice and hearing. Except for notice to the applicant prior to action by the planning director, notice of hearing is not required to be given for certificates of compliance under Government Code section 66499.35(a) because the issuance of such certificates of compliance is ministerial. The planning director shall schedule applications for conditional certificates of compliance under Government Code section 66499.35(b) on the public hearing portion of the subdivision review board agenda. Notice of hearing shall be given pursuant to Section 21.04.010 for all conditional certificates of compliance under Government Code section 66499.35(b); provided, however, for conditional certificates of compliance for properties located within the coastal zone, notice and hearing requirements shall be as set forth in Sections 21.04.010 and 21.08.020 of this title. [Added 1992,



Ord.2582; Amended 1993, Ord. 2602]

- (3) Approvals within the coastal zone. For conditional certificates of compliance applications located within the coastal zone that are appealable to the coastal commission, approval shall not be final until either all appeal periods have expired and no appeal has been filed, or the coastal commission has approved the application. [Added 1992, Ord.2582]
- (d) Recordation. After a decision to issue a certificate of compliance or conditional certificate of compliance becomes final, such certificate or conditional certificate shall be recorded in the office of the county recorder upon payment by the applicant of the required recording fee.

### **3. Analysis**

The appellant contends that his application for a variance or adjustment has been improperly processed as a new CCOC (contentions 5 and 13). The appellant submitted a land use application form to the County requesting a "grant of variance or adjustment of Title 23.04.430 and Title 26.01.070" in order to "complete the certificate of compliance C89-007 as recorded 5/11/89".<sup>4</sup> Appellant asserts that the County revised the application to be a request for a new CCOC without his consent, and thereby denied him due process to a variance proceeding (contention 13).

The first step in identifying the procedures for processing a development application is to identify the type of development being proposed. In this case, the applicant is seeking relief from the conditions of a CCOC issued in 1989 through an exemption to regulations that prevent him from applying for building and land use permits without evidence that water and sewer services will be provided by the local service district. On page 8, paragraph 3 of the appeal, the appellant writes:

The administrative record of this application will reflect that appellant "did" file and "application" for Grant of Variance and/or Adjustment to CCOC C1989-007 based on an inability and undue hardship in obtaining the "will serve" letters as conditioned in the original certificate pursuant to Section 23.04.430 of Title 23.

It is the decision making body, as opposed to applicants, that determine the appropriate procedures for processing permit applications and development requests. CZLUO Section 23.01.041.e assigns the Board of Supervisors the responsibility of resolving differing interpretations of Title 23, including coastal development permit processing. In this case, the Board determined that a variance could not be used to modify a recorded CCOC pursuant to CZLUO Section 23.01.045. The Commission concurs with that determination. The appropriate time to request a variance is concurrently with a development application. Variance procedures are not intended to provide a method for revising previous actions on development applications, or for exempting development from the conditions previously established as

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<sup>4</sup> pages 6 and 8 of application submitted to San Luis Obispo County



part of such actions.

With regard to the request for an *adjustment*, the County found the property does not meet the requirements for such adjustments, established by Section 21.030.010 of the Real Property Division Ordinance. Specifically, the County concluded that there are no special circumstances or conditions affecting the parcel that warrant such an adjustment, and that the granting of an adjustment could have a material effect on the health and safety of the neighborhood and community.

Again, the Commission concurs with the County's determination. All owners of vacant property within the Cambria Urban Area must contend with the constraints to development that are attributable to a limited supply of water. There are 666 property owners desiring to build a single family residence that are on the CCSD's waiting list for water, and over 300 property owners on the County's allocation list. There are no unique circumstances applicable to the appellant's property that would warrant an adjustment to the process being implemented by the County and the CCSD in order to protect the area's water supply and natural resources. The granting of such an adjustment would set a precedent that threatens the public's safety as well as the health and productivity of environmentally sensitive habitats.

Contrary to the appellant's claim that the County "fraudulently altered" the application with the intention of denying him of due process, the record indicates that the County took steps to facilitate the processing of the appellant's requests and provide him with an opportunity for a public hearing. The County could have rejected the variance application, but instead applied appropriate discretion in categorizing the request so that it could be processed in accordance with established county procedures.

As described by the County's findings, the procedure for requesting a modification to the terms of a previously issued CCOC is to apply for a new CCOC. This refutes the appellant's allegation that the CCOC cannot be amended (Contention 16). No substantial issue is raised by the appellant's objection to the County's processing of his request application as a new CCOC rather than a variance or adjustment. Contentions 8 and 16 do not raise a substantial issue, because, as addressed in the preceding findings, the conditions of the new CCOC appropriately address existing public service constraints.

As an alternative to the variance and/or adjustment originally requested in the appellant's application to the County, the appellant now suggests that the Commission determine that CCOC C1989-007 is in substantial conformance with Section 21.04.040(b) (contentions 13 and 20). The substantial compliance procedures established by Section 21.04.040(b) are applicable to parcel maps and tentative tract maps only, not CCOC's. Even if the ordinance did apply, the appellant would not be eligible to receive such a determination, because he has been unable to document the availability of water, as required in the ordinance's reference to Section 21.03.010.

Finally, appeal contends that the 1989 CCOC was improperly processed. First, the appeal alleges that the ordinances applied to that review came into affect after the first condition date of Conditional Certificate of Compliance C1989-007 (Contention 2). Second, the appeal indicates that only a five-foot strip of one of the three was the subject of the violation that gave rise to the need for a conditional certificate (contention 7). The opportunity to challenge the 1989 certificate has long since expired, and



such challenges do not provide valid grounds for appeal. As discussed above, the correct procedure for re-evaluating these issues is to apply for a new CCOC.

#### **4. Conclusion**

The County has appropriately processed the appellant's request for a variance or adjustment to the requirements established by a 1989 CCOC as an application for a new CCOC. There is no legal basis for the Commission to grant the appellant's request for a variance, adjustment, or substantial conformance determination, nor would it be in the interest of coastal resources or the public's health and welfare to do so. Therefore, the appeal does not raise a substantial issue regarding the procedures used by the County to process the appellant's requests.

### **C. Takings and Equal Protection**

#### **1. Appellant's Contentions**

The following contentions assert that the County's action violates the appellant's constitutional rights:

3. Condition 2 cannot be met because a construction building permit allocation can never be issued by the County pursuant to Title 26 of the county code.
9. Condition 1 and 2 are unreasonable and are not feasible pursuant to Pursuant to Public Resources Code Section 30108, 30010, and 30607, because the applicant is unable to obtain a water connection or an intent to serve letter.
10. The CCSD's determination that the property is not eligible for water has taken away the applicant's development rights. By not being able to obtain water or sewer service from the district, the applicant is unable to apply for building permits and land use permits by the LCP. The property is required by the LCP, CCSD regulations, the County Health and Safety Code, and Section 713 of Title 24 of the California Code of Regulations to obtain water and sewer service from the CCSD.
12. The CCSD was required to adopt Ordinance 14-90 to comply with County Ordinance 2477, which implements Title 26 (Growth Management Ordinance). Contrary to the County and the Commission's positions that Title 26 is not a part of the LCP, Title 26 is imbedded within the LCP because new development must comply with its requirements, and because Title 23 (Coastal Zone Land use Ordinance) and Title 19 (Building and Construction), are included by reference as part of Title 26.
13. ... The applicant has a right to seek a variance as administrative remedy. The County has circumvented this constitutional right in order to keep the applicant from meeting the threshold to seek a taking of private property in court.
14. ... The provisions of Title 26 constitutes a building restriction for any property not on the CCSD's wait list, and therefore is a violation of the Equal Protection provision of the Constitution of the State





of California. It is the opportunity to build a project that is precluded and debarred by Section 26.01.070 of title 26 and Section 8.04/070 of the CSD compliance ordinance to SLO County Ordinance No. 2477.

16. The conditions of the 1989 CCOC cannot be amended because the CCOC was issued in 1989, and the Public Health Department will not accept an intent to serve letter from the CCSD to satisfy the original conditions.
17. The provisions of CCSD ordinance 8.04.080 closed the waiting list for residential development in 1990. This violates the due process provision for district members who are precluded from the water and sewer allocation list. The provisions of this ordinance do not provide any basis for future access to the waiting list for residential development. As such, the CSD ordinance eliminates all future development of appellants property. This is a taking of private property by the government pursuant to a building restriction that is definite, punitive, and goes to far by overregulation. It is also a breach of benefit unit assessment contracts.
25. The Periodic Review adopted by the Coastal Commission in 2001 states that substantial progress has been made by the County and the CCSD on achieving implementation of a buildout reduction plan for Cambria. Given the fact that the lot reduction plan continues to be discussed, the appellant believes that the CCC was referring to Title 26 (San Luis Obispo County's Growth Management Ordinance) and CCSD Ordinance 8.04.070 (which closed the CCSD's water and sewer waiting lists), when it adopted this statement. These are punitive measures that place a disparate impact of the restriction, allocates unequally the benefits and burdens of people of same rights, and provides a substantial impairment of existing contracts by modifying one parties contractual rights to the benefit of another within the same class or standing
30. The only purpose for Title 26 was to implement general provisions for the issuance of construction permit allocations and construction permits based on the provisions of Growth Management Ordinance No. 2477.
31. The County's action is a taking by regulation.

## **2. LCP Provisions**

The LCP Framework for Planning identifies the following general goal of the LCP's Land Use Element:

14. Property Rights - Recognize and protect property rights by:
  - a. Seeking to maintain a balance between the rights of property owners and efforts to plan for the community.
  - b. Not taking property without just compensation.
  - c. Recognizing and protecting the rights of all property owners, individuals and groups to comment and participate in coastal planning and land use



decisions.

### **3. Analysis**

There appear to be two main components to the appellant's allegations regarding takings. First, the appellant implies that he has been placed in a "Catch-22" situation that prevents him from making use of his property (contentions 3, 9, and 16). Second, appellant claims that the ordinances implemented by the County and the CCSD, and the County's action of his application, constitute takings by regulation (contentions 10, 12, 13, 17, and 31).

The appellant's opinion that he will never be able to satisfy the terms of the CCOC requiring evidence of water and water service from the local service provides the basis of his "Catch-22" takings argument. The Commission acknowledges that LCP standards (i.e., Public Works Policy 1 and CZLUO Section 23.04.021C) prohibit residential development until such services are identified, but disagrees that these conditions constitute a takings of private property. Rather, they recognize the natural constraints to development that must be addressed in order to protect the public's health and welfare. The absence of a sustainable source of water is not caused by regulation. If and when additional sources of water can be identified, obtained, approved, and funded (e.g., via the CCSD's on-going pursuit of a desalination plant) the appellant will have an opportunity to pursue an allocation of such water and seek a permit for residential development.

Other broad challenges to the application and legality of the County's Growth Management Ordinance and CCSD Ordinances (i.e., contentions 12, 14, 17, 25, and 30) are beyond the scope of the Commission's LCP jurisdiction. Whether or not the County's Growth Management Ordinance should be considered as part of the LCP (the issue raised by contention 12) is not, in this case, a substantial issue, because Public Works Policy 1 and CZLUO Section 23.04.021 provide adequate support the County's action. In other words, the argument that the County's Growth Management Ordinance is part of the LCP and an illegal taking is rendered moot by the fact that the County's action is appropriately justified by the terms of Public Works Policy 1 and CZLUO Section 23.04.021. Again, the Commission disagrees with the appellant's contention that the application of these LCP standards constitutes a taking of private property, for the reasons identified above.

