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# W23a

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Staff: Brian O'Neill - SC  
Staff Report: 2/21/2020  
Hearing Date: 3/11/2020

## STAFF REPORT: CDP AMENDMENT

**Application Number:** 140-32-A1

**Applicants:** Gloria Bell; Diana and Kenneth Bell; James Bell; Vincent Bell; and Jacob Bell

**Project Location:** 1457 Los Osos Valley Road, San Luis Obispo County (APN 074-315-003)

**Original Project Description:** Construction of a two-story 2,800 square-foot single-family residence for the exclusive use of immediate family on an approximately 80,000 square-foot lot developed with an existing one-story 1,597-square-foot single-family residence.

**Amendment Description:** Eliminate a condition of the original permit approval that required recordation of a deed restriction that, in turn, required demolition of the original home on the property at the time of any sale of the property.

**Staff Recommendation:** Approval with Conditions

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## SUMMARY OF STAFF RECOMMENDATION

The original project approved by CDP 140-32 in 1977 was for the construction of a new single-family residence on a lot that was already developed with an existing residence.

At the time, the subject lot was in a rural area at the outskirts of the community of Los Osos and was surrounded by completely undeveloped lots or lots developed with one single-family home. The application was submitted shortly after the Coastal Act went into effect and San Luis Obispo County had just begun to prepare a Local Coastal Program (LCP). Because the LCP had not yet been developed and the standards regarding residential development in this rural area, and second units in particular, had not yet been determined, Commission staff recommended denial of the proposed second house due to concerns that approval of the project would prejudice development of the LCP. However, at the hearing, the Applicant noted that the proposed second residence was intended for the exclusive use of his immediate family, and the Commission thus codified same by approving the project subject to the recordation of a deed restriction that required demolition of the existing home upon any future sale of the property (which would ensure that the project would indeed be used exclusively by the immediate family and would also not prejudice the development of the LCP because the approval did not permanently approve a second residence).

Since the time the CDP was issued, the LCP has been certified and includes a number of standards applicable to second units in Los Osos. The Applicants' request for an amendment to remove the deed restriction condition would essentially replace the Commission's temporary approval and allow a new permanent secondary dwelling unit to remain on the parcel. As such, an amendment to remove the deed restriction condition can only be found consistent with the intent of the Commission's original action and with the County's LCP (i.e., the standard of review for this CDP amendment application) if the new permanent secondary dwelling unit is consistent with current LCP standards for secondary dwelling units. As proposed, the second unit is not LCP consistent.

Specifically, the secondary dwelling unit is approximately 800 square-feet larger than the LCP allows. In addition, the information provided by the Applicants does not clearly show whether the existing development is entirely consistent with the LCP's other second unit development standards with respect to maximum distance between units, parking requirements, etc.<sup>1,2</sup> Thus the proposed amendment cannot be found consistent with the LCP as proposed by the Applicants. However, the amendment could be approved if the Applicants modify the secondary dwelling unit to bring it into compliance with the LCP standards. And that is exactly what staff recommends (and has long recommended to these Applicants when inquiries about the deed restriction have been made over the years). Thus, staff recommends approval subject to conditions that

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<sup>1</sup> In addition, since the base CDP was issued, additional development appears to have occurred on the subject lot including a second driveway, in a different location than the approved driveway, and several unidentified structures/outbuildings that were not approved by the CDP. Staff's recommendation here would require the Applicants to either submit confirmation that such development has been legally established or bring the site into compliance with the base CDP. Approval of this application pursuant to the staff recommendation, issuance of the CDP, and the Applicants' subsequent compliance with all terms and conditions of the CDP will result in resolution of future impacts from the violation.

<sup>2</sup> Consistent with advice from both the State Attorney General and the Coastal Commission Chief Counsel (see memos dated June 20, 2014 and August 1, 2014, respectfully), Commissioners should not engage in any ex parte communications related to these violations.

require the Applicants to submit revised plans and information to ensure LCP consistency for all development on the site, and thus to correspondingly allow the Applicants to remove the deed restriction and avoid the currently required demolition of the entire 1,597-square-foot residence in event of sale.

In sum, when the Commission considered the CDP in 1977, it was concerned that the original second unit as proposed would not be consistent with the standards of the yet-to-be developed LCP. The Commission's concerns were well founded given that the second unit did not end up conforming to the requirements of the LCP. As such, an amendment to remove the deed restriction condition can only be found consistent with the intent of the Commission's original action and with the County's LCP if the amendment is conditioned to ensure that the secondary dwelling unit (and other development on the site) is consistent with the original CDP and the LCP. Staff recommends approval with conditions to accomplish same, where the motion to adopt the staff recommendation is found on page 5 below.

