

## **CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060-4508  
VOICE (831) 427-4863  
FAX (831) 427-4877



# Th13d

**A-3-SLO-19-0180 (SHEAR DEVELOPMENT SFDS)**

**JULY 9, 2020 HEARING**

### **EXHIBITS**

- Exhibit 1 – Location Maps
- Exhibit 2 – Site Photos
- Exhibit 3 – Proposed Project Plans
- Exhibit 4 – County Informational Brochure “Vacant Lots in Los Osos – FAQs”
- Exhibit 5 – Commission Staff Letters Regarding Special Condition 6
- Exhibit 6 – Applicable LCP Provisions
- Exhibit 7 – United States Fish and Wildlife Service Letter Dated February 11, 2010

# Project Location

City of Morro Bay

Morro Bay

Los Osos

Project Site



# Project Location

Project Site











**Figure 2**

Aerial Overview

**Lots 1, 3, 5 and 7 of Tract 2161**

Shear Development Company, LLC

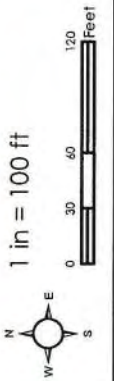


Exhibit 2

A-3-SLO-19-0180

1 of 5





**Photo 5.** Lot identified as APN 074-025-017 showing mowed veldt grass on constructed pad surrounded by concrete retaining wall and privacy fence. Landscaping was present in the constructed basin in the upper left corner of photo and Monterey cypress in upper right.



**Photo 6.** Westerly view of APN 074-025 -019 showing mowed veldt grass and beach volleyball court on graded pad. Residences surround site and landscaping including coast live oaks were present along perimeter. Concrete retaining wall and privacy fencing were also present along the perimeter.





Photo 2: Photo of lot 1 viewing northeast. Note annual grasses that dominate the site.

February 24, 2019





Photo 4: Photo of unmaintained volleyball court and annual grasses that dominate lot 3.

February 24, 2019



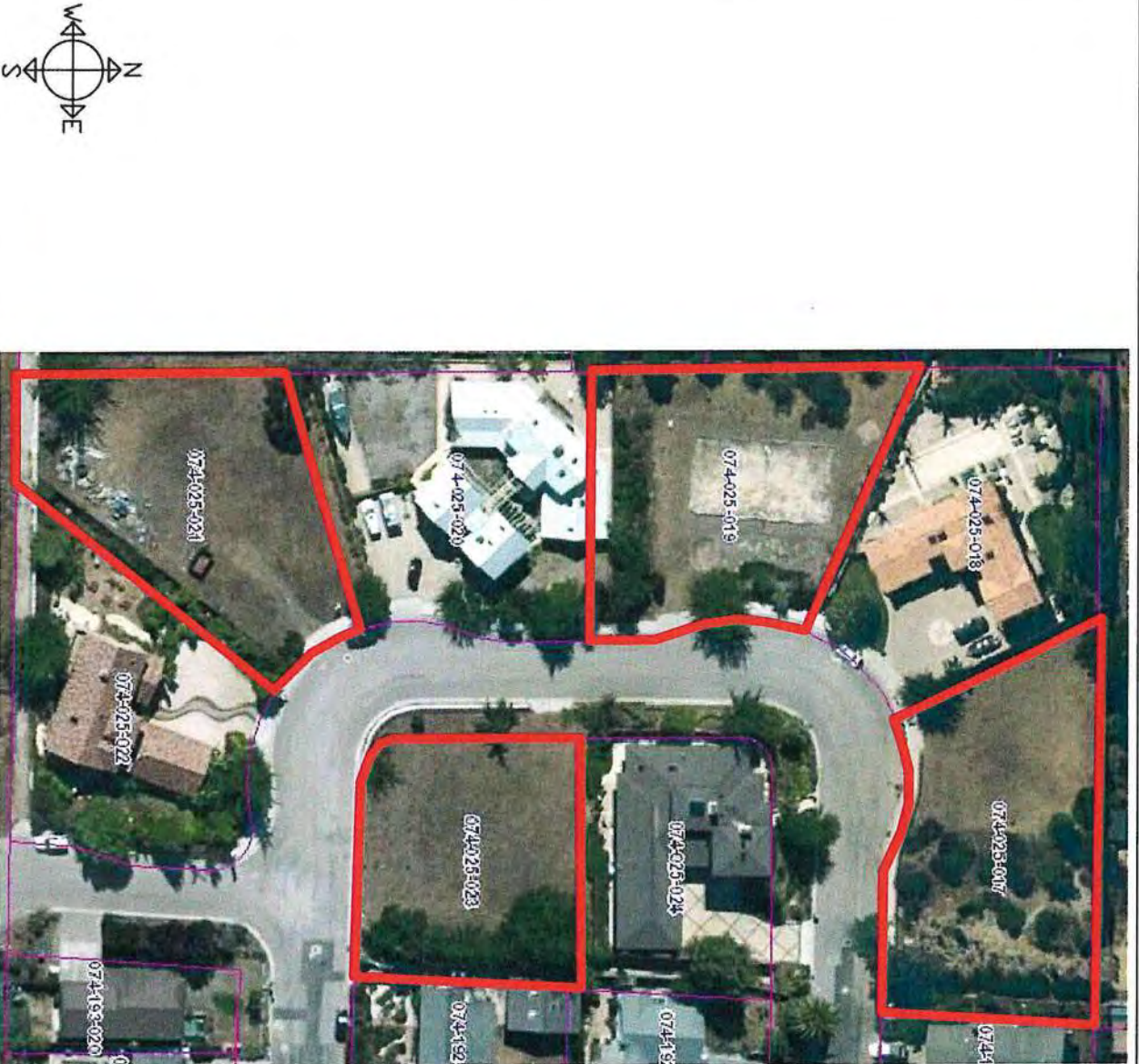


Photo 6: Phot viewing southwest through lot 5. Note annual grasses that dominate the site.