With respect to the takings claim attributed to the County's processing the application as a new CCOC rather than a variance (contention 13), please refer to the procedures findings above. There is no evidence to support the allegation that the method for processing the application selected by the County was intended to deny, or has the effect of denying, the appellant's opportunity to pursue a takings claim.

Finally, arguments that application of the County's Growth Management Ordinance and Service District resolutions constitute a violation of equal protection requirements (Contentions 12, 14, 17, and 25) are beyond the scope of this appeal and without merit. The CCSD's waiting list was closed in 1990 as a result of the lack of available service capacity. Since that time, the County has created a supplemental process for selecting development allocations if and when the necessary public services are available. This appears to a fair "first come, first serve" approach to allocating limited resources.



**4. Conclusion**

Contentions of the appeal that claim the County's action violates the appellant's constitutional rights do not raise a substantial issue regarding compliance with the LCP goal cited above. The applicant's inability to develop his property at this time is a result of the lack of adequate service capacities, not "over regulation". LCP standards requiring evidence of adequate services are essential to the protection of coastal resources (e.g., riparian habitats) and the public's health and welfare (e.g., water supply, agriculture, fire protection). The County's action recognizes the applicant's ability to pursue a building permit once the availability of the necessary public services can be demonstrated. While this may be a significant constraint to development, it does not preclude development once sustainable sources of the public services can be identified and implemented. Moreover, this constraint was in effect, and a matter of public record, when the appellant acquired the property.<sup>5</sup> Thus, the appeal fails to demonstrate that the appellant has been denied an economic use of his property based on a reasonable expectation.

**D. Other Appeal Contentions**

As noted above, many of the appellant's contentions do not provide valid grounds for appeal under Coastal Act Section 30603. In addition to the contentions so identified and addressed above, the following allegations fall beyond the scope of the Commission's coastal development permit appeal jurisdiction:

8. The requirements of the new CCOC, requiring the applicant to obtain water and sewer service from the CCSD, are more onerous than the terms of the 1989 CCOC, which, prior to the adoption of Title 26 by the County, could have been met by applying for placement on the allocation wait lists.

**Response:** The appellant's comparison of the new CCOC to the 1989 CCOC is not relevant to the question of whether the County's action on the new CCOC is consistent with the LCP.

11. The County Health Officer stated that he would not have approved the conditions pursuant to Section 21.03.010 if he had seen the CCSD's response to the project referral.

**Response:** This contention implies that the County Health Department no longer supports the condition it recommended to the Department of Planning and Building. This claim is not substantiated by the County record or relevant to the review of LCP compliance.

15. The State Division of Water Rights would not approve of the selling of wait list positions, and the transferring of water from other parcels, because the water permit for the CCSD is only an appropriative right to pump water owned by the State.

**Response:** The appellant's personal opinion of what the State Division of Water Rights might say about the selling of wait list positions is conjecture that is not relevant to the Commission's review of LCP

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<sup>5</sup> According to the County record, the restrictions on future development established by the terms of the 1989 CCOC were recorded on May 11, 1989. The appellant first obtained interest in the property on May 30, 1989.



compliance.

21. The limitations on water withdrawals established by coastal development permits issued to the CCSO by the Coastal Commission, and the restrictions on future development established by the LCP to address concerns regarding the adequacy of local water supplies, are inconsistent with the State of California Health and Safety Code requirements that public works facilities be designed to accommodate the existing project plan and buildout of the service area.

**Response:** Alleged conflicts with the California Health and Safety Code do not provide valid grounds for an appeal of a County action on a Coastal Development Permit pursuant to Section 30603 of the Coastal Act. The Commission notes that the time for challenging the limitations on future development of the appellant's property, established by the 1989 CCOC, is long past.

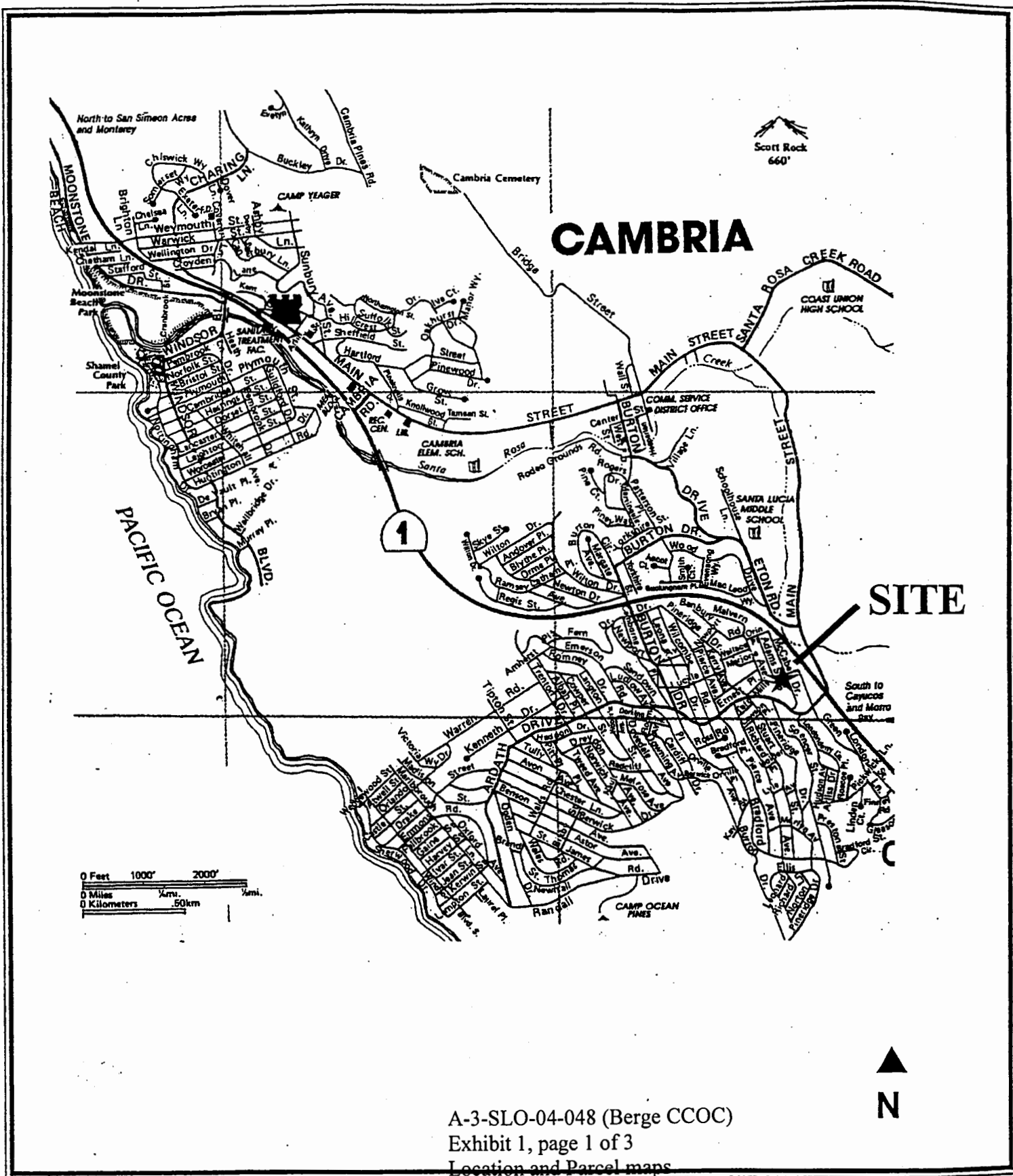
22. It is the fault of the County that the water and sewer system was designed poorly and cannot serve the areas eligible for urban services.

**Response:** Not an issue of LCP compliance.

24. The CCSO has not completed the three performance standards regarding further water withdrawals from Santa Rosa and San Simeon Creeks established by the suggested modifications to the North Coast Update adopted by the Commission in 1998, which were never accepted by the County.

**Response:** As acknowledged in the contention, San Luis Obispo County did not accept the modifications to the 1998 Update of the North Coast Area Plan Update. As a result, these modifications were not incorporated into the LCP, and do not provide a standard of review. Moreover, the requests of the applicant conflict with the premise of these modifications.





Berge

S030135C, C03-0388

County of San Luis Obispo Department of Planning & Building

Vicinity Map

C-7  
C-6







**EXHIBIT A**  
**Findings - C03-0388 (S030135C)**

*Environmental Determination*

- A. The project was found to be exempt from the provisions of the California Environmental Quality Act under the provision of California Code of Regulations, Title 14, Section 15061(b)(3) (General Rule Exemption) because it can be seen with certainty that there is no possibility that the issuance of the conditional certificate of compliance will have a significant effect on the environment.

*Conditional Certificate of Compliance*

- B. The parcel was created February 25, 1963 by deed transfer at a time following the adoption of the County's first lot division ordinance effective October 12, 1960. At that time a map (called a plat map) was required to be approved by the County Subdivision Review Board or Planning Commission to create a parcel or to adjust the boundary between parcels. Therefore, since no such approval was granted, the parcel was not created in compliance with the Subdivision Map Act and local ordinances in effect at the time, which requires a conditional certificate of compliance.
- C. Pursuant to the Subdivision Map Act, the County may impose conditions that require the parcel to comply with the subdivision standards, zoning regulations and general plan standards in effect on May 30, 1989, (the date the land owner acquired his interest in the property).
- D. The subject application is not for a "Variance". A Variance under the Coastal Zone Land Use Ordinance, Section 23.01.045, cannot modify conditions on a recorded Condition Certificate of Compliance.
- E. The property can not meet the required findings under Section 21.03.010 of the Real Property Division for an adjustment:
1. There are no special circumstances or conditions affecting the parcel that support an adjustment.
  2. The granting of an adjustment on water and sewer services may have a material effect upon the health and safety of the neighborhood and the community of Cambria.



### *Coastal Access*

- F. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act, because the project is not adjacent to the coast, is not located between the ocean and the first public road, and the project will not inhibit access to the coastal waters and recreation areas.

### *Miscellaneous*

- G. An application for a variance from the provisions of Title 23 of the San Luis Obispo County Code, the County's zoning ordinance, could not be approved because the conditions of approval of Conditional Certificate of Compliance C89-007 have not been satisfied; specifically, a will serve letter has not been submitted by the Cambria Community Services District agreeing to provide water service and sewer service to the applicant's property. As a result, conditions 1, 2, 6, and 7 of Conditional Certificate of Compliance C89-007 have not been satisfied and are independent grounds for disapproval of variance application if one were filed.
- H. In order to modify or adjust the conditions of approval of the previously recorded Conditional Certificate of Compliance C89-007, an application must be filed by the present landowner or vendee for a new conditional certificate of compliance requesting modifications, adjustments, or changes to the previously recorded Conditional Certificate of Compliance. The new conditional certificate of compliance, with its revised conditions, will supersede and replace the previously recorded Conditional Certificate of Compliance C89-007, which was recorded on May 11, 1989. The time period within which to challenge and review the May 11, 1989 recorded Conditional Certificate of Compliance has run and its provisions are final unless superseded and replaced by a new conditional certificate of compliance application filed by the current landowner or vendee and approved by the County.
- I. Title 26 of the San Luis Obispo County Code is not part of the County's Coastal Zone Land Use Ordinance, its zoning ordinance. As a result, there is no authority to request or approve an application for a variance from the provisions of Title 26.

