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Staff: Katie Morange -SC
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STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE DETERMINATION AND DE NOVO HEARING

Application numberA-3-SLO-05-072

Applicant.....Teodora and Graciano Patague; Shaunna Sullivan, Representative

AppellantsCommissioners Meg Caldwell and Trent Orr

Local governmentSan Luis Obispo County

Local decisionApproved with Conditions (September 12, 2005)

Project locationLariat Drive (approximately 1,000 ft. north of Los Osos Valley Road in the Estero Planning Area), Los Osos, San Luis Obispo County (APN 074-222-002).

Project description.....Subdivision of a 2-acre parcel through the issuance of a Coastal Development Permit in the form of a Conditional Certificate of Compliance.

File Documents.....County Final Local Action Notice (File # S030112C / C03-0354); Periodic Review of the San Luis Obispo County Local Coastal Program (adopted July 12, 2001); Coastal Commission appeals A-3-SLO-97-40, A-3-SLO-03-113, A-3-SLO-98-087, and A-3-SLO-99-79.

Staff Recommendation ..**Substantial Issue; Deny Coastal Development Permit**

Summary of Staff Recommendation

San Luis Obispo County's approval of a Coastal Development Permit (CDP) in the form of a Conditional Certificate of Compliance (CCOC) for a 2-acre parcel in Los Osos has been appealed to the Coastal Commission on the basis that: 1) approval of the CDP/CCOC does not include specific factual findings supporting the conclusion that the proposed development is in conformity with the certified Local Coastal Program (LCP); 2) the proposed development is inconsistent with LCP provisions requiring a 5-acre minimum parcel size; 3) the proposed development is inconsistent with LCP provisions protecting coastal agriculture; and 4) the proposed development is inconsistent with LCP provisions requiring demonstration of adequate public or private service capacities and protection of the Los Osos groundwater basin.

Staff recommends that the Commission determine that the appeal raises a **substantial issue**, then



California Coastal Commission
April 11, 2007 Meeting in Santa Barbara

Staff: K. Morange Approved by:

deny the CDP because the proposed land division is inconsistent with the requirements of the San Luis Obispo County LCP regarding density, demonstration of adequate public services, and protection of prime agricultural soils. Specifically, the land division would create a 2-acre parcel in conflict with the 5-acre minimum parcel size established by the LCP. Moreover, approval of the land division would create a new parcel comprised entirely of prime agricultural soil, inconsistent with LCP provisions prohibiting land divisions that create building sites in such an area. Finally, there are significant outstanding questions regarding the capacity of the Los Osos groundwater basin to provide a sustainable water supply for the buildout of existing lots. As a result, the creation of a new lot through the CCOC process cannot be approved consistent with LCP public works standards that prioritize service to existing lots of record and require new development to demonstrate adequate water supplies.

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List of Exhibits

Exhibit	Title
A	County Final Local Action Notice (Staff Report, Findings and Conditions)
B	Appeal of Commissioners Meg Caldwell and Trent Orr
C	Location Map
D	Aerial Photo Click on this link to go to the exhibits.
E	Memo dated September 9, 2004 from San Luis Obispo County Agriculture Department



I. San Luis Obispo County Action

On September 12, 2005, the San Luis Obispo County Subdivision Review Board approved the proposed project subject to multiple conditions (see Exhibit A for the County's staff report, findings and conditions on the project). Notice of the Subdivision Review Board's action on the coastal development permit (CDP) was received in the Commission's Central Coast District Office on September 29, 2005. The Commission's ten-working day appeal period for this action began on September 30, 2005 and concluded at 5pm on October 14, 2005. One valid appeal (see below) was received during the appeal period.

II. 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 tideline 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. This project is appealable because subdivision is not listed in Coastal Table O, Part I of the Land Use Element as a principal permitted use within the Residential Suburban (RS) land use category.

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 Local Coastal Program (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. This project is not located between the nearest through public road (Los Osos Valley Road) and the shoreline of a waterbody and thus, this additional finding would not need to be made in a de novo review in 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.