Attachment 7

SAN LUIS OBISPO COUNTY • PLANNING and BUILDING



DRC2017-00029-SHEAR DEVELOPMENT COMPANY, LLC- AERIAL VIEW



SAN LUIS OBISPO COUNTY • PLANNING and BUILDING



West Elevation



South Elevation

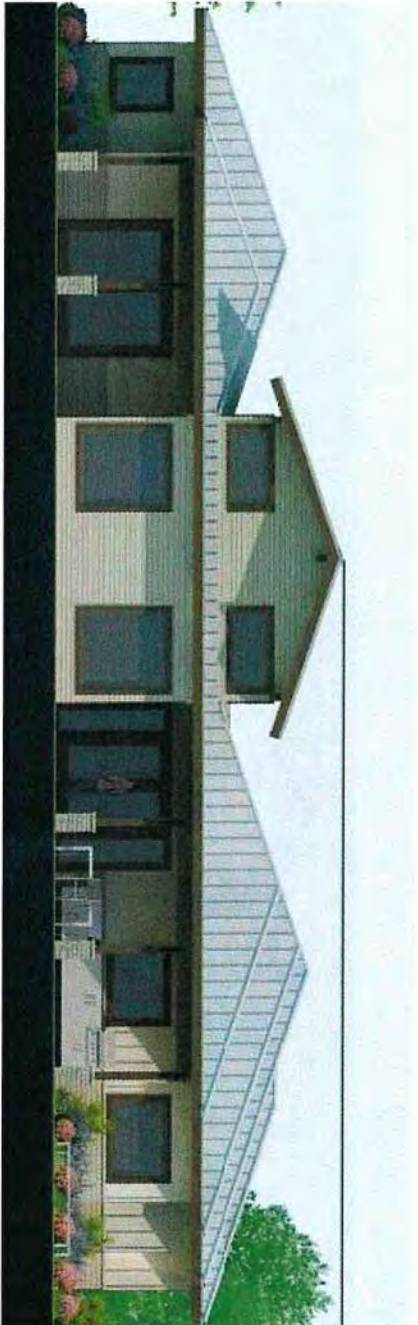








SAN LUIS OBISPO COUNTY • PLANNING and BUILDING



West Elevation



South Elevation





SAN LUIS OBISPO COUNTY • PLANNING and BUILDING



**PROPOSED PLANT PALETTE**

BOTANICAL / COMMON NAME

SCALE SIZE

NOTE

**CANOPY TREES**

- A. *Platanus occidentalis* / LICHEN PLANT 15 GAL. DRIFTWOOD CANOPY TREE
- B. *Geinkia parviflora* / ATLANTIC WILLOW 24 BOX EVERGREEN
- C. *Malus domestica* / CRABAPPLE TREE 15 GAL. EVERGREEN VERTICAL FORM

**PROTESTANT-SIZE TREES**

- D. *Adiantum* / BURNING BUSH 24 BOX RED BARK, PINK FLOWERS
- E. *Malus domestica* / CRABAPPLE TREE 15 GAL. EVERGREEN VERTICAL FORM
- F. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN

**MEDIUM SHRUBS**

- G. *Adiantum* / BURNING BUSH 24 BOX RED BARK, PINK FLOWERS
- H. *Malus domestica* / CRABAPPLE TREE 15 GAL. EVERGREEN VERTICAL FORM
- I. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN

**SMALL SHRUBS**

- J. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN
- K. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN
- L. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN

**PERENNIALS / GRASSES**

- M. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN
- N. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN
- O. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN

**SUCCULENTS / ACCENTS**

- P. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN
- Q. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN
- R. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN

**GROUNDCOVER**

- S. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN
- T. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN
- U. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN

**GROUNDCOVER**

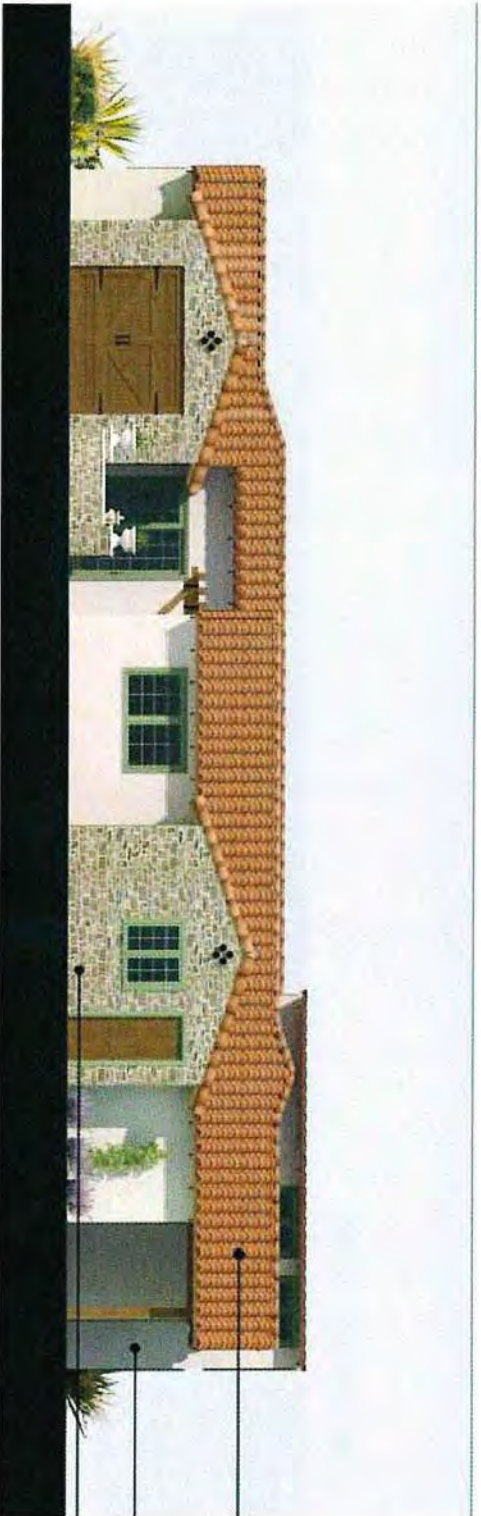
- V. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN
- W. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN
- X. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN
- Y. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN
- Z. *Malus domestica* / BRONZE IDOL 24 BOX EVERGREEN