**EXHIBIT B**  
**Conditions of Approval - C03-0388 (S030135C)**

1. Community water, sewer service and fire protection shall be obtained from Cambria Community Services District.
2. A final will serve (intent to serve) letter, for water and sewer, shall be obtained from Cambria Community Services District in conjunction with your Selection of your Allocation to Build, Request No. 312-21057.
3. Prior to any development, a Minor Use Permit shall be submitted to the County Planning and Building Department for review and approval and shall comply fully with Lodge Hill standards.
4. Development of the property must be as a single building "site" as defined in the Coastal Zone Land Use Ordinance, Chapter 11.

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JUL 27 2004

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### APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

#### SECTION I. Appellant(s)

Name: Gregg Allen Berge

Mailing Address: 40735 Pocona Place

City: Murrieta, CA 92562

Zip Code: (951)-

Phone: 696-9772

#### SECTION II. Decision Being Appealed

1. Name of local/port government:

County of San Luis Obispo Board of Supervisors File No. S030135C/C03-0388

2. Brief description of development being appealed:

Appellant Berge qualifies as "an aggrieved person" pursuant to Section 13111 of Title 14 of the California Code of Regulations and pursuant to Sections 30801, 30513 and 30625 of the Public Resources Code.

Appellant Berge seeks relief from the California Coastal Commission to unreasonable terms and conditions approved by the local government action on "modification" of existing permit C1989-007, pursuant to Section(s) 30607 and 30108 of the Public Resources Code. Appellant Berge contends that the Subdivision Review Board action upheld on appeal by the San Luis Obispo Board of Supervisors, "approved" the Conditional Certificate of Compliance as a land division in the coastal zone without water or sewer services, in violation of the Health and Safety Code, Subdivision Map Act, Local Coastal Plan and Program, and Code of Regulations of the State of California.

Appellant Berge contends that conditions 1 and 2 of the "new" conditional certificate of compliance C03-0388, are not consistent with the certified local coastal program and/or plan, general plan, and Code of Regulations of the State of California, by implementing conditions of ordinances that went into force and effect "after" the required first condition date of Conditional Certificate of Compliance C1989-007. Condition 2 cannot be met in that a construction building permit allocation (No. 312-21057) can never be issued by the County of San Luis Obispo pursuant to Section 26.01.070 of Title 26 of the county code.

Appellant Berge contends that action of the Subdivision Review Board, as upheld by Board of Supervisors, is not consistent with standards of the certified Local Coastal Program and/or plan, to assure sustainable new development based upon the requirements of Public Works Policy 1. As required by Public Works Policy 1, all new development must demonstrate that there is

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sufficient water supply to serve the development.

**Public Works Policy 1: Availability of Service Capacity**

New development (including division of land) "shall" demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within the existing subdivided areas. Prior to permitting "all" new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable...

This policy is implemented by Coastal Zone Land Use Ordinance (CZLUO) Section 23.04.430:

**CZLUO Section 23.04.430- Availability of Water Supply and Sewage Disposal Services**

A land use permit for new development that requires water or disposal of sewage "shall" not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as provided by this section...

Section 21.03.010 of Title 21 requires that "land divisions" within the Coastal Zone of the County of San Luis Obispo, where located within communities with limited water or sewage disposal capacity as defined by Resource Management System alert Level II or III:

(A) Within an urban services line, new subdivisions "shall" not be approved unless the planning commission or Subdivision Review Board first finds that sufficient water and sewage disposal capacities are available to accommodate both existing development and development that would be allowed on presently vacant parcels.

(B) A proposed subdivision between an urban services line and urban reserve line "shall" not be approved unless the planning commission or subdivision review board first finds that sufficient water and sewage disposal service capacities are available to accommodate both existing development within the urban services line and development that would be allowed on presently vacant parcels within the urban services line.

The standards of Title 23 of the county code apply to all new land uses required to have a permit to this title (CZLUO), except:

- (1) Where the standards of Chapters 23.07 or 23.08 conflict with the provisions of this chapter, the provisions of Chapters 23.07 and 23.08 prevail;
- (2) Where planning area standards (Part II of the land use element) conflict with the standards of this chapter, the planning area standard prevail.
- (3) Where policies (Part II of the policy document of the local coastal plan) conflict with the standards of this chapter the policies "shall" prevail.

The Local Coastal Plan means the local coastal program land use plan, which is a portion of the county's local coastal program as certified by the California Coastal Commission. The local coastal plan consists of the policy document, land use element programs and standards (Part II of the LUE) and land use element maps (Part III of the land use element). The local coastal program consists of (a) the local coastal plan, (b) the coastal zone land use ordinance, and (c)

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other implementing actions for the coastal zone of the county which meet the requirements of the California Coastal Act of 1976 as certified by the California Coastal Commission.

No use of land , buildings, division of land or other development "shall" be established, and no application for such use , land division or other permit required pursuant to this title (CZLUO), unless the proposed use or division is determined to be allowable in the land use category where the proposed site is located pursuant to sections (1) to (5) of this section (Section 23.01.033 of Title 23). When an application is accepted for processing pursuant to this section and Section 23.02.020 (applications and procedures) et seq., such application "shall" not be approved unless;

(4) The proposed use of division satisfies any policies, programs and standards contained in the local coastal plan policy document (except for Appendices a, b, and c) that are applied to the site or the proposed development by provisions of Chapters 23.04 or 23.08 or other applicable provision of this title

(5) The proposed use or division satisfies the terms, conditions and other requirements of all implementing regulations adopted as part of the local coastal program including but not limited to any categorical exclusion.

For properties located within the coastal zone of the county, "subdivision development" means lot line adjustments, tentative parcel maps, tentative tract maps, vesting tentative maps, reversion to acreage, determinations that public policy does not necessitate the filing of a parcel map, modificationss of a recorded parcel or tract map, "conditional certificates of compliance under Government Code Section 66499.35(b).

Both the County of San Luis Obispo and the California Coastal Commission do not contest the fact that Conditional Certificate of Compliance C1989-007 was issued pursuant to Government Code Section 66499.35(b), by action of the Subdivision Review Board in May 1989. The original certificate was "not" appealed by the California Coastal Commission. The current existing application pursuant to the this approval process was for Grant of Variance and Adjustment to the original conditions of CCOC C1989-007, that cannot be completed because of the constraints of the building restriction imposed by Section 26.01.070 of Title 26 of the county code and compliance Ordinance 8.04.070 of the Cambria Community Service District.

Appellant Berge contends that the original certificate "could not" have been issued without the factual findings of Public Works Policy 1, pursuant to the requirements of the local coastal program policies. As such, the Cambria Community Services District acting as the responsible agency pursuant to Government Code Section 65933, was required to determine that there were adequate water and sewer capacities available to serve the parcels created by the "land division," prior to the issuance of CCOC C1989-007. The County of San Luis Obispo Department of Planning and Building, acting as "lead agency", was required to seek a determination from the applicable special district with jurisdiction for the approval of water and sewer service for the parcels created prior to the issuance of the approved certificate of compliance. The finality of county action of a decision on an application, cannot be made until all required findings have been adopted, including the specific factual findings supporting the legal conclusions that the proposed development is or is not in conformity with the certified local coastal program and,

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where applicable, with the public access and recreation policies of Chapter 3 of the Coastal Act. As such, the determination of Public Works Policy 1 as implemented by Section 23.04.430 of Title 23, had to be determined as part of the original factual findings of the "issued" conditional certificate of compliance.

It is a major "issue" before this commission that the factual findings of the subdivision review board determined that there were adequate water and sewer disposal capacities to service the parcels created and did not just condition the applicant to "obtain water and sewer from the community service provider and well as the required "intent to serve" letter(s). Failure of the SRB to complete the required due process is not the responsibility or fault of the appellant as successor in interest to the subject property.

For the administrative record as part of this appeal let the record show that the original subject site was created as lots 19, 20, and 21, Block 128, Cambria Pines Manor No.6, County of San Luis Obispo, State of California, according to subdivision tract map recorded July 2, 1930 in Book 5, at page 15 of Maps. The southerly 5 feet of Lot 21 was granted to the owner of Lot 22 by grant deed dated February 25, 1963, and recorded February 26, 1963 in Book 1227, page 356 of Official Records. The County of San Luis Obispo maintains that February 25, 1963 was the date that Lot 21 was created (while referencing lots 19 and 20 as part of that deed transaction which is misleading and false).

Lots 19 and 20 were not part of what is considered the original "violation" on the behalf of Ms.. Burns and Mr. and Mrs. Sewell. For the record, lots 19 and 20 along with the remainder portion of Lot 21 were required to be consolidated as part of Section 23.04.048 of Title 23 of the County Code. Section 23.04.048 requires that in any residential land use category, any single ownership of two or more adjoining vacant lots with continuous frontage, "shall" be considered a single parcel of real property and a single building site, except s provided by this section. No sale, transfer, division or devlopment of less than "all" of such single parcel "shall" occur unless the portion or portions of the single parcel to be sold, transferred, divided or developed are in conformity with the provisions of this title as modified by this section.

(1) Where sewage disposal is by a community sewage system:

(A) Minimum lot size:three thousand five hundred sqaure feet (3500 sq. ft),

(B) Minimum lot width: forty feet, measured along the front setback (Section 23.04.108)

(2) Where sewage disposal is by individual sewage disposal system:

(A) Minimum lot size: six thousand square feet where served by community water, one acre where served by a domestic well.

It is appellant contention that the deeding of the southerly five (5') feet of Lot 21 to Lot 22 was a ploy by Mr. Sewell to keep a house from being built next to his property. He duped a poor "old" lady who did not know any better at the time. The southerly 5 feet lowered the subject site to 5525 square feet from the required 6000 square feet in order to meet the required minimum site requirements for building..

In February 25, 1963, there was no community sewage treatment plant located in Cambria, all

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sewage disposal was by private septic system which required a minimum 6000 square feet of land area by the county code. There was existing water service provided by the Cambria County Water District with 4" main lines fronting the subject property and/or lots. We will go into great detail later in this appeal as to the affect of the Cambria County Water District as to the development of the subject property.

For this administrative record, let the "chain of title" as referenced in the staff report of the May 3, 2004 action of the Subdivision Review Board reflect that there was over six (6) deed transfers to new owner of the subject property after the original "cut" was recognized by the County of San Luis Obispo.

The subdivision review board once again on May 3, 2004, issued the "new" conditional certificate of compliance against the subject property as C03-0388, to supercede and replace the first CCOC based upon the findings listed in Exhibit A and the conditions listed in Exhibit B of the modified certificate. The staff report and the subdivision review board indicates that water and sewer shall be obtained from the Cambria Community Services District. For the record, appellant contends prior to the adoption of Title 26 by the County of San Luis Obispo, all the original conditions of CCOC C1989-007 could be met by "only" being able to "apply" for placement on the CCSD allocation wait list(s) for water and sewer services.