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**EXHIBITS**

- Exhibit 1: Project Location Maps
- Exhibit 2: 1977 Project Plans
- Exhibit 3: Project Photos
- Exhibit 4: CDP 140-32
- Exhibit 5: September 17, 1999 Letter from Central Coast District Staff to Lester Bell
- Exhibit 6: Deed Restriction
- Exhibit 7: Applicable LCP Provisions
- Exhibit 8: Special Conditions as Amended (with changes incorporated)

**CORRESPONDENCE**

**EX PARTE COMMUNICATION**

## I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** the proposed coastal development permit amendment. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Motion:** I move that the Commission **approve** the proposed amendment to Coastal Development Permit Number 140-32 subject to the conditions set forth in the staff recommendation, and I recommend a **yes** vote.

**Resolution to Approve CDP Amendment:** The Commission hereby approves coastal development permit amendment number 140-32-A1 and adopts the findings set forth below on grounds that the development, as amended and subject to conditions, will be in conformity with the policies of the certified Local Coastal Program. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## II. SPECIAL CONDITIONS

This permit amendment is granted subject to the following special conditions. All terms and conditions of the original approval of Coastal Development Permit No. 140-32 remain in full force and effect, except those that are explicitly replaced or modified in this amendment (shown in underline)<sup>3</sup>, as follows:

### 1. **Modify Special Condition 1**, as follows:

... Applicant shall submit to the Executive Director and shall record with the County Recorder of San Luis Obispo Co. a deed restriction which shall promise that at the time of any future sale of all or part of subject property the existing residence shall be demolished. The restriction shall remain in full force and effect until the Executive Director has determined that Special Conditions 2, 3, and 4 of this CDP as amended (listed below) have been satisfied. Upon written confirmation from the Executive Director that Special Conditions 2, 3, and 4 have been met, the Permittees may remove the deed restriction from the property.

### 2. **Add Special Condition 2** as follows:

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<sup>3</sup> **Exhibit 8** shows all conditions of CDP 140-32 with all changes from this amendment incorporated.

**2. Existing Development Plans and Permitting History.** PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, the Permittees shall submit a full size set of site plans clearly depicting all existing development on the site. The Existing Development Plans shall be prepared by a licensed professional or professionals (i.e., architect, surveyor, geotechnical engineer, etc.), based on current professionally surveyed and certified topographic elevations for the entire site, and shall include a graphic scale. The Existing Development Plans shall: confirm the exact size of the property; confirm the location of all existing structures on the parcel; identify all building setbacks (i.e., front, side and rear property line setbacks, as well as setbacks between structures); confirm the square footage of all structures; confirm the height of all existing structures; calculate the gross floor area of all structures; and calculate the existing site coverage (i.e., the percentage of the site that remains open space and the percentage of the site that contains any type of residential development such as driveways, decks, structures, etc.). The Permittees shall also submit the permitting history for all structures constructed on the site since January 1, 1977. For any development on the site prior to January 1, 1977, the Permittees shall submit evidence (e.g., building permits, photographs, etc.) demonstrating that such development was present before January 1, 1977.

**3. Add Special Condition 3** as follows:

**3. LCP-Consistent Final Site Plans and Construction Plans.** PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, the Permittees shall submit two full size sets of Final Site Plans and Construction plans to the Executive Director for review and approval. The Plans shall be prepared by a licensed professional or professionals (i.e., architect, surveyor, geotechnical engineer, etc.), shall be based on current professionally surveyed and certified topographic elevations for the entire site, shall include a graphic scale, and shall provide for all of the following:

- a) **LCP-Consistent Final Site Plans.** The Final Site Plans shall clearly depict all alterations necessary to bring all existing development on the site into conformance with CDP 140-32 and all applicable LCP provisions, including but not limited to Coastal Zone Land Use Ordinance Section 23.08.169 regarding second units and all other LCP provisions that apply to the residential single family zoning district (see **Exhibit 7**). The Final Site Plans shall clearly describe the changes necessary to bring all development on the site into conformance with the LCP. Such changes may include removal of portions of and/or removal of the entirety of structures that do not conform with the standards of the residential single family zoning district and with the LCP's requirements for second units.
- b) **Construction Plans.** The Construction Plans shall identify the type and location of all erosion control/water quality best management practices that will be implemented during removal or alteration of the existing structures on the site to bring them into conformance with the LCP, including the following: (1) silt fences, straw wattles, or equivalent apparatus shall be installed at the perimeter of the

construction site to prevent construction-related runoff and/or sediment from discharging to coastal waters or to areas that would eventually transport such discharge to coastal waters; (2) the contractor shall ensure that good construction housekeeping controls and procedures are maintained at all times (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the site).