SAN LUIS OBISPO COUNTY • PLANNING and BUILDING



East Elevation



North Elevation

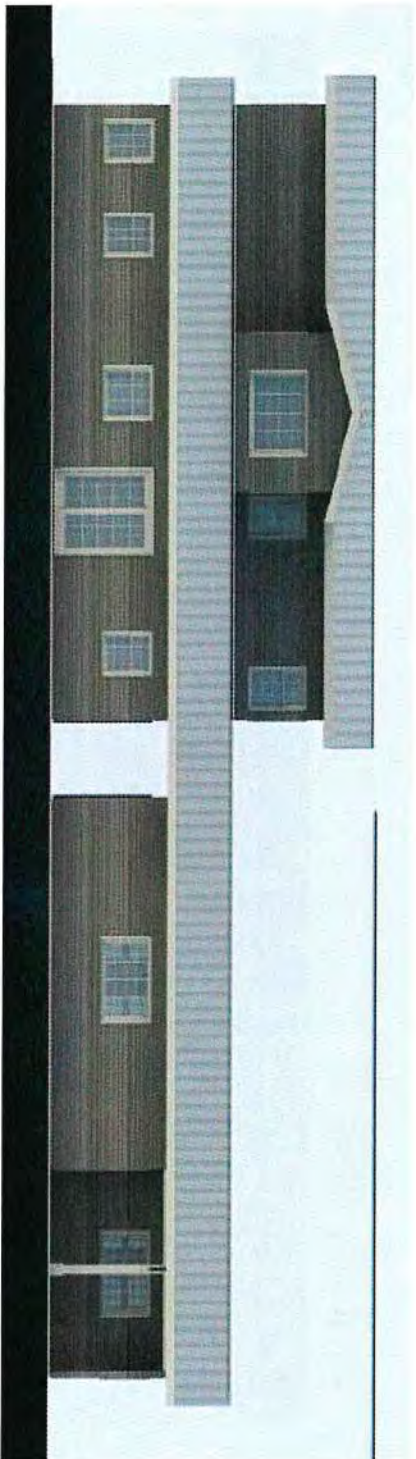








SAN LUIS OBISPO COUNTY • PLANNING and BUILDING



East Elevation



North Elevation





SAN LUIS OBISPO COUNTY • PLANNING and BUILDING



DRC2017-00029-SHEAR DEVELOPMENT COMPANY, LLC-LOT 7 PLANTING PLAN



## WASTEWATER PROJECT

The Los Osos Wastewater Project is complete. The Los Osos Wastewater project **cannot** serve vacant parcels until the County amends the Estero Area Plan - Los Osos Urban Area (hereafter referred to as the Los Osos Community Plan) to incorporate the following:

- A sustainable buildout target that indicates that there is water available to support such development (buildout) without impacts to wetlands and habitats
- A community-wide Habitat Conservation Plan (HCP) for the long-term preservation of sensitive habitats

Vacant lots have not been assessed for fees for sewer connections.

The County is currently working on both of these fronts—the Los Osos Community Plan and the community-wide HCP.

## LOS OSOS COMMUNITY PLAN

The Public Review Draft of the Los Osos Community Plan is available at the following link:

<http://www.slocounty.ca.gov/Departments/Planning-Building/Active-Major-Projects/Los-Osos-Community-Plan-Update.aspx>

The Los Osos Community Plan provides a framework to allow new development in Los Osos. Due to the degradation of the groundwater basin, development of vacant lots is contingent on implementation of the Los Osos Basin Management Plan.

Once the local approval process is complete, the Coastal Commission will need to approve and certify the Los Osos Community Plan. Estimated completion date is Summer 2020.

## COMMUNITY-WIDE HABITAT CONSERVATION PLAN

The Los Osos ecosystem supports a globally rare habitat of a unique composition, including several endangered species. To protect this sensitive habitat and the endangered species, while allowing development within the community; the County is working on a Habitat Conservation Plan (HCP). A Habitat Conservation Plan is a required part of an application for an Incidental Take Permit, a permit issued under the United States Endangered Species Act. The County is seeking a programmatic incidental take permit from the US Fish and Wildlife Service. The County, as the applicant, is requesting a permit term of 25 years to authorize take of covered species associated with covered activities in the Habitat Conservation Plan area, which is approximately 3,560 acres bounded by the Los Osos Urban Reserve Line. As the permittee, the County will have the ability to issue certificates of inclusion to confer incidental take coverage to landowners and other entities as long as their activities are included on the incidental take permit(s).

The HCP will be incorporated into the Los Osos Community Plan.



## LOS OSOS GROUNDWATER BASIN

The Los Osos Groundwater Basin is in a Level III severity. The basin is made up of several aquifer layers, underlying the Los Osos community and surrounding areas. The Upper and Lower aquifers are the main sources of municipal and domestic water supplies. Due to water quality degradation of the Upper aquifer from septic systems (nitrates), water purveyors have been pumping from the lower aquifer. Groundwater extractions have exceeded the sustainable yield of the basin in the lower aquifer in the western area; this has resulted in seawater intrusion. The groundwater issues Los Osos faces pre-date the drought and the current restrictions.

To address the groundwater issues, the water purveyors developed the Los Osos Groundwater Basin Management Plan (BMP). The BMP calls for many infrastructure projects and breaks them into two categories: the first is to fix the existing problem (with no future development) and the second is to allow new development. Funding is also divided into two categories: no future development and buildout of the community.

The BMP was approved on October 14, 2015. However, the BMP still needs to be funded and implemented. This means that although the County is working on the Los Osos Community Plan and the HCP, new development will not be able to occur until the BMP is fully funded and implemented.

The Los Osos Groundwater Basin Management Committee (BMC) Board of Directors is scheduled to hold regular meetings on the 3rd Wednesday of every month starting at 1:30 p.m. The regular meeting location is the South Bay Community Center at 2180 Palisades Avenue in Los Osos, California.

For more information regarding the Basin Management Committee, visit this website:

<http://www.slocountywater.org/site/Water%20Resources/LosOsos/>

## Coastal Commission Letter (see footnote on page 3)

STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

EDMUND G. BROWN, JR., GOVERNOR

**CALIFORNIA COASTAL COMMISSION**

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August 3, 2017

Mark Hutchinson, Deputy Director  
 San Luis Obispo County Department of Public Works  
 County Government Center, Room 206  
 San Luis Obispo, CA, 93408

**Subject: Your letter to Dan Carl (Central Coast District Director) dated July 25, 2017  
 regarding potential amendments to CDP A-3-SLO-09-055/069 (Los Osos  
 Wastewater Project)**

Dear Mr. Hutchinson:

We received the above-referenced letter from you on July 31, 2017 in which you indicate that the County Board of Supervisors authorized the landowner of a property at 2045 Pine Street in Los Osos (Rick Kirk) to apply to the Coastal Commission: to amend the County's coastal development permit (CDP) for the Los Osos Wastewater Project (CDP A-3-SLO-09-055/069) to include the subject parcel (APN 074-052-033) in the Wastewater Service Area; and to clarify the applicability of CDP A-3-SLO-09-055/069 conditions to this and other undeveloped properties in the Los Osos area subject to the Estero Area Plan. The purpose of this letter is to respond to both of those issues, and to provide direction to the County on the nature of the requirements that continue to adhere by virtue of CDP A-3-SLO-09-055/069.