III. Appellants' Contentions

The two Commissioner Appellants contend that the action taken by the County of San Luis Obispo is inconsistent with the Real Property Division Ordinance (Title 21) of the LCP that requires the County's decision on Conditional Certificates of Compliance (CCOCs) to include specific factual findings supporting legal conclusions that the proposed development is in conformity with the certified LCP. In addition, the Appellants contend that the action is inconsistent with LCP policies and ordinances relevant to minimum parcel size, coastal agriculture, adequate services, and the preservation of the Los Osos groundwater basin. Please see Exhibit B for the Appellants' complete appeal document.

IV. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

MOTION: *I move that the Commission determine that Appeal No. A-3-SLO-05-072 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 SUBSTANTIAL ISSUE: Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE: The Commission hereby finds that Appeal No. A-3-SLO-05-072 presents 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.

V. Substantial Issue Findings and Declarations

Title 21 Real Property Division Ordinance of the San Luis Obispo County certified Local Coastal Program (LCP) defines CCOCs as subdivision development that is subject to coastal development permit requirements (Section 21.08.020, cited on page 10 of this report). The appeal asserts that the project is inconsistent with provisions of the LCP that require specific



factual findings supporting legal conclusions that the approved development is in conformity with the LCP (Title 21 Real Property Division Ordinance Section 21.08.030(a), cited on page 10 of this report). The County found that the proposed CCOC is consistent with the Estero Area Plan and Real Property Division Ordinance of the LCP because of conditions placed on the project that address future development. However, the County did not make any findings that address LCP consistency with the current project. The absence of required findings is not in itself a project inconsistency with the certified LCP. Rather, it is the fact that the proposed project creates a new lot that does not comply with the LCP minimum parcel size requirements, agriculture protection standards, water supply and groundwater protection provisions that raises a substantial issue.

Specifically, a substantial issue is raised by the fact that the County-approved project does not meet the minimum parcel size standard for Residential Suburban-designated lots. Estero Area Plan Residential Suburban Standard #1, cited on page 11 of this report, requires a minimum parcel size of 5 acres for lots adjoining land designated Agricultural north of Tapidero Road. The County approval of a 2-acre parcel does not meet this minimum parcel size standard, and as a result creates a non-conforming parcel. A primary concern with reducing the size of the parcels in this area is the potential to impact the long-term viability of agricultural resources and operations. An increase in the number of small substandard parcels can significantly increase non-agricultural development, in turn increasing conflicts between residential and agricultural uses, increasing the physical extent of land converted by residential development, and potentially altering the economics of the region to decrease the viability of agriculture as a predominant use.

A substantial issue is also raised by the fact that the potential impacts of the proposed CCOC on prime agricultural land have not been adequately addressed. Policy 2 in Chapter 7 of the LUP, cited on page 15 of this report, prohibit the division of prime agricultural soils unless it is demonstrated that agricultural production of at least three crops will not be diminished and adequate water supplies are available for habitat values, proposed development, and to support existing agricultural viability. The information contained in the County approval indicates that the site contains prime soils, but the County has not demonstrated that agricultural capabilities are not diminished as a result of the subdivision, nor have findings been made showing the availability of adequate water supplies. In addition, the project has the potential to contribute to cumulative agricultural impacts because of the presence of multiple parcels in the vicinity that are also non-conforming in size and illegally created. In this case, the issuance of CCOCs can cumulatively erode the viability of agricultural lands in this area of Los Osos inconsistent with the LCP as nonconforming parcels are recognized and developed with non-agricultural uses.

Lastly, the appeal raises a substantial issue because the project is inconsistent with those provisions of the LCP that require new development to demonstrate that adequate public or private service capacities are available (Policy 1 of the Public Works section of the LUP, cited on page 12 of this report) and require protection of the groundwater basin within the Coastal Zone (Policy 1 of the Coastal Watershed section of the LUP, cited on page 12 of this report). The project is inconsistent with these standards because there is currently no means of treating



the wastewater that would be generated by future development of the new legal lot, and because there does not appear to be adequate water to serve such development. The County approval does not provide evidence of an adequate water supply and does not demonstrate that groundwater resources will be protected. The County approval will result in additional demands on the Los Osos groundwater basin, which is currently in overdraft. Furthermore, the project site is outside the urban services line, and therefore is also inconsistent with the components of these LCP provisions that prioritize the provision of services to existing lots within the urban area.

The above issues are addressed in more detail in the De Novo findings of this report.