**4. Add Special Condition 4** as follows:

**4. Confirmation of LCP Consistent Development.** PRIOR TO REMOVAL OF THE DEED RESTRICTION, the Permittees shall undertake development in accordance with the approved LCP Consistent Final Plans (see **Special Condition 3**) and shall submit to the Executive Director, for review and approval, confirmation that the development has been completed prior to removal of the deed restriction (see **Special Condition 1**).

### III. FINDINGS AND DECLARATIONS

#### A. Project Description

The proposed project is located at 1457 Los Osos Valley Road in the community of Los Osos in San Luis Obispo County. Los Osos is an unincorporated coastal community of about 15,000 residents that is located in central San Luis Obispo County at the south end of Morro Bay and roughly due west of the City of San Luis Obispo. The project site is currently developed with two dwelling units as well as other structures and development.<sup>4</sup> The site is zoned residential single family, which allows for one primary residence per legal parcel. Second units are allowed in this zoning district subject to certain size and locational criteria. Please refer to **Exhibit 1** for project location information and **Exhibit 2** for photographs of the site.

The second dwelling unit on the site was approved by the Commission via CDP 140-32 in 1977. Specifically, on August 8, 1977, shortly after the Coastal Act went into effect, the applicant at the time (Lester Bell Sr.) submitted a Coastal Development Permit (CDP) application for the construction of a new two-story 2,800 square-foot single-family residence on an approximately 80,000 square-foot lot in Los Osos that was already developed with an existing one-story approximately 1,597-square-foot single-family residence. At the time, the subject lot was in a rural area at the outskirts of the community of Los Osos, and it was surrounded mostly by undeveloped lots or lots developed with one single-family home.

At the time the application was submitted, San Luis Obispo County had just begun to prepare a Local Coastal Program (LCP). Thus, the standards regarding residential development in this rural area, particularly whether secondary dwelling units would be allowed, had not yet been determined. Due to concerns that approval of the project would prejudice development of the County's LCP, and also because approval of the second residence was not in character with the relatively undeveloped surrounding neighborhood, Commission staff recommended denial of the proposed second residence. However, at the September 1977 Commission hearing on the CDP, the then Applicant noted that the second residence was necessary for his family and that it would be used exclusively by his immediate family. Based on this testimony, the Commission approved the project with a special condition (see **Exhibit 3**) designed to ensure that the two homes would only be used in that way and for this family. Specifically, that condition required the recordation of a deed restriction that mandated demolition of the existing roughly 1,600 square-foot home at the time of any future sale of the property, thereby ensuring that only the new 2,800-square-foot residence would be present (and thus wouldn't raise issues regarding secondary dwelling units) upon sale. In other words, the Commission allowed the second home at that time as a means of allowing the then Applicant to have two homes that could be used exclusively by the immediate

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<sup>4</sup> In addition, since the base CDP was issued, additional development appears to have occurred on the subject lot (including a second driveway, in a different location than the approved driveway, and several unidentified structures/outbuildings that were not approved by the CDP) without benefit of a CDP. Consistent with advice from both the State Attorney General and the Coastal Commission Chief Counsel (see memos dated June 20, 2014 and August 1, 2014, respectfully), Commissioners should not engage in any ex parte communications related to these violations.

family as a means of meeting the then Applicant's needs and also avoiding LCP prejudice (because the approval did not permanently approve a second residence on the parcel). On November 1, 1977, the Permittee recorded the deed restriction (see **Exhibit 5**) as required by the Commission's approval, a CDP was subsequently issued, and the Permittee constructed the second residence.

Since the time the CDP was issued, the LCP was certified and included a number of provisions that are applicable to second units in Los Osos. In 1999, the Permittee submitted an inquiry to Commission staff to determine whether the deed restriction on the property could be removed. Commission staff responded that removal of the deed restriction would require a CDP amendment application and that Commission staff would need to determine whether retaining the two residences on the site would comply with all LCP standards before an amendment could be approved (see **Exhibit 4**). The Permittee did not submit an amendment application at that time.

In January 2019, descendants of the original Permittee Lester Bell Sr. and their spouses (i.e., the Applicants for this CDP amendment) contacted Commission staff to determine whether the deed restriction could be removed. Commission staff again stated that removal of the deed restriction would require a CDP amendment and, as long as the two existing residences comply with all current LCP standards, the amendment could be approved. In August 2019, the Applicants submitted the current CDP amendment request to remove the deed restriction,<sup>5</sup> which would allow both homes to remain on the property if and when the property is sold, but without modifications necessary to meet LCP requirements.