As you know, CDP A-3-SLO-09-055/069 Special Condition 6 **prohibits** wastewater service to undeveloped properties unless and until the Estero Area Plan is updated to identify appropriate and sustainable buildout limits, and that update is certified as an LCP amendment by the Coastal Commission. The County has been working on the required update to the Los Osos component of the Estero Area Plan, including the complementary Habitat Conservation Plan, for many years, but that update remains incomplete at the County level, and thus it has never been submitted to the Coastal Commission. Importantly, the LCP growth and buildout standards applicable to Los Osos that were required by the Coastal Commission to be updated have not yet been updated. As a result, and as we have discussed with you and your staff and other County staff in other departments, per the CDP **undeveloped properties are not allowed wastewater service at this time.**

With respect to potential amendments to the CDP to potentially add properties to the wastewater service area, such as the aforementioned request related to the property at 2045 Pine Street, the intent of the CDP (including Special Condition 7 allowing for it to be amended under certain circumstances) is **not** to facilitate development of undeveloped properties in Los Osos absent the required LCP update. On the contrary, and as we discussed with you and your staff and other County staff at the time of the original CDP approval, as well as since then, the intent of the potential amendment provision of the CDP is to consider minor modifications that address potential anomalies associated with **already developed** properties. For example, the Coastal



Mark Hutchinson  
 CDP A-3-SLO-09-055/069 Requirements  
 August 3, 2017  
 Page 2

Commission approved a service area adjustment through a CDP amendment in June 2016 to allow the Monarch Grove area to be added to the service area so as to better protect coastal resources by connecting that area to the wastewater plant instead of continuing use of their failing package plant. At the same time, it is clear under the CDP that undeveloped properties (including significant intensifications of use and expansions on developed properties (e.g., such as the proposed expansion of the Sea Pines Golf Resort and Morro Shores Mobile Home Park) cannot be allowed sewer service and/or be brought into the service area absent the required Estero Area Plan LCP update. The County acknowledged and agreed to be bound by these terms and conditions when it accepted the CDP to construct the Los Osos Wastewater system.

As a result, please understand that we cannot support allowing undeveloped properties, such as the property at 2045 Pine Street, to be added to the service area or to be allowed wastewater service unless and until the LCP's Estero Area Plan is updated as required by CDP A-3-SLO-09-055/069. In addition, and as we have informed you and other County staff, including as recently as May 31, 2017 (i.e., in an email from Daniel Robinson in the Central Coast District Office to you and Kerry Brown of the County's Planning and Building Department) it would appear quite clear at this point that any application proposing to amend CDP A-3-SLO-09-055/069 to allow same **would be required to be rejected** by Coastal Commission staff because it would lessen and avoid the intended effect of the Commission's CDP approval (see California Code of Regulations Section 13166(a)). Again, the Commission required the County to update the Los Osos portion of the Estero Area Plan through an LCP amendment subject to certain criteria before any undeveloped properties in Los Osos can be served. Thus, unless and until the Estero Area Plan is updated as required, modifications to service area boundaries to include undeveloped properties and/or allow wastewater service to undeveloped properties are not allowed by CDP A-3-SLO-09-055/069.<sup>1</sup>

**In short, the requirements of the CDP prohibit the extension of wastewater service to undeveloped properties, and to do so would be a knowing and intentional violation of the CDP.**<sup>2</sup>

<sup>1</sup> In addition, questions have arisen recently about the potential to allow development on properties prior to the required Estero Area Plan update that have been awarded wastewater or water saving credits (otherwise known as 'Title 19 Retrofit Certificates') in the past. In terms of wastewater credits, the RWQCB has indicated that any credits available from past actions were intended for properties that were already eligible to connect to the sewer. For example, if someone has a property that is eligible to connect to the community sewer system and wanted to build prior to being hooked up to the sewer, then they could utilize a credit to install a temporary septic system. However, as detailed above, only already-developed properties are eligible for sewer connection at this time, and thus they would not need a temporary septic credit. In terms of the retrofit certificates, these certificates alone do not somehow entitle development at this time. Although these water conservation certificates were previously issued to properties in the septic prohibition zone, the certificate does not somehow guarantee the right to develop parcels upon completion of the sewer. As described above, the key threshold before wastewater service can be provided to any undeveloped property is certification of the Los Osos portion of the Estero Area Plan by the Coastal Commission.

<sup>2</sup> We note that the County correctly denied a CDP for development of the proposed Noyy residence on Pasadena Drive on these grounds in September 2016. We further note that on August 4, 2017 the County Planning

Mark Hutchinson  
CDP A-3-SLO-09-055/069 Requirements  
August 3, 2017  
Page 3

We understand that certain members of the community are interested in developing their properties now that the wastewater treatment plant is up and running, and we can appreciate their desire to do so, including after the significant efforts by many to bring the wastewater treatment plant and system in Los Osos online. At the same time, however, the County is obligated to finalize the update to the Los Osos portion of the Estero Area Plan through an LCP amendment before that occurs, and that requirement has been in existence for over a decade, dating back to a similar requirement associated with the since abandoned wastewater treatment plant CDP approved by the Coastal Commission in 2004, and also because the County required the same as part of its approval of the wastewater treatment plant in late 2009 (i.e., County Condition 92, which was part of the County's proposed project before the Commission when the Commission approved CDP A-3-SLO-09-055/069 in 2010). We would strongly suggest that the County put its efforts towards completing the required LCP planning instead of pursuing any measures designed to avoid its CDP obligations.

Finally, despite the Board authorizing a private citizen to apply to amend the County's CDP, we note that it is the County that is the Permittee of the subject CDP, and it is the County that would have to be the Applicant for any amendment to it. The County could apply on an individual's or group's behalf, as was done for the Monarch Grove CDP amendment request described above, but the County would have to be the entity to request the amendment. We would not be able to accept an amendment application by a private individual or group.