VI. Staff Recommendation on Coastal Development Permit

Staff recommends that the Commission, after public hearing, **deny** a coastal development permit for the proposed development.

MOTION: I move that the Commission approve Coastal Development Permit Number A-3-SLO-05-072.

STAFF RECOMMENDATION OF DENIAL: Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT: The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of the San Luis Obispo County Local Coastal Program. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

IX. De Novo Findings and Declarations

A. Project Description and Location

The County approved project is for one Conditional Certificate of Compliance (CCOC) for a 2-acre parcel (APN 074-222-002) in Los Osos that was not legally created. The proposed parcel is undeveloped and has historically been in agricultural use. The parcel is located at the northern end of Lariat Drive at Latigo Lane in Los Osos, approximately 1,000 feet north of Los Osos Valley Road, in San Luis Obispo County (see Exhibits C and D). The parcel is bounded by Latigo Lane on the south and by agricultural land on all other sides. At the time the illegal



subdivision occurred, the parcel was in the Agriculture land use category. Los Osos Creek, which defines the eastern boundary of the South Bay Urban Area, lies approximately 270 feet to the west of the parcel. The site is currently zoned Residential Suburban (RS) with a minimum parcel size of 5 acres. Surrounding land use includes agriculture to the north, east, and west, with single-family residential development located to the south. The site is located outside both the Urban Service Line (USL) and Urban Reserve Line (URL). Development in this area is regulated by the policies and ordinances of the Certified San Luis Obispo LCP, including the Rural Area Standards of the Estero Area Plan.

B. Project Background

Subdivision Map Act and Coastal Act

The Subdivision Map Act provides for the approval of Certificates of Compliance (COCs) and CCOCs (Government Code Section 66499.35). Certificates of Compliance are granted to confirm the legality of an existing parcel that was created consistent with the rules for land divisions in effect at the time the parcel was created. A CCOC is granted to legalize a parcel that was *not* created pursuant to the rules in place at the time of its creation. From a land use standpoint, COCs do not create new parcels; they are simply a procedure for recognizing an existing, legal parcel. Conditional Certificates of Compliance do, however, create new parcels at the time they are awarded and may be conditioned to bring these parcels into conformity with current land use regulations regarding subdivisions if the illegal subdivider is still the owner or the rules that were in effect when the current owner (the successor to the illegal subdivider) purchased the property (Subdivision Map Act Section 66499.35(b)). The creation of new parcels constitute development under the Coastal Act (Public Resources Code Section 30106) and must also therefore be found consistent with the policies and implementing ordinances of the LCP by obtaining a Coastal Development Permit. [CZLUO Section 21.08.030(a)]

San Luis Obispo County LCP

Title 21 of the County's LCP includes the following ordinances that identify the process and standards for authorizing subdivisions through the issuance of a CCOC:

Section 21.01.010 - Title--Purpose. (d) *It is further the purpose of this title to implement the county general plan and certified local coastal program. Approval of a lot line adjustment, tentative parcel map, tentative tract map, vesting tentative map, reversion to acreage, determination that public policy does not necessitate the filing of a parcel map, modification of a recorded parcel or tract map, or conditional certificate of compliance under Government Code section 66499.35(b) shall constitute approval of a coastal development permit as a local government equivalent in accordance with the certified local coastal program and the California Coastal Act of 1976. [Added 1988, Ord. 2343; Amended 1992, Ord. 2582]*

Section 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.

21.08.020(a) Subdivision development defined. *For purposes of Sections 21.08.020 through 21.08.038, inclusive, subdivision development means lot line adjustments,*



tentative parcel maps, tentative tract maps, vesting tentative maps, reversions to acreage, determinations that public policy does not necessitate the filing of a parcel map, modifications of a recorded parcel or tract map, conditional certificates of compliance under Government Code section 66499.35(b), when located in the coastal zone of the county.