Appellant contends that conditions 1 and 2 of Exhibit B are unreasonable and are not feasible pursuant to Public Resources Code Sections 30108, 30010, and 30607. As part of the review of the current submittal by other agencies, the Cambria Community Services District issued a response letter to Mr. Larry W. Kelly the Department of Planning and Building on March 26, 2004. The letter stated that there are "no variances available , of whatever description, that would allow him (Berge) to presently obtain water and sewer service from the District (CCSD)...but Mr. Berge is not currently "entitled" to either a water connection of an intent to serve letter".

Appellant had issued a written letter of request as "an applied challenge" to the Cambria Community Services District to obtain the conditioned "will serve" letter(s) pursuant to the requirements of Section 19.04.030 of Title 19 of the county code. This letter of request was sent in October, 2003 in response to the new conditions implemented by the County of San Luis Obispo, upon adoption of county Ordinance No. 3004 in July of 2003. Appellant sought a determination of Section 23.04.430 from the Cambria Community Services District for "issuance" of "will serve" letters as conditioned in the original certificate in 1989.

Section 19.04.030(a) of Title 19 implements the general provisions, procedures, and requirements for the preparation and processing of construction permit applications and the conduct of construction inspections shall be set forth in Chapter 3 of the Uniform Administrative Code and this title (Title 19).

(b) Water Supply Information. In addition to the information required by subsection (a) of this section, building permit applications "shall" include verification of an available potable water supply pursuant to Section 19.20.238.

(e) Land Use Permit Required. Where a discretionary land use or subdivision permit is required



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for a project by Title 22 or Title 23, no construction permit "application" for such project shall be submitted until "all" required land use or subdivision permits have been approved by the applicable Review Authority, and all appeal periods have expired or all appeals have been resolved.

Pursuant to Section 23.11.030(169), a land use permit or "entitlement" means a ministerial or discretionary permit that grants an "applicant" the authority to establish a use of land only after obtaining additional building and/or grading permits, as required, and serves as the local government equivalent of a coastal development permit in accordance with the Coastal Act. For purposes of this title, (Title 23-CZLUO) land use permits are the plot plan, minor use permit, development plan or "variance", established by Chapter 23.02 of this title, and are subject to appeal by the California Coastal Commission where applicable.

Section 19.20.238 of Title 19 requires verification of water supply before a grading, building, or plumbing application or plans for a project which will require new service with potable water "shall" be issued unless:

- (a) The building official is provided a written statement from the operator of a community or domestic water system that the purveyor will provide potable water service to the dwelling and that the water purveyor has sufficient water resource and system capacity to provide such service:  
or
- (b) The building official is provided evidence that a permit or other authorization has been granted by the water purveyor for the proposed project to connect and use the community or domestic system.

The Cambria Community Services District written response and determination was that the subject property at 2255 Adams Street, Cambria, California was "not" eligible for water or sewer permits or service, and that there was no "application forms" available for placement on the list(s) "either". The District's counsel cited that the "District's wait list(s) were closed many years ago "after" you had purchased your lots". The effect of the District's determination was to forever take away the development rights of the subject property. (See administrative file No. S030135C hereby incorporated in its entirety as part of this appeal) The response from the CCSD also "nullified" the Superior Court of San Luis Obispo Judge Umhofers (Ret.) prior ruling that the County of San Luis Obispo had a process for issuance of a construction permits. When the CCSD stated for the record that there was no form of application, then a "waiting list position" could never be obtained, thereby precluding the construction permit process found in Titles 19 and 26 of the County code.

The County of San Luis Obispo land use plan and general plan require that all properties within the coastal zone that have a land area or "site" less than 6,000 square feet, must obtain water and sewer from the local community service provider. There is no exception to this policy. In fact, CCSD regulation (Section 5.04.070) requires that owners of all properties used for human occupancy situated within the District and "abutting" on any street, alley, or right-of-way in which there is now located or may in the future be located a public sewer of the district, is required at his or her expense to connect such facilities directly with the proper public sewer in



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accordance with the provisions of this chapter, within ninety (90) days after the date of official notice to do so, provided that the public sewer is within two hundred (200) feet of the property line. This requirement is also found in Section 1101D of the Health and Safety Code, and Section 713 of Title 24 of the California Code of Regulations as part of the Uniform Plumbing Code.

Another major issue is that the County Environmental Health Officer, Mr. Richard Lichtenfels stated that had he seen the CCSD response letter of March 26th to Mr. Kelly's referral, he would not have "approved" the current "possible" conditions in their letter of response of March 18, 2004, from Laurie A. Salo pursuant to Section 21.03.010 of Title 21 of the county code..

The Cambria Community Services District was required to adopt their compliance Ordinance 14-90 in November of 1990, to conform and to comply with County of San Luis Obispo Ordinance No. 2477, which is implemented as Title 26 of the county Code.

Compliance with the growth management ordinance of the County of San Luis Obispo is required. No application to construct a new dwelling "shall" be accepted for processing or approval, unless the proposed new dwelling is determined to be in compliance with the provisions of this title (Title 26) and other applicable provisions of this code. (Section 26.01.032 of Title 26).

For the record, the County of San Luis Obispo acknowledges that under item (I) of Exhibit A of the new certificate, Title 26 of the county code is "not" part of the County's Coastal Zone Land Use Ordinance, its zoning ordinance. As a result, there is no authority to request or approve an application for a variance from the provisions of Title 26. Later in this submittal, we will establish where this statement is false and self-serving by the County. Section 26.01.020 of Title 26 pursuant to the general provisions of the title, Title 23 (CZLUO) is adopted and included by reference as part of Title 26, as though they are fully set forth herein, as is Title 19, the Building and Construction Ordinance of the County of San Luis Obispo. Both the County and the California Coastal Commission acknowledge that Title 26 is not part of the "certified" Local Coastal Program and/or plan.

It is Appellant contention that this is purposeful by the County and the CCC in order to hopefully limit the future liability of Title 26. It is without question or argument that the permitting process for issuance of construction permits in the coastal zone of the County of San Luis Obispo, is controlled under the provisions of Title 26 and Title 19, and therefore should be imbedded in the Local Coastal Plan that governs the issuance of coastal development permits and the related zoning clearances that "may" come out of the CDP approvals.

For the record of this appeal, it is clear that the County of San Luis Obispo Board of Supervisors as well as the Department of Planning and Building, failed to provide a written response or determination as to the legality of Title 26 as raised by appellant Berge under Issue 2 of the formal appeal to the Board of Supervisors (see page 2 of staff report dated June 22, 2004).

Section 26.01.070 of Title 26 describes the general procedures for determining the number of

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dwelling unit construction permits applications processed by the department of planning and building, how the allotment is to be conducted, what information must be included with an application submitted for processing under the provisions of this title.

Section (G)(H) of 26.01.070 provides for the procedure for issuance of construction permit allocations authorizations in communities with existing wait lists for development. In the unincorporated area of Cambria, construction permit allocations issued by the County of San Luis Obispo "shall" be in accordance with the with the provisions of the local waiting lists of the community service provider (CCSD).

(b) In order to eventually eliminate the need for an individual community waiting list for services, the CCSD list that exists as of December 31, 1990, "shall" be frozen for purposes of administering this title. The county "shall" obtain a "certified" copy of the waiting list and "all" future allocations within each community (Cambria) "shall" come from the certified list. For purposes of this appeal, the term "shall" is mandatory under Title 26. This provision of Title 26 constitutes a "building restriction" for any property not on the CCSD certified wait lists for water and sewer services in violation of the due process clause of the 14<sup>th</sup> Amendment. It is also a violation of the Equal Protection provision of the Constitution of the State of California. I will go into detail as to these constitutional issues later in this appeal action. The strong wording of both Section 26.01.070 of Title 26 and CCSD compliance Ordinance 8.04.070 require that the only way a project can have a construction permit allocation/allotment from the County of San Luis Obispo for purposes of obtaining "construction permits" or any other grant of approvals is to have a waiting list position on the "certified" water and sewer list of the Cambria Community Services District, pursuant to the CCSD ordinance, plans, and policies.

For the record of this proceeding, the County of San Luis Obispo Department of Planning and Building acknowledges in item (G) of Exhibit (A) that a "variance" could not be approved because the conditions of approval of the original certificate (C1989-007) "have not" been satisfied: specifically, a "will serve" letter has not been submitted by the Cambria Community Services District "agreeing" to provide water service and sewer service to the "applicant's property. As a result, conditions 1, 2, 6, and 7 have not been satisfied and are independent grounds for disapproval of variance application ( \*if one were filed). The administrative record of this application will reflect that appellant "did" file an "application" for Grant of Variance and/or Adjustment to CCOC C1989-007 based upon the inability and undue hardship in obtaining the "will serve" letters as conditioned in the original certificate pursuant to Section 23.04.430 of Title 23.

My attorney verified that a "variance" can be requested when a property is located in the coastal zone, and the approval of the "land use permit", which a variance is defined as, is subject to "appeal" by the California Coastal Commission. The requested "variance" must be related to conditional language relating to Section(s) 23.04, 23.05, or 23.08 of the Coastal Zone Land Use Ordinance. Our original request of the CCSD was "issuance" of the required "will serve" letters from the community services district pursuant to Section 23.04.430 to verify availability of water supply and sewage disposal services which are separate in the permitting process.

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It is most curious that condition 1 and 2 of the new certificate are the same conditions that the Cambria Community Services District refuses to provide to the subject property. That is to service the property for water and sewer, and to provide a final "will serve (intent to serve) letter. The County Department of Planning and Building, Subdivision Review Board, Board of Supervisors, and now the California Coastal Commission are well aware that these conditions

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can "never" be met pursuant to Section 26.01.070 of Title 26 and compliance Ordinance 8.04.070 of the Cambria Community Services District. Written confirmation is reflected in the CCSD letter of March 26, 2004 to Mr. Kelly, whereby the CCSD deny "entitlement" for water or sewer service, as well as the ability to issue an "intent to serve" letter.

Only a "waiting list position" entitles an owner of a property within the urban services line of the CCSD to obtain a new hookup for water and sewer service when the owner's position number is "eligible" for issuance, and upon their completion of all Intent to Serve letter requirements. An "Intent to Serve" letter is a letter that states that the CCSD will provide water and sewer services to a particular project upon satisfactory completion of a number of steps, timely payment of fees and availability of water. For any parcel of property not on the CCSD certified list, the "only" option is to "transfer" water from another parcel that already has a waiting list position. This is why existing wait list positions have been "sold" as a commodity for as much as \$275,000 dollars recently. The State Division of Water Rights would not approve of this situation when the water permit for the CCSD is "only" an appropriative right to pump water owned by the "State" from a subterranean stream. Only the CCSD maintains a "list" of water "applicants" prioritized by date, who are waiting for the "opportunity" to build a project. A deposit toward water and sewer connection fees "is required" for each wait list position. It is this "opportunity" to build a project that is precluded and debarred by Section 26.01.070 of Title 26 of the county code and Section 8.04.070 of the CCSD compliance ordinance to Ordinance No. 2477 of the County of San Luis Obispo.

The administrative record reflects that the conditional language of the original certificate requiring a "will serve" letter cannot be amended because the CCOC was issued in 1989, and that the Public Health Department "will not" accept a intent to serve" letter form the CCSD to satisfy the original condition(s).