## **B. Standard of Review**

The project site is located within the County's CDP jurisdiction area. Thus, the standard of review for the proposed project is the San Luis Obispo County LCP.

## **C. Secondary Dwelling Units**

Since the time the project was originally approved, the San Luis Obispo County LCP has been certified and includes a number of standards applicable to secondary dwelling units. The Applicants' request for an amendment to remove the deed restriction condition would allow for a permanent secondary dwelling unit to remain on the parcel

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<sup>5</sup> The Applicants have also argued that the Commission should agree to the removal of the deed restriction because it was not lawfully recorded in the first place. Specially, they argue that the original permittee, Lester Bell Sr., only owned a half interest in the property, as a joint tenant with his wife, Dorothy Mae Bell, and the other property owners (Lester Bell Jr. and Lena Bell owned the other half interest as joint tenants) did not sign the deed restriction. However, even assuming, arguendo, that Mr. Bell lacked authority to record the deed restriction on his own, the lawfulness of the recordation is irrelevant to the current amendment application. The deed restriction requirement was a properly imposed permit condition that was not challenged by the other property owners or anyone else, so the permit condition remains valid. Thus removal of the deed restriction can only be legally accomplished if authorized through a permit amendment. Moreover, even if the recordation of the deed restriction were determined to be invalid, the underlying permit condition that required recordation of the deed restriction would remain an enforceable component of the permit and removal of the deed restriction absent a permit amendment would constitute a violation.

upon future sale of the property.<sup>6</sup> As such, an amendment to remove the deed restriction condition can only be found consistent with the intent of the Commission's original action and with the County's LCP if the new permanent secondary dwelling unit is consistent with current LCP standards for secondary dwelling units.

Coastal Zone Land Use Ordinance (CZLUO) Section 23.08.0169 (see **Exhibit 6**) provides a variety of specific design standards for secondary dwelling units. Such standards include an 800-square-foot maximum size on lots less than two acres in size, a maximum distance of 50 feet between the primary and secondary unit, a requirement to combine driveways serving the primary and secondary units when possible, a requirement of at least one off-street parking space and a maximum of two spaces to serve the second unit, and a requirement that any garage or workshop for the second unit must be limited to a maximum of 50 percent of the size of the secondary dwelling.

The existing secondary dwelling unit is approximately 1,597-square-feet, approximately 797 square-feet above the LCP maximum for second units.<sup>7</sup> Approval of the amendment alone therefore cannot be found consistent with the LCP because the unit is above the maximum size allowed. However, the Applicants could reduce the size of the 1,597-square-foot residence to meet the LCP's 800-square-foot maximum for a second unit and be consistent with both the Commission's intent in requiring the condition and with the LCP's second unit standards. This would allow the Applicants to remove the deed restriction and avoid demolition of the entire 1,597-square-foot residence.

However, although it is clear the existing unit is larger than allowed, the information provided by the Applicants does not clearly show whether the existing development is entirely consistent with the LCP's other second unit development standards (including with respect to maximum distance between units, parking requirements, etc.). In fact, the site plans that were submitted in support of this amendment application are original 1977 plans that were hand drawn, presumably by the Permittee (see **Exhibit 2**). The Applicants have been unwilling to provide plans prepared by licensed professionals to confirm the accuracy of the original site plans and to confirm that the existing development is consistent with the Commission's 1977 approval. Although the Applicants have asserted that the unit is consistent with all other standards, their assertion alone is insufficient. Consistency cannot be confirmed without additional verified information.

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<sup>6</sup> The Applicants argue that the existing second dwelling unit should be considered a legal non-conforming use because it was established prior to the effective date of the LCP. However, as explained above, that use was only allowed conditionally. The Commission approved a CDP to allow a second unit on the parcel for the exclusive use of the Permittee's immediate family and only until such time the property was sold, at which time one of the residences would need to be demolished. The current amendment request is for a new use that was not established prior to the effective date of the LCP, namely a permanent second unit that would be available for use by anyone and is not subject to the aforementioned condition.

<sup>7</sup> Although the Applicants have stated that the size of the home is 1,597-square-feet, the Applicants have not submitted confirmation of the exact size of the existing development on the property via site plans prepared by a licensed professional and thus all square-footage is listed as approximations.