Section 21.08.030 - Finality of county action. *A county decision on an application for subdivision development shall not be deemed final until: (a) The county decision on the application has been made and all required findings have been adopted, including specific factual findings supporting the legal conclusions that the proposed development is or is not in conformity with the certified local coastal program and, where applicable, with the public access and recreation policies of Chapter 3 of the California Coastal Act of 1976.*

The ordinances cited above provide a procedure for considering CCOCs that includes notice, hearing, and appeal provisions. Action on CCOCs for property located in the coastal zone appeal jurisdiction is appealable to the Coastal Commission (Title 21 Real Property Division Ordinance Section 21.02.020). Section 21.01.010(d) of Title 21 provides that action on a CCOC constitutes action on a Coastal Development Permit as well. In order to approve a Coastal Development Permit, the decision making body must find that the project is consistent with the policies and implementing ordinances of the LCP.

Original Creation of the Parcels/Deed History

As detailed in the County staff report, the subject parcel was created by a series of conveyances beginning with the original Subdivision of Ranchos Canada de Los Osos and La Laguna. The first three of these conveyances complied with the relevant law at the time they were accomplished. In 1964, however, a previous owner, Morro Los Osos Land and Investment Co., conveyed a parcel to Los Osos Valley Memorial Park Inc. (APN 074-222-011) without complying with the requirements of the County's Lot Division Ordinance and the Subdivision Map Act in effect at that time. Subsequent conveyances resulted in the present parcel configuration. The applicant purchased the property in 1971. (Please See Exhibit A County staff report, pages 3 through 5 for a complete deed history and discussion).

Violation

As described above, the subject parcel was created in 1964 without first having a subdivision approved by San Luis Obispo County. Lots less than three acres in size could not be created after October 12, 1960 without first having a subdivision approved by the County, and a tract or parcel map was required to be approved to create parcels at that time. Therefore, the parcel was not legally created, and a violation was filed against the subject parcel on December 31, 1964 (1331 OR 267). A Notice of Intention to Record a Notice of Violation for this property was recorded on August 22, 1979 (2179 OR 779), and a Notice of Violation was recorded on November 19, 1979 (2203 OR 902). This CCOC has been requested to release the Notice of



Violation that was filed against the property in 1979.

D. Coastal Development Permit Findings

1. Land Use Density

Relevant LCP Provisions

Estero Area Plan Residential Suburban Standard 1 is applicable to the project site and states:

1. Minimum Parcel Size – Lots Adjoining Agricultural Area North of Tapidero Road.
Minimum parcel size for lots adjoining the agricultural land use designation to the north shall be 5 acres.

Consistency Analysis

The 2-acre site designated Residential Suburban is located immediately north of Tapidero Road in the Estero Planning Area, and is adjacent to Agriculture designated land. The proposed creation of a new 2-acre site results in a parcel that does not conform to the 5-acre minimum required by the LCP. The creation of parcels that are inconsistent with minimum parcel sizes undermines the primary way in which the LCP plans and regulates development densities. Managing development density is a critical tool for ensuring adequate public services and protecting coastal resources. This is particularly important within the Los Osos area, where there are significant concerns about the adequacy of water supplies wastewater treatment methods, the preservation of agriculture, and where the biological continuance of numerous rare and sensitive species is threatened by development.

The development densities established by the LCP also provide a means to manage the transition of urban to rural, thereby protecting the agricultural, scenic, and habitat values of coastal open space. The proposed new parcel is located in an area where the urban environment of Los Osos transitions to a rural agricultural area. Maintaining minimum parcel sizes of 5 acres is essential to protect coastal agricultural resources and associated rural character, as further discussed in subsequent findings of this report.

Density Conclusion

The proposed project is inconsistent with LCP density standards because it will create a 2-acre lot that does not conform to the 5-acre minimum parcel size established by the Estero Area Plan. There is inadequate area within the existing parcel to create a lot that complies with the 5-acre minimum lot size standard. The project must therefore be denied.

2. Public Service Capacities



Relevant LCP Provisions

The LCP contains the following policy relevant to the provision of public or private public services for new development:

Policy 1: Availability of Service Capacity - *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 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 USL (Urban Services Line) shall be allowed only if it can be serviced by adequate on site private water and waste disposal systems.*

The Applicant shall assume responsibility in accordance with county ordinances or the rules and regulations of the appropriate 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 23.04.021 (c) OF THE CZLUO]

Coastal Watershed Policy 1: Preservation of Groundwater Basin - *The long-term integrity of groundwater basins within the coastal zone shall be protected. The safe yield of the groundwater basin, including return and retained water, shall not be exceeded except as part of a conjunctive use or resource management program which assures that the biological productivity of aquatic habitats are not significantly adversely impacted. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD].*

Consistency Analysis

The policies cited above ensure that new development, including land divisions, will not be approved unless it can be shown that adequate services are available to support the additional development. For projects like this one that are located outside both the USL and URL, Policy 1 requires that the applicant must demonstrate that the new development can be adequately served by private onsite water and waste disposal systems as the use of municipal services are not permitted beyond the USL.