Appellant was notified by Assistant Planning Director Patricia Beck on April 9, 2004, that County Counsel of San Luis Obispo instructed Mr. Euphrat to modify my application to reflect a request by me for a "new" conditional certificate of compliance. If you check the administrative record of these proceedings, the CCC will find "no" application on file for a certificate of compliance, but will find my original application for variance, which has been altered "fraudulently" without my consent. The record will reflect numerous letters to Mr. Victor Hollanda and Mr. Euphrat that state that I "will not" agree to a new conditional certificate of compliance process. I would not agree to change the original first condition date of September 26, 1983.

I was instructed by my attorney to seek "grant of variance" in order to complete the due process requirements of the "federal courts" for administrative remedies afforded a governmental agency the "right" to correct a wrong. This is mandated by the Supreme Court of the United States. I will not let the County or this California Coastal Commission take away that right. If the CCC wants to deny my request for "variance", so be it. But, the County will not circumvent my constitutional rights to "due process" in order to keep from meeting the "threshold" to seek a "taking" of my property in the proper court.

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The CCSD compliance Ordinance No. 8.04.080(A) establishes the procedures for sewer and water service based upon the district's commercial, residential, and multi-family water and sewer wait lists

(B) The district maintains separate water and sewer waiting lists for residential single-family, multifamily, commercial and affordable housing. Based upon the length of the lists and to "comply" with county ordinances, the single-family residential or multifamily waiting lists were closed in 1990 and new applications for single-family residential or multifamily wait list positions "will not" be accepted without further amendment of this chapter. The CCSD defines a "wait list position" as an "applicant" who has a application on file for a water and sewer allocation in order to complete an "entitlement". It is this provision that violates the "due process" provision for other district members who are precluded from the water and sewer allocation list(s).

Section 8.04.070 of the CCSD Water and Sewer Allocation Ordinance establishes the procedure for an applicant request for commercial or affordable housing water and sewer service wait list position.

(A) "Only" commercial or affordable housing applications for water and sewer wait list positions will be accepted by the district. Pursuant to Section 2.5-5 of ordinance No. 14-90, enacted to conform with the provisions of Section 26.01.070h(2) of San Luis Obispo County Ordinance No. 2477, effective four p.m. on December 31, 1990, Residential "applications" for the Water and Sewer Waiting List are no longer taken.

The provisions of this water and sewer allocation ordinance are "absolute" and definite and do not provide for any basis of termination or condition of qualification for future residential single-family access to the waiting lists. As such, the CCSD ordinance eliminates all future development of appellants property, and any future development for any person not on the CCSD certified list(s). This constitutes a taking of the property by the government pursuant to a building restriction that is both definite and punitive and "goes to far" by over regulation. It is also breach of contract of the "benefit unit" assessment contracts of the Cambria Assessment Districts 01 and 02 funded by the joint powers agreement of the Cambria County Water District and County of San Luis Obispo in 1970 and 1976.

It is no wonder that the existing conditions of CCOC 1989-007, and as modified by C03-388 as part of Application No. 3-SLO-04-232/S030135C, cannot be met in order to satisfy the conditional language of the certificates, thereby eliminating the legalization of the subject property at 2255 Adams Street, Cambria, CA. The constraint lies in Title 26.01.070 of the County Code and Ordinance 8.04.070 of the CCSD.

With the complete elimination of access to water and sewer wait lists by Section 26.01.070 of Title 26, Appellant Berge requested a Grant of Variance and/or adjustment to the original Conditional Certificate of Compliance C1989-007 and a determination by the County Department of Planning and Building of "substantial conformance" of the conditional certificate pursuant to Section 21.04.040 of Title 21.

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Section 21.04.040(a) states that building and land use permits must be in compliance with Title 21 as a "condition precedent" to the issuance of a building permit or land use permit by any person authorized to issue such permits in the unincorporated territory of the county.

(b) This Title (Title 21) "shall" deemed complied with if the parcel or tract map is in "substantial conformance with the conditions of approval of the tentative parcel map or tentative tract map approved by the subdivision review board or planning commission and the parcel map satisfies the requirements of Section 21.03.010 of this title.

Pursuant to Section 21.03.010 of Title 21 it is appellant Berge's belief and conviction that the factual findings of the subdivision review board approval of Conditional Certificate of Compliance C1989-007 pursuant to Section 21.02.020 of Title 21, in conjunction with the Board of Supervisors consent on April 18, 1989, established that there were adequate water and sewer capacities available to serve the subject property as required under Public Works Policy 1 of the Coastal Plan and Policies. (Section 23.04.430). Appellant Berge has provided "proof" to the County Department of Planning and Building and Environmental Health Services Department of the Public Health Department from the CCSD that there are 6" water mains and 8" sewer mains fronting and "abutting" the subject site.

The abutting water and sewer mains were installed and upgraded by the Cambria County Water District from the proceeds of Cambria Assessment Districts 01 and 02 funded by the Municipal Bond Act of 1913 and 1915 pursuant to provisions of the Streets and Highways Code of the State of California. It is appellants belief along with many people in Cambria, that district members within the boundaries of the original assessment districts of the Cambria County Water District have grandfathered rights to water and sewer pursuant to Resolution 76-753 of the Board of Supervisors and Resolution 76-8 of the Local Agency Formation Commission as certified by the Secretary of State of California of December 13, 1976.

It is for these reasons and conditions that Appellant seeks the approval and determination from the Commission that Conditional Certificate of Compliance C1989-007 is in substantial conformance with the provisions of Section 21.04.040 (b) of Title 21, and order that the County of San Luis Obispo issue "certificate of compliance" to the subject property, and instruct the CCSD to issue "intent to serve" letter for construction permit allocation No. 312-21057 in order for County of San Luis Obispo to issue an authorization to file for construction permit. This is the only way that Appellant can be made "whole" under these circumstances that were of the County and CCSD's doing. They hold "all" the responsibility, the California Coastal Commission holds "all" the liability. This is only fair and equitable under the existing circumstances.

It is of great importance that we explain the formation of the original Assessment Districts 01 and 02 of the Cambria County Water District, and the confirmation of compulsory levies of the districts by the Board of Supervisors of San Luis Obispo County, CA.

In 1967, Dr. George Harper, the Public Health Officer of the County of San Luis Obispo, issued a



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building moratorium in the unincorporated area of Cambria, California, based upon the rise in the number of failed private sewage disposal systems that threatened the ground water and wells of area owners and wells of the Cambria County Water District.

The public health officer ordered that there be no further construction or building permits issued within the community of Cambria until such time as a Wastewater Treatment Plant was built and "operational".

The Cambria County Water District approached the Board of Supervisors for assistance in obtaining funding for the new sewer plant and facilities. The County and the Water District entered into a joint powers agreement to build and construct the waterworks systems needed for the wastewater treatment plant. The County public engineer was hired for overseeing the design and construction.

Bonds were issued for the financing of the construction of the facilities through the Municipal Bond Acts of 1913 and 1915, along with grants and funding from the Department of Housing and Urban Development.

Assessment District No. 1 was funded in 1971 through confirmed assessments that constructed the required public facilities for the area north of Santa Rosa Creek. Assessment District (02) was funded in 1976 through confirmed assessments that constructed the required public facilities for the area south of Santa Rosa Creek and the Cambria Air Force Base. At that time the Cambria County Water District boundaries were expanded to accomplish sewer service to the CAFB.

On July 29, 1976, the Treasurer of the County of San Luis Obispo received and receipted a full cash payment for the assessment for sewers and the expansion of the water mains and systems of the Cambria County Water District from Mr. Eugene Stach of behalf of the subject property. The receipt was No. 38138 for \$712.40 based upon the method of assessment for the assessment district No. 2 where the subject property is located. The assessment district provide for the "immediate" right to sewer hookup upon payment of fees and provided for equal rights to request water service by application. Both of these conditions were ratified by the CCSD in 1982 upon establishment of the water and sewer service ordinance W-82 and S-82.

In February 1976, the Local Agency Formation Commission received an application to "dissolve" the Cambria County Water District, Cambria Fire District, Cambria Garbage District and County Service Area No. 6 into a "new" community services district (CCSD). LAFCO approved the application pursuant to Resolution 76-8 of the formation commission. Said resolution provided 16 conditions in order to dissolve the four districts into one, provided that the resolution was approved by the voters of Cambria. The County of San Luis Obispo Supervisors issued Resolution No 76-753, which was approved by the voters of Cambria in November of 1976. Resolution 76-753 was certified by the Secretary of State of California on December 13, 1976.

Resolution 76-753 required the newly formed community services district (Cambria Community

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Services District) to adhere to the rights, duties, responsibilities, "contracts", and liabilities of the dissolved districts and was required to cooperate with the County engineer during the completion and construction of the public facilities funded by the assessment districts. Upon completion and issuance of operational permits, the facilities were "transferred" to the newly formed CCSD. This was part of the terms and conditions of their formation by LAFCO Resolution 76-8.

Prior to the LAFCO formation hearings, the CCSD started to complete a comprehensive Water Master Plan for the new facilities and District. This plan was started in February 1976, and encompassed the expanded boundaries of the revised district, including the Air Force Base.

In 1976 the Cambria Community Services District applied for a water rights permit for extraction of water from the San Simeon Creek from the State of California Division of Water Rights. The application was approved for 1230 acre feet. In 1977, the California Coastal Commission limited the urban service areas for this new water supply and identified the maximum number of dwelling units that could be served as 3800 (Application 132-18). This included the additional 538 acre feet permit to be extracted from the Santa Rosa Creek permit. A condition of that 1977 coastal development permit stated that:

Use of all District wells on Santa Rosa Creek shall be discontinued when water production from the San Simeon Creek has been established. Any continued permitted use of the Santa Rosa Creek wells shall be limited to supplementing of San Simeon Creek well production in years when the 1230 acre feet cannot be safely removed.....Until the San Simeon Creek wells are functioning, no new water permits shall be permitted by the District.

When the Land Use Plan of the County's LCP was certified in 1985, the concern remained that there was inadequate water to serve existing parcels within Cambria. The findings regarding Cambria stated that based upon the land uses and intensities designated in the LUP for subdivided and un-subdivided land, 8,150 dwelling units could be developed, however, it was estimated that the community of Cambria had adequate water and sewage capacities to serve 5200 dwelling units (in 1984). The finding continue to state:

Buildout of the existing subdivided parcels alone within the USL (Urban Services Line) would result in a number of dwelling units for which there is inadequate sewer and water capacity. Clearly the community does not adequate services to supply the LUP proposed development within the USL without severely overcommitting its water supplies and sewage treatment facilities.

Appellant finds that these findings are not consistent with the State of California Health and safety Code requirements that "public works" facilities be designed to accommodate the existing project plan and buildout of the area that the facilities are to service upon construction of the "new" facilities. This is of importance to the design of the sewage treatment plant and related expansion of the water systems under the original assessment districts 01 and 02.

The County and the California Coastal Commission do not contest that the urban services line of



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the CCSD boundaries have been expanded by the Commission in prior years after the formation of the CCSD and has had water and sewers lines expanded and constructed to "abutt" all the properties that had compulsory levies assessed based upon the "project plan" implemented and constructed by the County of San Luis Obispo public engineer. It is the fault of the County that they designed their systems poorly not to be able to serve the urban services line and presently vacant and existing homes upon completion.