Additionally, photographic evidence suggests that there are may be other sheds, garages, workshops, and/or other structures on the property, which are not identified on any of the site plans submitted with the amendment request, and the Commission is not aware of CDPs authorizing same. Further, the Applicants have not submitted any permit history for these other structures and it is not clear that these structures can even meet other LCP requirements (e.g., regarding lot coverage, allowable uses, open space requirements, etc.).

Given all the above, **Special Condition 2** therefore requires the Applicants to submit revised plans and information prepared by licensed professionals to confirm the details of all of the existing development on the site prior to issuance of the amended permit. That information is critical to ensure that structures on the site are modified to meet LCP requirements and the original terms of the permit. This information is also critical to determine the consistency of all development on the site with the LCP's development standards for the residential single family zoning district. This condition also requires that the Permittees provide the permitting history for all development on the site.

Once that information is submitted and consistency (or lack thereof) with the LCP can be confirmed, **Special Condition 3** requires the Applicants to submit final plans prepared by licensed professionals, for Executive Director review and approval, that shows the alterations necessary to bring the existing second unit on site into consistency with the original CDP and the LCP, including all of the development standards of CZLUO Section 23.08.169 regarding second units. For other development on the site, these plans must also clearly depict the changes necessary to bring such development on the site into conformance with the LCP provisions that apply to the residential single family zoning district. To ensure that potential adverse impacts from construction related activities are mitigated, **Special Condition 3** also requires submission of a construction plan that requires erosion and sediment controls and general Best Management Practices to control runoff during the construction/demolition/alterations necessary to make all development on the site consistent with the requirements of the LCP.

**Special Condition 4** requires the Applicants to submit confirmation to the Executive Director that the development shown on the LCP-consistent final plans (Special Condition 3) has been successfully completed. Only upon confirmation that all development on the site has been brought into conformance with the LCP, does the revised version of **Special Condition 1** allow for the existing deed restriction to be removed.

### **Conclusion**

The Applicants have requested that Special Condition 1 be modified to allow for removal of the deed restriction, without any changes to ensure LCP consistency. As explained above, removal of the deed restriction without any changes to ensure LCP consistency would not be consistent with the intent of the Commission's original approval, nor would it be consistent with the LCP, because it would result in the permanent approval of a secondary dwelling unit that is inconsistent with the LCP provisions for such units. The Applicants suggest that demolition of the second unit

does not further the statewide goal of providing more housing. However, approval of this amendment recommendation would not require demolition of the second unit, but rather would allow the house to remain if it, and other development on the site, is modified as necessary to bring all development on the site into conformance with the LCP. The conditions are intended to provide a path for the Applicants to remove the deed restriction, while avoiding complete demolition of the existing unit, and to bring all other development on the site into compliance with the LCP.

In sum, when the Commission considered the CDP in 1977, it was concerned that the original second unit as proposed would not be consistent with the standards of the yet-to-be developed LCP. The Commission's concerns were well founded given that the second unit did not end up conforming to the requirements of the LCP. As such, an amendment to remove the deed restriction condition can only be found consistent with the intent of the Commission's original action and with the County's LCP if the amendment is conditioned to ensure that the new permanent secondary dwelling unit (and other development on the site) is consistent with the LCP. Thus, as conditioned, the project can be found consistent with original permit and the County's LCP.

#### **D. Violations**

Violations of the Coastal Act and/or the LCP exist on the subject property including, but not limited to, a second driveway, in a different location than the approved driveway, and several unidentified structures/outbuildings that were not approved by the base CDP. Issuance of this CDP amendment and compliance with all of the terms and conditions of the CDP, as amended, will result in resolution of the future impacts from the aforementioned violations of the Coastal Act/LCP on the subject property as the conditions require the Applicants to bring the site into conformance with the original CDP and the LCP.

Although development has taken place prior to submission of this CDP amendment application, consideration of this application by the Commission has been based solely upon the San Luis Obispo County LCP. Commission review and action on this CDP amendment does not constitute a waiver of any legal action with regard to the alleged aforementioned violations, or any other violations at the site, nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a CDP. In fact, approval of this CDP amendment is possible only because of the conditions included herein and failure to comply with these conditions would also constitute a violation of this CDP, as amended, and of the Coastal Act/LCP. Failure to comply with the terms and conditions of this permit may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

#### **E. California Environmental Quality Act (CEQA)**

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the

application to be consistent with any applicable requirements of CEQA. 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 that the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA. The preceding coastal development permit findings discuss the relevant coastal resource issues with the proposal, and the permit terms and conditions identify appropriate modifications to avoid and/or lessen any potential for adverse impacts to said resources.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, if so conditioned, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).