Accordingly, applicants for new development outside the USL must demonstrate that a well and septic system that met county health standards could be installed on the site. The mitigated negative declaration prepared for the project indicates that the project proposes to use an onsite shared well as its water source for the development of a maximum of one primary and one secondary dwelling unit, resulting in a reasonable “worst case” indoor water usage of approximately 1.18 acre feet per year (afy). The project was subsequently conditioned by the



County to require a shared well agreement, well completion report, pump tests, and a full water quality report. The mitigated negative declaration also indicates that wastewater needs on the site will be served by an onsite septic system, which the County indicates will be evaluated in greater detail prior to the issuance of future building permits.

While the County approval indicates that it is possible to utilize the existing well on the site, no evidence is provided as to the adequacy or long-term sustainability of the well or septic system, as required by Policy 1. The certified Estero Plan (1988) states “*growth in the South Bay area will be limited until alternative water supplies are available*” (page 5-4). In the 19 years since the Estero Plan was certified, no new water sources for the South Bay have been found. The November 1998 Draft Estero Plan Update states that a Resource Management Level III (the most severe constraint) on water capacity will be reached when the population is over 12,660 people (Estero Area Plan, page 3-5). The population of Los Osos area as of 1996 is given in the draft plan as 14,568, well above the figure triggering a Level III of severity.

Indeed, the County, the Los Osos Community Services District (LOCSD), the Coastal Commission, and the Central Coast Regional Water Quality Control Board have all identified significant outstanding issues regarding the adequacy of the public infrastructure needed to serve existing lots (let alone new lots) in the Los Osos area. In particular, the Coastal Commission’s concerns regarding the safe-yield of the Los Osos Groundwater Basin and the environmental problems created by the current practice of using septic systems to dispose of wastewater have been thoroughly documented in the Commission’s *Periodic Review of the San Luis Obispo County Local Coastal Program* (adopted July 12, 2001) and in Commission staff reports regarding the wastewater treatment facilities proposed for the area (Coastal Development Permit Appeals A-3-SLO-97-40 and A-3-SLO-03-113). In light of these critical outstanding issues, the Commission has denied requests to subdivide existing parcels within Los Osos (Coastal Development Permit Appeals A-3-SLO-99-79 and A-3-SLO-98-087).

In this case, the proposed project would create a new legal parcel that is currently undeveloped. The creation of a new parcel will place additional demands on local water supplies by increasing the number of parcels in the Los Osos area available for future development. Whether water for such development is provided by a private well or by connecting to the municipal system, it represents an additional withdrawal from the highly constrained Los Osos groundwater basin. Because existing withdrawals exceed the safe yield of the groundwater basin estimated by the certified LCP, it cannot be found that there are adequate water supplies to support the creation of new legal parcels at this time.

The problems of maintaining a sustainable water supply would be exacerbated by the project, not only because it would create a new parcel that places additional demands on extremely limited water resources, but because these demands would be in excess of the level of development allowed by the LCP. Density standards established by the LCP provide the fundamental means by which levels of development are balanced with available services and resource constraints. The proposed project creates the potential for up to two residences to be developed on a site that



can only be developed with one residence in accordance with existing LCP density standards. Thus, the project results in a level of development beyond that allowed by the LCP or that can be supported by existing water supplies and other environmental resources as further discussed below.

The additional wastewater that would be generated by future development is also of concern. Although the proposed parcel is outside of the septic tank prohibition area established by the Regional Water Quality Control Board, there has been no evidence provided that the geologic conditions of the site would accommodate future development dependent upon a septic system in a manner that would effectively protect coastal water quality and aquatic habitats. This concern is heightened by the close proximity of the proposed parcel to Los Osos Creek. A precautionary approach must be followed given the significant outstanding issues regarding the impact that septic systems are having on the coastal resources and water supplies of Los Osos.