The County of San Luis Obispo, the CCSD, State Regional Water Quality Control Board, and the California Coastal Commission are aware that the existing wastewater treatment plant operated by the CCSD has been expanded by permit to 1.5mpd drywater average. The existing plant can be expanded to 2.5 mpd drywater average.

The California Coastal Commission is fully aware that the CCSD has not completed the three required performance standards prior to January 1, 2001: completion of an instream flow management study for Santa Rosa and San Simeon Creek; completion of a water management strategy which includes water conservation, reuse of wastewater, alternative water supply, and potential off stream impoundments; and cooperation of the County and CCSD to place a lot reduction ballot measure before the Cambria electorate. If these standards were not performed by January 1, 2001, the modification required a "moratorium on further withdrawals from San Simeon and Santa Rosa Creek. These measures were never accepted by the County under the modified amendment to the 1988 LCP certification. of the North Coast update.

In the 2001 periodic review, the commission adopted recommendation No. 2.13. In that recommendation, the California Coastal Commission cites under (4) "substantial progress has been made by the County and the CCSD on "achieving" implementation of buildout reduction plan for Cambria; and (5) there is adequate water supply and distribution capacity to provide emergency response for existing development. The word achieving is defined as "to succeed in doing as to obtain a goal."

This is most interesting in that the Cambria Community Services District held its Notice of Preparation on the future Draft EIR of the Water Master Plan on July 15, 2004, just one week ago today. A component of the plan its to study and complete the lot reduction plan. No public hearings have been held as to the amount of lot reduction sought. Any sizable amount of lot reduction or lot retirement has been through water transfers and incidental retirements of "sub-standard lots. It is Appellants contention and belief that the lot reduction "achieved" was the implemetation of Title 26 of the county along with the compliance Ordinance 8.04.070 of the CCSD, which eliminated over 3500 lots for development through the closures of the water and sewer wait lists as a "building and zoning restriction". It has now been almost 13 years since the implementation of Section 26.01.070 of Title 26. The federal courts "will not" have a sympathetic ear to such a punitive measure that places a disparate impact of the restriction, allocates unequally the benefits and burdens of people of same rights, and provides a substantial impairment of existing contracts by modifying one parties contractual rights to the benefit of another within the same class or standing.

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The Cambria Community Services District "declared" a State Water Code 354 water emergency in regard to "insufficient fire flow" to a potential conflagration. The 354 declaration also stated concerns related to water supplies as part of its finding for the declaration but fell short of stating that they were in a water shortage emergency. Pursuant to the declaration, the CCSD now must make immediate strides to eliminate the emergency, which would include solving the water "shortage emergency" for the complete urban services line/urban reserve line, and not just those who are on the CCSD wait list as stated in their August 2003 meeting. This would include the entire area subject to the Water Master Plan of 1976, which would include the Cambria Assessment Districts 01 and 02.

Appellant has verified through the State of California Division of Water Rights that CCSD Progress Reports by Permittee as required by the Water Rights Division, does not confirm that the CCSD has exceeded the "threshold" for an emergency in regards to the annual extractio of 1230 acre feet. To the contrary, they have not even been close to the 900 acre feet mark, and this is without pumping from Santa Rosa Creek due to high magnesium counts, or taking into consideration the establishment of the Coast Union Well as approved through the temporary diversion permit from the State.

The acre foot amount does not take into consideration that the Chevron abatement order has been lifted by the State Regional Water Quality Control Board against Chevron U.S.A. As part of the release, the SRWQCB cited that Chevron had provided the CCSD with the "means" for the replacement source of water and cited the payment of over 3 million dollars for the Coast union well installation which included the installation of sewer to the high school in order to abandon the schools septic system, along with the determination that the Santa Rosa Creek were treated to allow pumping by the District. The District has refused to pump or provide Chevron with critical data concerning the Santa Rosa Creek production. This was always a sticking point for Chevron in regards to the abatement order conditions. The CCSD has "settled" with Chevron, but the SRWQCB has not release the CCSD to the liability of the "replacement order".

The California Coastal Commission, County of San Luis Obispo, the CCSD, State Regional Water Quality Control Board, and Division of Water Rights are aware that the CCSD is in receipt of a temporay water diversion permit for the Coast Union High School Well as part of the MTBE contamination issue between CCSD and Chevron, USA.

Prior to the implementation of Title 26, it should be noted that the County of San Luis Obispo did not issue findings that the Level Of Severity (LOS) pursuant to the Resource management System was at Level 1 which is defined as the time when sufficient lead time exists either to expand the capacity of the resource or to decrease the rate at which the resource is being depleted. Level 2 identifies the crucial point at which some moderation of the rate of resource use must occur to prevent exceeding the resource capacity. Level 3 occurs when the demand for the resource equals or exceeds supply. The County of San Luis Obispo to this day refuses to certify the Level Of Severity as required of the Local Coastal Plan and the RMS system. The County has never implemented the required steps and conditions for LOS 2 or 3.

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The only purpose for Title 26 was to implement the general provisions for the application and issuance of construction permit allocations/allotments and the issuance of construction permits for the unincorporated areas of the County of San Luis Obispo based upon the provisions of the Growth Management Ordinance No. 2477, as adopted on October 23, 1990.

For the record, if this isn't a taking by regulation that goes to far, then there is no definition suitable for any Court in this land.

Appellant will be submitting a detailed brief in regards to the takings issue prior to the hearing and within the 49 day hearing limit. Appellant does "not" waive the 49 day provision to have this appeal heard.

Respectfully submitted this 23<sup>rd</sup> day of July, 2003,


  
Gregg Allen Berge- Applicant/Appellant C1989-007/S030135C/C03-388

The California Coastal Commission approved the "operational" coastal development permit of the CCSD in

3. Development's location (street address, assessor's parcel no., cross street, etc.):

2255 Adams Street, Cambria, CA 93428 (APN No. 023-383-041), Lots 19, 20, and portion of 21, of Block 128, Cambria Pines Manor Unit No. 6, County of San Luis Obispo, State of California, according to map recorded July 2, 1930 in Book 5 at Page 15 of Maps. Excepting from said Lot 21, the Southerly 5 feet, as granted by deed dated February 25, 1963 and recorded February 26, 1963 in Book 1227, Page 356 of Official Records.

4. Description of decision being appealed (check one):

- ☒ ~~Approval, no special conditions~~ delete   
☒ Approval with special conditions:  
☐ Denial

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

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DISTRICT:

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator  
☒ City Council/Board of Supervisors  
☐ Planning Commission  
☐ Other

6. Date of local government's decision: 06/22/2004

7. Local government's file number (if any): File No. S030135C/C03-0388

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Gregg Allen Berge (successor in interest to permit No. C1989-007)  
 40735 Pocona Place  
 Murrieta, CA 92562

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Cambria Community Services District  
 1314 Tamson Drive  
 Cambria, CA 93428

(2) County of San Luis Obispo  
 County Government Center  
 Department of Planning and Building  
 San Luis Obispo, CA 93408

(3) North Coast Advisory Council  
 P.O. Box 533  
 Cambria, CA 93408

No other public testimony received or noted.

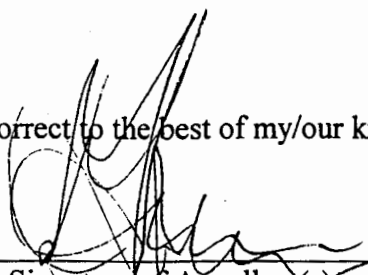
**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)****SECTION IV. Reasons Supporting This Appeal****PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

NOTE : SEE SECTION TWO OF THIS WRITTEN APPEAL.

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)****SECTION V. Certification**

The information and facts stated above are correct to the best of my/our knowledge.

  
\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date: 07 /23/2004

**Note:** If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby authorize \_\_\_\_\_  
to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date: \_\_\_\_\_

**8.04.070 Procedure for applicant request for commercial or affordable housing water and sewer service wait list position.**

A. Only commercial or affordable housing applications for water and sewer wait list positions will be accepted by the district. Pursuant to Section 2.5-5 of Ordinance No. 14-90, enacted to conform with the provisions of Section 26.01.070h(2) of San Luis Obispo County Ordinance No. 2477, effective four p.m. on December 31, 1990, Residential applications for the Water and Sewer Waiting List are no longer taken.

B. Applicants with projects shall make written request, on forms provided by the general manager, for water and sewer service for their proposed project(s). Prior to submitting such request to the district, the applicant shall submit the proposed project to the county department of planning and building for a preliminary review and administrative clearance concerning property ownership and general project compliance with county code requirements. The general manager shall review the application and determine the following:

1. That the proposed project has had initial review by the county and received preliminary clearance to proceed with application to the district;
2. Whether the project is subject to Sections 8.04.030, 8.04.050 or 8.04.060; and
3. The level of EDUs required.

C. Upon receipt of the application fee and all necessary forms, information and clearances from the applicant, the general manager shall place the new commercial or affordable housing projects on the applicable waiting list and shall promptly notify the applicant of the project's placement on the waiting list. No notification will be submitted to the county, except for a periodic summary of waiting list backlog. The placement of a proposed project on the waiting list will not entitle the applicant to service nor will the district issue any intent to serve letter based upon being on the waiting list. (Ord. 8-2003 § 2.5-7)



**8.04.080 Procedure for new service from district water and sewer waiting lists.**

A. This section provides the procedure for sewer and water service based upon the district's commercial, residential, and multifamily water and sewer waiting lists. This section also provides the procedures for affordable housing projects, except as modified by Section 8.04.110.

B. The district maintains separate water and sewer waiting lists for residential single-family, multifamily, commercial and affordable housing. Based upon the length of the lists and to comply with county ordinances, the single-family residential and multifamily waiting lists were closed in 1990 and new applications for single-family residential or multifamily wait list positions will not be accepted without further amendment of this chapter. All waiting list positions shall pay an annual maintenance fee to remain on the waiting list.

1. If at any time prior to issuance of water and sewer connection permits, the applicant desires to withdraw the application the applicant may do so by filling out and submitting to the general manager a written request on a form provided by the district, and a processing fee. The application shall also contain signatures of all lien holders of record consenting to the withdrawal accompanied by a lender's liability title policy also known as a policy of insurance of record title (PIRT) which shows all listing lien holders of record. Upon receipt of the written request with lien holders signatures, PIRT policy, and processing fee, the general manager shall promptly remove the parcel from the waiting list.

C. Prior to each allocation year in which intent to serve letters will be issued, the district shall conduct a poll of waiting list applications, in priority order, to determine which positions are willing and able to move forward on their building projects. This "inquiry" shall notify each eligible applicant of the requirements, which must be met upon acceptance of an intent to serve.

1. Deferral Policy. Effective with the date of the ordinance codified in this chapter, each waiting list position, regardless of changes in ownership, is allowed one deferral (choosing to remain on the waiting list when offered an intent to serve), without losing their position. Failure to respond to the inquiry in a timely manner shall constitute a deferral.

a. Variances may be allowed for deferral upon the following conditions: applicant provides proof of exceptional unanticipated circumstances which may include but not be limited to: recent serious illness or injury, death in immediate family, divorce, loss of employment. If circumstances meet the conditions, the board of directors may allow one non-penalty deferral in addition to that allowed in paragraph (C)(1) of this section.

b. Deferrals subsequent to those discussed in paragraphs (C)(1) and (C)(1)(a) of this section shall cause the position to move to the end of the waiting list.