In closing, we again note that the Coastal Commission's CDP requirements that prohibit wastewater service to undeveloped properties in Los Osos are unambiguous, and we strongly suggest that the County recognize that requirement in all County actions (including in accepting any CDP applications, and in any County CDP actions).

We continue to be available to assist County staff as it attempts to complete the required LCP update, and we strongly recommend that the County concentrate its resources on those efforts. If you have any questions or wish to discuss this further, please contact me or Daniel Robinson of my staff at (831) 427-4863.

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Commission will hear a CDP application to develop another undeveloped property in Los Osos (i.e., the proposed *Watterworth* residence on Mitchell Drive), and the Planning Commission should deny this project for the very same reason. Again, approval of development that uses wastewater services on undeveloped properties would be a violation of the County's CDP, and would be subject to enforcement proceedings.



Mark Hutchinson  
CDP A-3-SLO-09-055/069 Requirements  
August 3, 2017  
Page 4

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Carl", with a stylized flourish at the end.

Dan Carl  
District Director  
Central Coast District Office  
California Coastal Commission

cc: (via email)  
Supervisor Bruce Gibson  
Supervisor John Peschong  
Supervisor Adam Hill  
Supervisor Lynn Compton  
Supervisor Debbie Arnold  
Planning Commissioner Michael Multari  
Planning Commissioner Julie Hawkins  
Planning Commissioner Jim Harrison  
Planning Commissioner Don Campbell  
Marvin Rose, County Department of Planning and Building Interim Director  
Wade Horton, County Public Works Department Director  
Jeff Edwards (Representative for Rick Kirk)

**CALIFORNIA COASTAL COMMISSION**

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December 8, 2017

Kerry Brown  
San Luis Obispo Department of Planning and Building  
976 Osos Street Room 200  
San Luis Obispo, CA 93408

**Subject: Coastal Development Permit (CDP)/Minor Use Permit (DRC2017-00029)**

Dear Kerry:

We are writing in regards to a proposed project to be heard at the December 15<sup>th</sup> meeting of the San Luis Obispo (SLO) Planning Department to construct four single family residences on four separate lots, located at 282 Mar Vista, 294 Mar Vista, 284 Highland Drive, and 289 Highland Drive in Los Osos (Shear Development Company LLC).

As described accurately in the County's staff report, Special Condition #6 (as well as County project condition #86 and #92) of the Los Osos Wastewater Treatment Plant CDP A-3-SLO-09-055/069 prohibits development on vacant parcels at this time. Specifically, Special Condition 6 prohibits new development on undeveloped properties in the prohibition zone until such time as the Estero Area Plan has been amended and certified by the California Coastal Commission.

We are writing in support of the SLO County Planning staff's recommendation for denial in this case. Because the proposed project cannot hook up to the sewer based on the conditions of the LOWWP permit, and cannot utilize a septic system (the Regional Water Quality Control Board prohibition on new septic discharge is still in effect), the project cannot be approved at this time.

Please do not hesitate to contact me at (831) 427-4863 if you have any questions regarding the above letter of support.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Robinson".

Daniel Robinson  
Coastal Planner  
Central Coast District Office



**CALIFORNIA COASTAL COMMISSION**

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August 29, 2016

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

Subject: **Frederick G. Novy Single-Family Dwelling (SFD), 1325 Pasadena Drive, Los Osos (APNs 038-732-016 and -017)**

Dear Rob Fitzroy, Hearing Officer,

I am writing to express our support for the Planning Department's denial recommendation of the proposed SFD located on an undeveloped property at 1325 Pasadena Drive in Los Osos, which you will be considering at a Planning Department hearing on September 2, 2016. Initially the project proposed to obtain wastewater service from the new Los Osos Wastewater Treatment Plant (LOWWP); the project now includes a proposed onsite septic system.

We previously worked very closely with the County, the Regional Water Quality Control Board (RWQCB), and other interested parties on the LOWWP project, dating back to the approval of a coastal development permit (CDP) for that project in 2010 (Coastal Commission appeal number A-3-SLO-09-055/069). Approval of the Novy SFD project with a connection to the LOWWP would directly violate Special Condition 6 of CDP A-3-SLO-09-055/069, which states:

***"Wastewater service to undeveloped properties within the service area shall be prohibited unless and until the Estero Area Plan is amended to identify appropriate and sustainable buildout limits, and any appropriate mechanisms to stay within such limits, based on conclusive evidence indicating that adequate water is available to support development of such properties without adverse impacts to ground and surface waters, including wetlands and all related habitats."***<sup>1</sup>

As the County is aware, a Local Coastal Program (LCP) amendment to the Estero Area Plan for this purpose has not been certified by the California Coastal Commission (Commission), although we have had multiple discussions with the County's planning and building staff and have collaborated on draft portions of the Los Osos Community Plan (LOCP) to help expedite this process, and will continue to do so. Given this reality, however, wastewater service for the proposed Novy SFD may not be provided by the LOWWP at this time.

In terms of the project now including an onsite septic system, the RWQCB imposed a moratorium on current sewage discharges, new sources of sewage discharge, and increases in the

<sup>1</sup> Special Condition #6 is similar to County Condition of Approval #86 for the LOWWP, which is entitled "**No Service to Undeveloped Properties.**"

volume of existing sewage sources in the community of Baywood-Los Osos on January 8, 1988. The primary effect of the moratorium is that the County is prohibited from issuing any permits for new onsite sewage disposal systems (commonly called septic systems) within the prohibition area. Further, we also agree with the RWQCB that the “septic system credits” identified in their letter dated May 8, 2014 were intended to be temporary credits for lots that were already eligible to connect to the community sewer. Given that the Novy lots are not eligible to connect to the sewer at this time because the update to the Estero Area Plan has not been certified, these credits should not apply to the Novy property. Thus, because there is an ongoing moratorium, because the proposed project cannot hook up to the sewer based on Special Condition #6 of the LOWWP permit and cannot utilize a septic system based on the August 8, 2016 letter from RWQCB, the project will not have adequate means to dispose of wastewater, and therefore cannot be approved at this time. Based on the above reasons, Commission staff supports County staff’s recommendation of denial at this time.