Public Service Conclusion

There are significant outstanding issues regarding the adequacy of Los Osos water supplies and the impacts of septic systems in this area that preclude the creation of new parcels from being consistent with LCP Policy 1 for Public Works and LCP Watershed Policy 1. The creation of a new lot with future development potential would place additional demands on limited water supplies. In addition, the increase in septic system discharges pose additional adverse impacts to the groundwater basin and aquatic habitats. As a result, the project is inconsistent with the LCP provisions cited above and the CCOC must be denied.

3. Agriculture

Relevant LCP Provisions

Policy 1: Maintaining Agricultural Lands - Prime agricultural land shall be maintained, in or available for, agricultural production unless: 1) agricultural use is already severely limited by conflicts with urban uses; or 2) adequate public services are available to serve the expanded urban uses, and the conversion would preserve prime agricultural land or would complete a logical and viable neighborhood, thus contributing to the establishment of a stable urban/rural boundary; and 3) development on converted agricultural land will not diminish the productivity of adjacent prime agricultural land.

Other lands (non-prime) suitable for agriculture shall be maintained in or available for agricultural production unless: 1) continued or renewed agricultural use is not feasible; or 2) conversion would preserve prime agricultural land or concentrate urban development within or contiguous to existing urban areas which have adequate public services to serve additional development; and 3) the permitted conversion will not adversely affect surrounding agricultural uses.



All prime agricultural lands and other (non-prime) lands suitable for agriculture are designated in the land use element as Agriculture unless agricultural use is already limited by conflicts with urban uses.

Policy 2: Divisions of Land - *Land divisions in agricultural areas shall not limit existing or potential agricultural capability. Divisions shall adhere to minimum parcel sizes set forth in the Coastal Zone Land Use Ordinance. Land divisions for prime agricultural soils shall be based on the following requirements:*

- a. The division of prime agricultural soils shall be prohibited unless it is demonstrated that existing or potential agricultural production of at least three crops common to the agricultural economy will not be diminished.*
- b. The creation of new parcels whose only building site would be on prime agricultural soils shall be prohibited.*
- c. Adequate water supplies are available to maintain habitat values and to serve the proposed development and support existing agricultural viability.*

Land divisions for non-prime agricultural soils shall be prohibited unless it can be demonstrated that existing or potential agricultural productivity of any resulting parcel determined to be feasible for agriculture would not be diminished. Division of non-prime agricultural soils shall be reviewed on a case-by-case basis to ensure maintaining existing or potential agricultural capability.

(This may lead to a substantially larger minimum parcel size for non-prime lands than identified in the Coastal Zone Land Use Ordinance. Before the division of land, a development plan shall identify parcels used for agricultural and non-agriculture use if such uses are proposed. Prior to approval, the applicable approval body shall make a finding that the division will maintain or enhance agriculture viability.) [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD].

Consistency Analysis

The subject parcel is undeveloped, has a history of being in agricultural production, and is surrounded on three sides by agricultural land. The mitigated negative declaration prepared for the project states that irrigated row crops on prime soils are grown on the project site, farmed in conjunction with approximately two acres west of the site. The San Luis Obispo County Agricultural Commissioner determined that the subject parcel is not of adequate size to support production of agriculture, but indicated that development of the parcel with non-agricultural uses would result in the conversion of prime soils (see Exhibit E).

Policy 1 of Chapter 7 of the LUP requires the maintenance of prime agricultural land unless: agricultural use is already limited by conflicts with urban uses; conversion would contribute to a stable urban/rural boundary; or development on converted agricultural land will not diminish the



productivity of adjacent prime agricultural land. The subject parcel is undeveloped and surrounded on three sides by agricultural land, and is outside the established URL and USL. The proposed lot is intended to accommodate a residential use, and will therefore result in the conversion of viable agricultural land. Agricultural use of the parcel is not limited by conflicts with urban uses, nor would the creation of the parcel contribute to a logical and viable neighborhood and the establishment of a stable urban/rural boundary. The proposed division could diminish the productivity of adjacent prime agricultural land by emphasizing residential development over other uses. The subsequent increase in residential development that will result from the creation of a new lot may result in conflicts with adjacent agricultural uses and increase the pressure to convert remaining agricultural lands.