D. Upon affirmative response by the applicant to the inquiry and establishment of the quantity of intent letters to be allowed for the allocation year, the general manager shall notify each eligible applicant of the following conditions, which must be met in order to be eligible for an allocation:

1. The district will notify the applicant of eligibility to participate in the district's plumbing retrofit program with an invoice for intent to serve and retrofit in lieu fees (see water conservation and retrofit program, Chapter 4.20, for details). The applicant must respond with full payment of intent to serve fee within fifteen (15) days;

2. The applicant shall successfully complete all of the requirements established under the district's water conservation and retrofit program within established deadlines; and

3. The applicant shall file for a building permit allotment under the county's growth management ordinance in the time periods specified by the district's water conservation and retrofit program, and submit a complete application to the county of San Luis Obispo building and planning department for a minor use permit or development plan, and a building permit within the deadline set by the county allotment.

E.1. Upon payment of the intent to serve fee and acknowledgement of requirements and retrofit fees by applicant, the district general manager shall promptly issue an intent to serve letter, which may be used for processing permit applications with the county. Such intent to serve letter shall be revocable in the event that the applicant does not comply in a timely manner with each of the provisions of subsection D of this section. The intent to serve letter shall contain conditions reserving the right of the district to revoke the letter as a result of conditions imposed on the district by other governmental agencies, or by a change in availability of resources, or by a change in ordinance, resolutions, rules or regulations adopted by the board of directors for the protection of the health, safety and welfare of the district. The intent to serve letter shall also contain a condition that issuance of the actual connection permit shall be subject to all permit fees in force at the time of issuance of the connection permit. The intent to serve letter does not constitute a binding commitment to serve water or provide sewer service and such letters may be revoked or suspended by the district at any time. In the event the district determines it is unable to serve the applicant, the applicant shall be notified and a full refund

of applicable fees paid shall be made by the district.

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2. Subject to the limitations otherwise specified in this chapter, intent to serve letters shall remain valid for eighteen (18) months from the date of issuance. Multifamily and commercial projects receiving an intent to serve letter for less than their entire project in any one year shall have their intent to serve letter automatically extended to the date of the expiration of their last allocation for the project provided they accept the maximum number of EDUs available to the project each year. For those commercial and multifamily projects with permanent structures already existing, the EDUs shall be assigned to the parcel upon compliance with this chapter.

3. Any request for extension shall be submitted to the general manager at least thirty (30) calendar days prior to the termination date of the intent to serve letter. The general manager shall process such requests for extensions for up to three EDUs. The board of directors shall have full discretion to approve or disapprove the request for extension on all other projects and, if granted, shall be subject to any conditions, which the board may impose. Applications for extension of a noncommercial intent to serve letter shall require the applicant to have an allocation under the county growth management ordinance and an active application for a building permit. Applications for an extension of a commercial intent to serve letter shall require the applicant to have an application accepted by the county for processing for a minor use permit or development plan, if applicable, and an active application for a building permit. In addition any extension of an intent to serve letter shall be subject to a non-refundable fee (see district fee schedule in Chapter 3.04 of this code). Extensions of commercial intent to serve letters shall be valid for a period of one year. Extensions of residential intent to serve letters shall be valid for a period of six months.

F. In the event an applicant's intent to serve letter is revoked for any reason, including failure to comply with the district's water conservation and retrofit program, the applicant shall be returned to the water and sewer wait list based on the date the original application was received. The general manager will calculate and apply retrofits completed, or in lieu retrofit fees paid, to future retrofit requirements for the same parcel. Upon revocation of an intent to serve letter as provided for in this subsection, if allocations are still available for the same allocation year as the revoked letter, the general manager shall promptly notify the next applicant on the appropriate waiting list that an intent to serve letter is available to be issued. If the next applicant does not respond affirmatively in writing within thirty (30) calendar days of the district's notice of availability of an intent to serve letter, then the general manager shall proceed in the same manner with the next applicant on the appropriate waiting list until the offer of intent to serve letter is accepted, or the allocation year expires, whichever comes first.

G. Upon receipt of a building permit, and prior to obtaining a foundation inspection from the San Luis Obispo County planning and building department, the applicant shall provide notification of the county permit to the general manager together with payment of the connection fee in force at that time. Subject to regulations in effect at the time, the general manager shall promptly issue connection permit to the applicant. All connection fees paid are non-refundable. Upon installation of a water meter, the applicant will be charged the appropriate monthly water and sewer fees in effect at the time.

H. Connection permits shall be valid for a period of one year from the date of issuance. If all load bearing and retaining foundations, pursuant to county approved plans, have not been completed within one year from date of issuance of water and sewer connection permit then the permit shall terminate and become null and void. Any request for an extension of the permit shall be submitted to the general manager at least thirty (30) calendar days prior to the termination date of the permit(s). The general manager shall process such requests for extensions for up to three EDUs. The board of directors shall have full discretion to approve or disapprove the requested extension on all other projects and, if granted, shall be subject to any conditions, which the board may impose. The applicant must demonstrate that due diligence is being used in completing the construction project subject to the connection permits. The application for extension of water and sewer connection permit shall be subject to a non-refundable fee and shall be valid for a period of one year. (Ord. 8-2003 § 2.5-8)

Chapter 26.01 GENERAL PROVISIONS

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26.01.010 Title and purpose.

The ordinance codified in this title is known as the growth management ordinance of the county of San Luis Obispo, Title 26 of the San Luis Obispo County Code. These regulations are established and adopted to protect and promote the public health, safety and welfare, and more particularly:

- (1) To implement the County General Plan by establishing an annual rate of growth that will give further guidance to the future growth of the county in accordance with that plan; and
- (2) To establish an annual rate of growth that is consistent with the ability of community resources to support the growth, as established by the Resource Management System (RMS) of the County General Plan; and
- (3) To establish a system for allocating the number of residential construction permits to be allowed each year by the annual growth rate set by the county board of supervisors; and
- (4) To minimize adverse effects on the public resulting from a rate of growth which will adversely affect the resources necessary to support existing and proposed new development as envisioned by the county general plan; and
- (5) To assist the public in identifying and understanding the growth management regulations affecting the development and use of land in San Luis Obispo County. (Ord. 2477 § 2 (part), 1990)

26.01.020 Maps and text included by reference.

In order to effectively implement the provisions of this title, the following documents, including maps and text, are adopted and included by reference as part of this title, as though they are fully set forth herein:

- (1) San Luis Obispo County general plan, including all elements thereof and all amendments thereto, as adopted by the board of supervisors pursuant to Sections 65000, et seq. of the Government Code;
- (2) Building and construction ordinance, Title 19 of this code;
- (3) Land use ordinance, Title 22 of this code;
- (4) Coastal zone land use ordinance, Title 23 of this code;
- (5) The Woodlands Specific Plan. (Ord. 2957A § 1, 2002; Ord. 2477 § 2 (part), 1990)

26.01.070 Construction permit procedures.

This section describes general procedures for determining the number of dwelling unit construction permit applications processed by the department of planning and building, how the annual allotment is to be conducted, what information must be included with an application submitted for processing under the provisions of this title, and the time limits for processing applications for new dwelling units to be permitted under this title.

(A) Maximum Number of New Dwelling Units Allowed. The maximum annual allotment shall be limited to an amount sufficient to accommodate an annual increase of 2.3 percent in the number of dwelling units, unless otherwise specified below. The number of new dwelling units to be allowed shall be based on the number of existing county unincorporated housing units, as defined by the most recent estimate provided by the state Department of Finance.

(1) Maximum number of new dwelling units allowed in the Nipomo Mesa area. The maximum number of new dwelling units allowed in the Nipomo Mesa area (see Figure (1)) for the period of January 1, 2003 through December 31, 2003, shall not exceed a 2.3 percent increase in the number of existing dwelling units in 2002, resulting in the potential for a Maximum Annual Allocation of one hundred thirty-five new residences in the Nipomo Mesa area for the year 2003.

(B) Annual Review of Growth Management Program. In the fourth quarter of the calendar year, the board of supervisors shall hold a public hearing to consider the annual summary report of the resource management system (RMS) as described in framework for planning of the general plan. In the second quarter of the calendar year, the board shall evaluate the proposed growth rate for the ensuing fiscal year in light of the availability of resources and services necessary to accommodate new development and may initiate proceedings to amend this title to modify the annual growth rate based on the evaluation of the RMS data.

(C) Distribution of Annual Allotment. After the allowed number of new dwelling units is determined by the board of supervisors through the process described in subsections (A) and (B) of this section, the allotment shall be distributed countywide, based on the availability of resources needed to support the new development as defined by the RMS.

(1) Diversity of Dwelling Unit Types. In order to allow opportunities for development of individual dwelling units and larger residential projects and to encourage a variety of dwelling unit types, the maximum annual allotment of new dwelling units will be distributed as follows:

(a) Category 1. Twenty percent of the maximum annual allotment shall be reserved for developers of multifamily dwellings and dwelling units in phased projects approved as planned developments or through adoption of a specific plan. No single applicant shall be eligible in any one year for more than five percent of the maximum annual allotment. Dwelling units to be developed in such projects may be carried over for one year upon written request of the applicant within the one hundred eighty days specific in subsection (G) of this section. If there are not enough applications for dwelling units to use up the twenty percent reservation in this category, those unused allotments shall be available for use in Category 2.

(b) Category 2. The remaining eighty percent of the maximum annual allotment shall be available for all other applicants for new dwelling units. However, no single applicant shall receive more than five percent of the annual allocations and/or allotments. If there are not enough applications for dwelling units in Category 2 in the fiscal year allotment, those unused allotments shall be available for use in Category 1.

(D) Filing of Request for Allotment. Applicants interested in building new dwelling units will file a request for allotment with the department of planning and building on a form provided by the department to allow the department to track the category of allotment. A complete application for the construction permits and full building plans are required at this time. If the application is determined to be incomplete by the department of planning and building, the construction permit application will be rejected and no selection under the Growth Management Ordinance will be made.

(E) Filing of Requests for Allocation. Applicants eligible to file a request for allocation are allowed an exception to the requirement that a complete application submitted as follows:

(1) For a vested map that was filed and accepted for processing prior to May 20, 2003, can elect to submit a request for allocation as provided in the ordinance that was in place at the time of acceptance of the vesting map for processing.

(2) For parcels located within communities with waiting lists as provided in subsections (H) and (I) of this section.

Complete construction applications (Permits) required at this time. The request for allocation will be accepted only from

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the owner of the parcel proposed for development, or an agent acting with the written authorization of the owner. The department will accept requests for allocations at any time and they will be processed on a first-come-first-served basis for as long as the vested status period of the map. Once the allocation can be selected, the applicant will have one hundred twenty days to submit a complete application, except as provided in subsection (G) of this section. In any year where all allotments have been issued, requests for allocation will continue to be accepted and placed on a waiting list in the order in which they are filed.