While denial of the project is appropriate at this time, certification of the LOCP should appropriately guide future development of infill lots within the urban area of Los Osos in the future. When that occurs for this site, Commission staff believes that a wetland setback reduction should not be allowed. At this time, a reduction is recommended to be allowed from 75 to 62 feet. However, it does not appear that a single-family residence of nearly *4,000 square feet* (i.e., a 3,048-square-foot residence, with a 484-square-foot attached garage and a 351-square-foot attached workshop) is the “*minimum*” size that would enable a single-family residence to be established on the site, as required by CZLUO Section 23.07.172.(d)(2). We also do not agree that the site would be “*physically unusable*” for a single-family residence unless the setback was reduced, again as stated by CZLUO Section 23.07.172.(d)(2). Thus, Commission staff does not support the proposed reduction in the wetland setback given that it appears readily feasible, based on project plans associated with the project, for the project to be modified to provide consistency with the LCP’s 75-foot wetland setback requirement.

Thank you for the opportunity to share our thoughts on this project. We look forward to continuing to work with County staff on the Estero Area Plan update (LOCP), which will facilitate future approvals of proposed residences, such as the Novy SFD, within the urban area of Los Osos.

Sincerely,

Daniel Robinson  
Coastal Planner  
Central Coast District Office

cc: Brandi Cummings, San Luis Obispo County Department of Planning and Building  
Jon Rokke, Central Coast Regional Water Quality Control Board  
Jeff Edwards



## **Applicable San Luis Obispo County LCP Policies and Standards**

### **PUBLIC SERVICES LCP POLICIES:**

**Public Works Policy 1: Availability of Service Capacity.** New development shall demonstrate that adequate public or private service capacities are available to serve the proposed development.

**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.

#### **EAP Public Facilities, Services, and Resources Standard II.A: Los Osos Water Supply.**

Perhaps no factor is of greater concern today than the future availability of potable water for Los Osos residents. Along with other north coastal communities, Los Osos is threatened with a potentially inadequate water supply to meet increasing agricultural and urban water demands. Water is supplied entirely through groundwater extraction from the Los Osos basin which underlies the planning area, and is provided by three municipal water suppliers. Some portions of the suburban area are served by individual domestic wells. Los Osos is confronted with two basic problems. Groundwater extraction levels are rapidly increasing while groundwater quality is showing indications of possible deterioration.

#### **EAP Public Facilities, Services, and Resources Standard II.B: Los Osos Sewage Disposal.**

Sewage disposal is presently handled through individual or collective septic tanks. The adequacy of this method has been evaluated and the Master Water and Sewerage Plan recommends that a sewage treatment facility will ultimately be necessary to handle projected growth. At present, the need for future sewerage has not been resolved. Monitoring of conditions of groundwater degradation, particularly concentration of nitrates, should be continued to provide current information upon which to reevaluate the implications of retaining septic systems. Of additional importance is the interrelationship of groundwater recharge, through the present use of septic systems, to the safe yield analysis of water resources. The transition from septic systems to a central sewage treatment facility will withdraw this water recharge and place the burden onto remaining water supplies, necessitating earlier importation of water.

### **GROUNDWATER PROTECTION LCP POLICIES**

**Groundwater Policy 1: Preservation of Groundwater Basins.** 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.]

**Groundwater Policy 2: Water Extractions.** Extractions, impoundments and other water resource developments shall obtain all necessary county and/or state permits. All pertinent information on these uses (including water conservation opportunities and impacts on in-stream beneficial uses) will be incorporated into the database for the Resource Management System and shall be supplemented by all available private and public resource studies available. Groundwater levels and surface flows shall be maintained to ensure that the quality of coastal waters, wetlands and streams is sufficient to provide for the optimum populations of marine organisms, and for the protection of human health. (Public works projects are discussed separately.) [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

**Groundwater Policy 3: Monitoring of Resources.** In basins where extractions are approaching groundwater limitations, the county shall require applicants to install monitoring devices and participate in water monitoring management programs [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 8.40.065 OF THE COUNTY CODE (WATER WELL REGULATIONS).]

**Groundwater Policy 5: Los Osos Groundwater Management.** The county Planning and Engineering Departments should work with communities, property owners and the Regional Water Quality Control Board to develop and implement a basin-wide water management program for the Los Osos groundwater basin which addresses:

- existing and potential agricultural demand,
- urban expansion in relation to water availability,
- groundwater quality,
- possible need for alternative liquid waste disposal,
- protection of aquatic habitats including coastal waters, streams and wetlands.

The Resource Management System of the Land Use Element provides a framework for implementing this policy and an interim alert process for timely identification of potential resource deficiencies, so that sufficient lead time is allowed for correcting or avoiding a problem. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

## **ESHA PROTECTION LCP POLICIES**

**ESHA Policy 2: Permit Requirement.** As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate.

**ESHA Policy 7: Protection of Environmentally Sensitive Habitats.** Coastal wetlands are recognized as environmentally sensitive habitat areas. The natural ecological functioning and productivity of wetlands and estuaries shall be protected, preserved and where feasible, restored.



**ESHA Policy 20: Coastal Streams and Riparian Vegetation.** Coastal streams and adjoining riparian vegetation are environmentally sensitive habitat areas and the natural hydrological system and ecological function of coastal streams shall be protected and preserved.”

**CZLUO 23.07.170: Environmentally Sensitive Habitats:** The provisions of this section apply to development proposed within or adjacent to (within 100 feet of the boundary of) an Environmentally Sensitive Habitat as defined by Chapter 23.11 of this title.

**a. Application content.** A land use permit application for a project on a site located within or adjacent to an Environmentally Sensitive Habitat shall also include a report by a biologist approved by the Environmental Coordinator that:

- 1) Evaluates the impact the development may have on the habitat, and whether the development will be consistent with the biological continuance of the habitat...
- 2) Is complete, current, and meets established standards for report content and assessment methodology. Report standards shall be consistent with CEQA guidelines, and incorporate the recommendations of the California Coastal Commission, California Department of Fish and Game, U.S. Fish and Wildlife Service, Marine Mammals Commission, and National Marine Fisheries Service, as appropriate.
- 3) Evaluates development proposed adjacent to environmentally sensitive habitats to identify significant negative impacts from noise, sediment and other potential disturbances that may become evident during project review.
- 4) Identifies the biological constraints that need to be addressed in designing development that would first avoid, then minimize impacts to ESHA. These identified constraints will be used by the County to evaluate, and require implementation of project design alternatives that result in impacts to ESHA being avoided and unavoidable impacts minimized. This shall also include assessment of impacts that may result from the application of fire safety requirements.
- 5) Verifies that applicable setbacks from the habitat area required by Sections 23.07.170 to 23.07.178 are adequate to protect the habitat or recommends greater, more appropriate setbacks...