A fundamental way in which the LCP protects agricultural land is by prohibiting land divisions that create new development potential within agriculturally-productive areas. LUP Agriculture Policy 2 regulates land divisions, including CCOCs, in all agricultural areas. Although the project site is designated as Residential Suburban rather than Agriculture by the LUP, the site has been historically farmed, is comprised entirely of prime soils, and is surrounded on three sides by agricultural uses. Thus, irrespective of its land use designation, it is clearly within an agricultural area and subject to compliance with Agriculture Policy 2.

Under LUP Agriculture Policy 2, subdivision development must not compromise the long-term viability of agricultural lands. This policy requires that agricultural lands be maintained in, or available for, agricultural production. Subsections a, b, and c of Policy 2 specifically prohibit the division of prime agricultural soils unless it is demonstrated that existing or potential production of at least three crops will not be diminished; prohibits the creation of new parcels whose only building site is on prime soils; and requires proof of adequate water supplies to serve the proposed development and support existing agricultural viability.

The County record for the project does not include evidence of the viability of existing or potential agricultural production on the subject parcel other than to state that the parcel is not of adequate size to support agriculture. According to the applicant, a recent farmer grew green beans, squash, tomatoes, and sugar peas on the site, and sold them at local farmer's markets. No evidence exists in the record to indicate that removal of this land from agricultural production will not diminish the production of at least three crops common to the agricultural economy other than a claim by the applicant that farming of the site is unprofitable. Because the site has been farmed in the recent past with crops that were sold for profit, the Commission is not able to find that the existing or potential production of at least three crops will not be diminished with the division of this land.

Furthermore, Agriculture Policy 2 prohibits the creation of new parcels whose only building site would be on prime soils. Accordingly, a critical step in evaluating the project's consistency with LCP agriculture standards is to evaluate whether the new 2-acre lot that would be created by the requested CDP/CCOC contains a location that could support future development outside of prime soils. As described above, the entire site contains prime soils, and therefore cannot be



divided consistent with Policy 2.

The applicant has also not provided proof of adequate water supplies to serve the creation of a new legal lot and support existing agricultural viability. As described above in Section D.2, Public Service Capacities, the Commission finds that an adequate water supply does not exist for the creation of a new parcel in Los Osos, especially when the LCP requires evidence of a water supply that would maintain habitat values, serve proposed development, AND support existing agriculture. Therefore, the CDP/CCOC would not meet the overriding requirements for division on prime agricultural soils established by subsection c. of Agriculture Policy 2.

In addition, as established in the Land Use Density findings of this report, the project is inconsistent with the LCP's 5-acre minimum lot size requirement. The effective protection of prime agricultural soils necessitates strict adherence to LCP density standards, which have been designed to control the intensity of development in a manner that protects agriculture and other coastal resources. By creating additional development potential beyond the intensity permitted by the LCP, the project is inconsistent with LCP requirements to prevent adverse impacts to prime soils and the continuance of agricultural production on such soils (LUP Agriculture Policies 1 and 2).

Agriculture Conclusion

The requested CCOC would create a new 2-acre parcel comprised entirely of prime agricultural soils that would be inconsistent with LCP provisions that require maintenance of prime soils for agricultural production and prohibit subdivisions, including CCOCs, on land comprised of prime soils. Future development of the proposed 2-acre parcel could preclude the continuance of agricultural production on the site and diminish the productivity of adjacent prime agricultural land. The project is therefore inconsistent with the LCP standards cited above and must be denied.

X. California Environmental Quality Act

Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

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

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

Public Resources Code (CEQA) Section 21080.5(d)(2)(A). *Require that an activity will*



not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

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

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

Pursuant to CEQA Guidelines (14 CCR) Section 15042 “a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.” Section 21080(b)(5) of the CEQA, as implemented by section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

San Luis Obispo County, the lead agency for the project, determined that there is no substantial evidence that the project may have a significant effect on the environment, and therefore issued a Mitigated Negative Declaration for the project on August 4, 2005. On appeal, the Commission finds that denial, for the reasons stated in the findings in this report, is necessary to avoid the significant effects on coastal resources that would occur if the project were approved as proposed. Accordingly, the Commission’s denial of this project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, does not apply.