(F) Limit on Number of Allotment Requests. A total of two requests for allocation or allotment will be accepted for any single legally created parcel per year, except that a single applicant may file one request for allocation or allotment for a maximum number of dwelling units not to exceed 2.5 percent of the total allocation per year on properties designated residential multi-family and proposed for development of multi-family dwelling units; or a maximum number of dwelling units not to exceed five percent of the total annual allocation for a phased project approved as a planned development or through adoption of a specific plan, or where such units are included in a development agreement approved by the board of supervisors, in accordance with Sections 26.01.050(2)(F) and (G) of this title.

(G) Authorization to File Construction Permit Applications. The department of planning and building will accept complete applications for construction permits and make a growth management allotment on a first-come-first-served basis. For projects that qualify to use the request for allocation process, a growth management allotment will be made at the time of submittal and they will be allowed one hundred twenty days to submit a complete application from the time of selection. The method of allocation will be for the department to issue a letter of authorization to file a construction permit application for a new dwelling unit in accordance with Titles 19, 22, and 23 of the County Code. Notification of authorization will be issued until the maximum annual allotment has been reached for the current fiscal year. The application of a construction permit must be filed with the department within one hundred twenty days of the date on the letter of authorization in order to retain the allocation allotment. The prescribed time limits for filing an application for a construction permit shall apply to all requests for allocations filed with the department on or after May 2, 2000, except that any applicant who has been issued a letter of authorization prior to the effective date of this ordinance provision on July 20, 2000, shall have one hundred eighty days from the date of the authorization letter to submit a construction permit application, with an additional ninety days available upon submittal of a written request for the director of planning and building as described above.

(H) Communities With Existing Waiting Lists. The following communities have waiting lists for development. Those waiting lists are administered by the specified community service provider(s) and the issuance of allocations by the county shall be in accordance with the provisions of the local waiting lists, as specified below.

(1) Cambria. The Cambria community services district (CCSD) has an existing waiting list for water service permits. The CCSD is allocating resources in compliance with its own resource management policies and ordinances, so as to be compatible with the resource management system of the county general plan and to carry out the county's purposes, goals and objectives. In recognition of the management policies in place, the allocation of dwelling units in Cambria shall be conducted as follows:

(a) Allocation Limit. The annual number of new dwelling units to be allocated shall not exceed two and one-third percent of the total number of dwelling units within the community services district boundary within the Urban Reserve Line as designated in the County General Plan. The dwelling units to be allocated shall be taken from those applicants next in line on the community waiting list. The number of allocated units may be reduced if the resources are not available to support the maximum number of potential allocations, as described below. Any dwelling unit allocations not utilized by Cambria shall become available for countywide allocation in accordance with the provisions of this title. However, the annual allocation number for Cambria shall be placed on a deferred list to be available at the time that the water emergency is resolved at which time the Cambria Community Services District may issue Intent to Serve letters for all or a portion of the deferred allocations. The Intent to Serve letter can be applied toward the deferred allocations on a first-come, first-serve basis. All deferred allocations will be retained on the waiting list of Cambria through June 30, 2007 or two years after the water emergency is resolved as determined by the Cambria Community Services District, whichever is sooner, at which time all unused allocations will be considered expired.

(i) Allocation for the Year 2003. Based on the County 2002 Resource Management System (RMS) Annual Report approved by the Board of Supervisors on December 3, 2002, the Maximum Annual Allocation shall not exceed one percent for the year 2003, resulting in the potential for thirty-eight Allocations for new residences in Cambria in the year 2003.

(ii) "Grandfathered" Units in Cambria. Of the total number of dwelling units to be allowed in Cambria each year, the Cambria community services district shall reserve four allocations for parcels certified by the district as having "grandfathered" right to water service and "will serve" letters will be issued to such applicants on a first-come-first-served basis.

(iii) Transfer of Allocations in Cambria. Residential allocations may be transferred within the CCSD as long as any



such transfer conforms with district Ordinance 1-93, as may be amended from time to time by the district relating to retirement of development rights. 29

(b) Freezing of Existing Waiting Lists. In order to eventually eliminate the need for an individual community waiting list for services, the CCSD list that exists as of December 31, 1990, shall be frozen for purposes of administering this title. The county shall obtain a certified copy of the waiting list and all future allocations within each community shall come from the certified list. Any applicant wishing to apply for a dwelling unit allocation that is not on the certified list shall apply to the county for placement on the county's waiting list for requests for allocation. At the point in the future when each existing community waiting list is exhausted, all future requests for new dwelling units shall be added to the county's waiting list on a first-come-first-served basis and all allocations for new dwelling units in the unincorporated county shall be made from the county waiting list.

(I) Los Osos Prohibition Area. A portion of the unincorporated community of Los Osos is presently unable to have construction permits issued for new dwelling units because of a sewage disposal prohibition imposed by the California Regional Water Quality Control Board, Central Coast Region. On September 8, 1999, the Regional Board adopted criteria by which exemptions to the prohibition might be granted within the Bayview Heights and Martin Tract areas of Los Osos, a copy of which is on file with the director of the department of planning and building.

In the areas where the development prohibition is imposed, a request for allocation may be filed and land use permits and construction permits for new dwelling units may be processed as specified below.

(1) Notice of Authorization to File Construction Permit Applications to Persons on Existing Waiting List. Those persons who have filed requests for allocation and are on the existing waiting list for Los Osos will be notified that they can proceed to file construction permit applications, and accompanying land use permit applications where necessary, in accordance with the time frames specified in subsection (E) of this section.

(a) Requests to Defer Filing of Application. Those persons receiving the notice described in subsection (8)(A) of this section may notify the department within the time frames specified in subsection (E) of this section that they do not wish to proceed at this time and request that their allocation be deferred until a future date.

(b) Activation of Deferred Allocations. The applicant may notify the department at some future date..., the department will issue a letter of authorization to proceed in accordance with subsection (E) of this section.

(c) Expiration of Deferred Allocations. All deferred allocations will be retained on the waiting list for Los Osos through December 30, 2003, at which time all unused allocations will be considered expired.

(2) Processing of Applications. The department will process all applications for land use and construction permits; however, no permits will be issued until the applicant provides verification to the department that an exemption to the areawide prohibition has been granted by the Regional Water Quality Control Board in accordance with the criteria adopted by the California Regional Water Quality Control Board, Central Coast Region, on September 8, 1999, or as subsequently amended.

(3) New Requests for Allocation Within the Prohibition Area. All requests for allocation will be accepted in accordance with subsections (D) and (E) of this section and added to the county-wide list of requests for allocation.

(a) Maximum Number and Timing of New Dwelling Units Allowed Within The Woodlands Specific Plan Area. Notwithstanding any other provisions of this title, allocations may be issued for The Woodlands Specific Plan Area (see Figure 1) as follows:

(i) In accordance with the adopted Woodlands Specific Plan phasing plan (four phases identified as 1A, 1B, 2A and 2B on the phasing plan map, Table 8 and accompanying text), allocations can be obtained for up to eight hundred twenty-five new dwelling units, at the rate of one hundred sixty-five units per year on a cumulative basis, in Phases 1A and 1B during the first five years following approval of the first development plan for Phases 1A and 1B.

(ii) Beginning in year six, Allocations for each subsequent phase (Phases 2A and 2B) can be obtained sequentially, at the rate of ninety-nine units per year on a cumulative basis, upon final inspection of at least sixty percent of the residences for which building permits have been issued and upon completion of primary infrastructure and related mitigation measures of the previous phase(s) as identified in the Woodlands Specific Plan.

(iii) Allocations issued to The Woodlands Specific Plan Area are nontransferable and terminate only at issuance of building permits.

(iv) The maximum number of all dwelling units for The Woodlands Specific Plan Area shall be one thousand, three hundred twenty. (Ord. 3005 §§ 5--10, 2003; Ord. 2989 §§ 1, 2, 3, 2002; Ord. 2957A § 2, 2002; Ord. 2955 §§ 1 and 2, 2001; Ord. 2946 § 2, 2001; Ord. 2932 §§ 1, 2, 2001; Ord. 2905 §§ 4, 5, 2000; Ord. 2895 §§ 4, 5, 2000; Ord. 2889 § 1, 1999; Ord. 2867 § 2, 1999; Ord. 2743 §§ 5, 6, 7, 8, 9, 10, 1995; Ord. 2506 § 3, 1991; Ord. 2477 § 2 (part), 1990)

## Chapter 23.01 ENACTMENT, ADMINISTRATION AND AMENDMENT

## 23.01.022 Maps and text included by reference.

To effectively implement the policies of the San Luis Obispo County General Plan and San Luis Obispo County Local Coastal Program, the following documents, including but not limited to contents of the land use element adopted by board of supervisors Resolution 80-350 and all amendments thereto are adopted and included by reference as part of this title, pursuant to Sections 65800 et seq. of the Government Code, as though they were fully set forth here:

## (1) Land Use Element Provisions.

(A) Land Use Categories. The land use categories described in Chapter 7, Part I of the Land Use Element;

(B) Allowable Uses and Definitions. The charts showing the uses of land which may be established in the land use categories, and the definitions of such uses identified as Coastal Table O and Section D, respectively, in Chapter 7, Part I of the land use element;

(C) Combining Designations. The combining designations described in Chapter 8, Part I of the land use element as supplemental categories used on the official maps to identify areas of the county where special characteristics, resources, or hazards to the public necessitate review of proposed land uses to evaluate their compatibility with those characteristics, resources or hazards;

(D) Planning Area Standards. The requirements affecting land use, and any informational maps accompanying such requirements, which are set forth in the various area plans comprising Part II of the land use element identified as "planning area standards"; and

(E) Official Maps. Those certain maps identified as the official land use maps of San Luis Obispo County, Part III of the land use element, on file in the planning department.

(2) Local Coastal Plan Provisions. The following portions of the San Luis Obispo County local coastal plan (the policy document portion of the land use plan prepared as part of the San Luis Obispo County local coastal program) adopted by board of supervisors Resolution 88-115 and all amendments thereto:

(A) Local Coastal Plan Policies. The policies contained in Part 2 of the San Luis Obispo County local coastal plan, and Part 3, Appendices D and E;

(B) Environmentally Sensitive Habitat Maps. The combining designation maps adopted as part of the local coastal plan showing areas that are sensitive habitats for plant and animal life, on file in the San Luis Obispo County planning department;

(C) Archaeological Resource Maps. The maps adopted as part of the local coastal plan showing areas of known or suspected archaeological resources, on file in the San Luis Obispo County planning department.

(3) Building Line Maps. Those certain maps adopted pursuant to the prior zoning ordinance for the purpose of measuring required yard dimensions and building locations with respect to building lines, which remain in effect; except the building line maps for Paso Robles Beach Subdivisions 1, 2 and 3 in Cayucos, which have been repealed. (Ord. 2968 § 2, 2002; Ord. 2934 § 2, 2001; Ord. 2919 § 1, 2000; Ord. 2912 § 2, 2000; Ord. 2900 § 1, 2000; Ord. 2882 § 2, 1999; Ord. 2847 § 2, 1998; Ord. 2807(A) § 1, 1997; Ord. 2802 § 1, 1997; Ord. 2801 § 1, 1977; Ord. 2787 § 1, 1996; Ord. 2776 § 2, 1996; Ord. 2383 § 1, 1988; Ord. 2344 § 1 (Exh. A) (part), 1988)