**b. Required findings:** Approval of a land use permit for a project within or adjacent to an Environmentally Sensitive Habitat shall not occur unless the applicable review body first finds that:

1) There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat.

2) The proposed use will not significantly disrupt the habitat.

**EAP Environmental and Cultural Resources Standard III.E: Los Osos Dune Sands Habitat (SRA).** The southern shore of the Morro Bay estuary, extending to the southern slopes of the first range of the Irish Hills and to Los Osos Creek, is comprised of sandy soils--primarily "Baywood fine sands," as identified by the Natural Resources Conservation Service in the Soil Survey of San Luis Obispo County, Coastal Part (see Figure 6-3). These sands also underlie some areas outside of Los Osos, and occur in the city of Morro Bay. The areas underlain by these sands outside of Los Osos are included in the Sensitive Resource Area combining designation and are also an Environmentally Sensitive Habitat (Terrestrial Habitat). These sands provide the soil characteristics that support globally rare habitat in a unique composition of the following biological communities, as described in detail in the Environmental Impact Report for the Estero Area Plan Update. The habitats of Los Osos have been disturbed from time to time for agriculture, silviculture and development. However, they usually recover quickly and result in high quality vegetative cover.

**EAP Los Osos Planning Standard B: Los Osos Dune Sands Habitat (SRA).** The following provisions are intended to ensure the long-term preservation of the rare and sensitive Los Osos Dune Sands habitat (which is an Environmentally Sensitive Habitat). Such habitat is of relative high quality compared to that on smaller, isolated, undeveloped lots. Following are the specific objectives:

- Preserve, maintain, and protect rare and specific endangered species;
- Preserve, maintain, and enhance the following environmentally sensitive areas: 1) Los Osos Dune Sands habitat, and 2) natural land forms that are barren or covered with non-native plants and that are potentially restorable to native plant cover such as Morro manzanita and Indian Knob mountainbalm;
- Eliminate any incentives for the illegal or inappropriate removal of Dune Sands habitat;
- Ensure that all new development is compatible with and sensitive to Los Osos Dune Sands habitat;
- Subordinate all public and private development to the protection of critical natural areas Los Osos Dune Sands Development Standards.

The following standards apply to new development within the areas designated "Los Osos Dune Sands SRA-TH" except where the Planning Director determines that the proposed activity is



otherwise sufficiently minor that no adverse effects on habitat can result. Within this area, the highest conservation priority is avoiding disturbance of sensitive Los Osos Dunes habitat.

**(1) Required Findings.** Approval of a land use permit shall not occur unless the review authority first finds that, in addition to the required findings for Environmentally Sensitive Habitats specified in Chapter 23.7 of the Coastal Zone Land Use Ordinance, the project incorporates all feasible and reasonable means of maintaining Los Osos Dune Sands habitats.

**(2) Resource Maintenance and Restoration Plan and Biological Survey.** Land use permit applications shall include a resource maintenance and restoration plan and biological survey prepared by a qualified biologist approved by the Environmental Coordinator. The recommendations of this plan and survey shall be incorporated into the project design and conditions at the discretion of the Planning Director.

**(i) Required contents.** The resource maintenance and restoration plan and biological survey shall recommend design, construction, restoration/ enhancement, maintenance, and monitoring measures for the entire site, as applicable, to achieve the preceding specified purposes of the Los Osos Dune Sands SRA.

**(ii) Survey methodology.** Biological survey methodology shall at a minimum comply with California Department of Fish and Game and U.S. Fish and Wildlife Service guidelines.

**(iii) Monitoring.** The monitoring measures recommended in the resource maintenance and restoration plan may include frequent monitoring during and soon after the completion of initial habitat restoration and/or enhancement activities, and less frequent monitoring after plants are well-established.

**(iv) Referrals.** The resource maintenance and restoration plan and biological survey shall be referred for review and comment to the California Department of Fish and Game, and the California Coastal Commission if requested by the Coastal Commission. The Planning Director may require that the plan be revised to include any additional project modifications recommended by these agencies as being necessary to reduce impacts to sensitive habitat.

**(3) Landscaping Plan.** A landscaping plan in accordance with Chapter 23.04 of the Coastal Zone Land Use Ordinance shall be required where development will disturb existing or potential native dune plant habitat. The landscaping plan shall include restoration planting on the site, including areas to be permanently protected, as recommended by the required resource maintenance and restoration plan. Invasive, non-native plants, including Pampas grass, Acacia, Genista, and non-native iceplants, pose a threat to the indigenous plant community and shall not be approved as part of proposed landscaping. The use of other non-native plants shall be limited to the outdoor living space immediately adjacent to the proposed development (i.e., within the

defined building envelope) and shall not be used within a conservation easement or other area to be set aside for permanent protection.

**(4) Conservation Instruments.** If proposed development will disturb sensitive habitat supporting or potentially supporting Morro manzanita, Indian Knob mountainbalm, or other rare or endangered species, as determined by the required resource management and restoration plan and biological survey, all portions of the property beyond the maximum area of site disturbance specified in this standard shall be permanently protected by agreements, easement controls, or other appropriate instrument, consistent with applicable legal requirements to allow reasonable use of the site.

**(5) Long-term maintenance and monitoring.** When areas to be permanently protected through conservation instruments are to remain in private ownership, the owner shall enter into a long-term maintenance and monitoring agreement with the county prior to issuance of building permits. The agreement and any easement shall provide for, but not be limited to, all of the following.

(i) The ongoing maintenance of remaining Los Osos Dune Sands habitat in a natural state.

(ii) The restoration of native plants, as recommended by the approved resource maintenance and restoration plan, and as shown in the approved landscape plan.

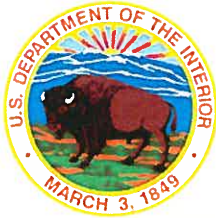
(iii) The long-term monitoring of rare and endangered plants and the maintenance of supporting habitat, as recommended by the approved resource maintenance and restoration plan.

(iv) Requirements for financial security, including guarantees to cover the cost of: (a) The proper completion of restoration measures (for example, plant installation and the eradication of non-native species) within a specified time; and (b) The proper maintenance of restored and undisturbed areas over a specified time (for example, five years), and the monitoring of those efforts. These requirements may also include penalty provisions such as extensions of the monitoring period, in addition to the forfeit of funds provided, in response to a failure to perform as agreed.

**(6) Site Disturbance.** This standard is intended to provide maximum preservation of Los Osos Dune Sands and its associated habitat of rare and endangered species. New development causing site disturbance shall ensure protection of habitat for Morro manzanita, Indian Knob mountainbalm, or any other rare or endangered species determined to be present on the site. However, limitations on the amount of site disturbance shall be consistent with applicable legal requirements to allow reasonable use of the site. Site disturbance includes disturbance of the following areas: areas disturbed by structures, roads, utility trenching, and pavement; areas on which grading or removal of native vegetation occurs. Site disturbance does not include activities



that are consistent with the restoration and maintenance of native plant habitats as guaranteed by project approval.



## United States Department of the Interior

### U.S. FISH AND WILDLIFE SERVICE

Ecological Services  
Ventura Fish and Wildlife Office  
2493 Portola Road, Suite B  
Ventura, California 93003



IN REPLY REFER TO:  
08EVEN00-2020-CPA-0015

February 11, 2020

Brian O'Neill  
California Coastal Commission  
Central Coast District Office  
725 Front Street, Suite 300  
Santa Cruz, California 95060

Dear Mr. O'Neill:

We have reviewed your January 24, 2020, notice of a coastal permit application (application number A-3-SLO-19-0180) regarding the proposed construction of single-family homes by the Shear Development Co. (applicant) within the community of Los Osos in San Luis Obispo County, California. The applicant proposes to construct three single-family homes within the vacant parcels: 282 Mar Vista, 294 Mar Vista, 284 Highland Drive, and 289 Highland Drive.

The U.S. Fish and Wildlife Service's (Service) mission is to conserve and protect the Nation's fish and wildlife resources and their habitats. To assist in meeting this mandate, the Service provides comments on public notices issued for projects that may have an effect on those resources, especially federally listed plants and wildlife. The Service's responsibilities also include administering the Endangered Species Act of 1973, as amended (Act). Section 9 of the Act prohibits the taking of any federally listed endangered or threatened wildlife species. "Take" is defined at section 3(19) of the Act to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The Act provides for civil and criminal penalties for the unlawful taking of listed wildlife species. Such taking may be authorized by the Service in two ways: through interagency consultation for projects with Federal involvement pursuant to section 7, or through the issuance of an incidental take permit under section 10(a)(1)(B) of the Act.

Our review of the proposed projects indicates that the parcels likely support the federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) and project activities may result in the permanent loss of Morro shoulderband snail habitat. Morro shoulderband snails are associated with coastal dune and coastal scrub plant communities containing sandy soils with less than 10 percent slopes. Three years of monitoring surveys for the Los Osos Wastewater Project have revealed that this species can occur in a wide diversity of native and non-native habitats, including areas that are highly disturbed, if underlain by Baywood fine soils. They also can occur in and around culms of nonnative veldt grass (*Ehrharta calycina*), underneath patches



of iceplant (*Carpobrotus* spp.), and in horticultural landscaping. As documented in Figure 1, all of the parcels occur on Baywood fine sand with 2 to 9 percent slopes and, as of 2018, all of the parcels were covered in veldt grass (Kevin Merk Associates, LLC [KMA] 2018). Additionally, the parcels are within 0.22 mile of Morro shoulderband snail critical habitat unit 2 and the adjacent Kroll parcel is known to contain Morro shoulderband snails (Ecological Assets Management, LLC [EAM] 2019).

The applicant has observed Morro shoulderband snails within at least one parcel. During the five protocol surveys conducted from December 17, 2018 to February 15, 2019, 14 live Morro shoulderband snails were observed on lot 5 (289 Highland Drive) (EAM 2019). In 2018, 2 Morro shoulderband snail shells were found on the paved driveway of lot 5 (KMA 2018). Although no live or empty Morro shoulderband snail shells were observed on lots 1 (295 Mar Vista Drive), 3 (282 Mar Vista Drive), and 7 (284 Highland Drive) (EAM 2019), we cannot dismiss the potential for snails to be present based on documented occurrences within lot 5 and the potential for dispersing individuals to occupy lots 1, 3 and 7.

Additionally, the applicant's report details that the remaining anthropogenic features on lot 5 provides habitat for dispersing Morro shoulderband snails from adjacent undeveloped parcels and that removal or manipulation of the remaining anthropogenic features on lot 5 may result in take of Morro shoulderband snail (EAM 2019). Please note that the clearing of debris within lot 5 that occurred in 2018 (EAM 2019), may have likely resulted in take of Morro shoulderband snail. Therefore, we recommend that the applicant contact us so we may recommend measures to avoid, minimize, and mitigate the potential of take of Morro shoulderband snail and the direct loss of Morro shoulderband snail habitat. We also can provide guidance on the steps that may be needed to consult with the Service to determine whether provisions to permit incidental take may be advisable.

If you have any questions, please contact Karen Sinclair of my staff at (805) 644-1766 ext. 53315, or by e-mail at karen\_sinclair@fws.gov.

Sincerely,



Leilani Takano  
Assistant Field Supervisor

## LITERATURE CITED

- [EAM] Ecological Assets Management, LLC. 2019. Morro Shoulderband Snail Habitat Assessment and Protocol Survey Report for the Shear Development MUP DRC2017-00029, Lots 1, 3, 5, and 7 of Tract 2161, Los Osos, San Luis Obispo County, California. Prepared for Carol Florence, Oasis Associates Inc, San Luis Obispo, California. Dated March 14, 2019.
- [KAM] Kevin Merk Associates, LLC. 2018. Morro Shoulderband Snail Habitat Assessment for Shear Development MUP M}DRC2017-00029, Lots 1, 3, 5, and 7 of Tract 2161, Los Osos, San Luis Obispo County, California





**Figure 1: Morro shoulderband snail (MSS) nearby Los Osos properties in San Luis Obispo County**

Application Number: A-3-SLO-19-0180  
 282 Mar Vista, 294 Mar Vista, 284 Highland Drive, 289 Highland Drive

■ MSS - CNDDB  
 ■ MSS - Final Critical Habitat

0 0.09 0.18 Kilometers  
 0 0.07 0.14 Miles

