

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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Th13d

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

JULY 9, 2020 HEARING

EX PARTE COMMUNICATION

RECEIVED

FEB 09 2020

From: Carol Florence <cmf@oasisassoc.com>

Sent: Sunday, February 9, 2020 1:35 PM

To: Brownsey, Donne@Coastal <donne.brownsey@coastal.ca.gov>

Subject: Gratitude for Consideration of Granting the CDP - De Novo Hearing Appeal No. A-3-SLO-19-0180, Los Osos

Dear Vice Chairperson Brownsey,

Thank you, in advance, for reading my email, as I can only imagine that, between your day job and your duties on behalf of the CCC, it is simply an overwhelming proposition to maintain the time and energy level required of you! Nonetheless, as a professional planner, I am ethically obligated to advocate on behalf of my client, Shear Development Co., LLC, while simultaneously serving the public interest.

I would pose a simple question to you and your fellow commissioners. Could you imagine that staff, while also certainly serious about their work, may have fallen prey to misinterpreting the regulatory framework surrounding the permit for these three (3) houses? As I daily strive to achieve high standards of professional integrity, proficiency, and knowledge, staff's recommendation for denial of the CDP has required us to conduct an even deeper dive into both state law, our local regulations, and their respective applications. We have carefully and painstakingly analyzed the situation and, based upon our findings, cannot accept the applicability of the customary response to all things "Los Osos", which is to say, "no".

I am fearful that the conditions surrounding Los Osos over so many decades, has led to an unfortunate and unwarranted malaise and perspective that endangers not only a simple project like this, but the future of the community. The SLO County LCP is very unique among LCPs in the way it defines concepts and procedures, some perhaps needing modification. But, those unique policies are in place today and govern this matter. Someone unfamiliar with the LCP and how it's been applied for three decades could easily conclude that this project is appealable. With that said, I believe that this is not a typical case of reasonable disagreement in the interpretation and application of the law, and I, therefore, beg your indulgence.

We have retained legal counsel to assist us with preparing our response which, in its entirety, has been sent to the commission and staff. For a quick reference, I present the executive summary to you. Again, your attention to this matter is of the utmost importance to me and my client. Again, thank you for the consideration.

EXECUTIVE SUMMARY

"The Commission took this appeal in mistaken reliance on staff's representations that (1) the site is in an area mapped as Environmental Sensitive Habitat Area ("ESHA"), and (2) the project (Single-Family Dwellings on three lots) does not conform to the Principal Permitted Use for the zone ("Residential Single-Family"). Both representations are false. There is no ESHA on or near the project site, and despite multiple

opportunities, staff has failed to produce a single official map designating the site or its environs as ESHA. Second, a Single-Family Dwelling on each of the three lots is, as a matter of fact and law, *the* Principal Permitted Use for this zone. Thus, the project is unappealable, and the appeal should be dismissed as improvidently granted.

Even if appealable, the project would easily satisfy the LCP. Staff says the project violates ESHA and water/wastewater policies. First, because the site is not ESHA, ESHA policies aren't implicated, so the project can't violate those policies. Second, overwhelming evidence supports the County's findings (twice made—once for the 1996 subdivision to which these lots belong, and a second time for this project) that the lots have adequate water/wastewater service. Special Condition 6 of the County's 2010 CDP for the Los Osos Wastewater Project does not preclude this project. Among other reasons, the condition applies only to "undeveloped" lots. As the Commission itself acknowledged in a 2004 CDP for development of the first half of the subdivision, this subdivision (including these three lots) is "**substantially developed** (i.e. grading, retaining walls, underground utilities, roads, and landscaping have been installed)" (emphasis added). The condition does not apply.

Finally, denial of this project would constitute an unlawful taking. The Coastal Act, as well as the U.S. Constitution, prohibits such a taking, requiring the Commission to approve this project."

Should there be an opportunity before Wednesday to engage with you, I would welcome the opportunity. Until then, I remain,

Yours respectfully,
C.M.Florence, AICP
Principal Planner

OASIS ASSOCIATES, INC.

3427 Miguelito Court
San Luis Obispo, CA 93401
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www.oasisassoc.com

From: Carol Florence <cmf@oasisassoc.com>

Date: February 9, 2020 at 1:37:58 PM PST

To: "Wilson, Mike@Coastal" <mike.wilson@coastal.ca.gov>

Subject: Gratitude for Consideration of Granting the CDP - De Novo Hearing Appeal No. A-3-SLO-19-0180, Los Osos

RECEIVED

FEB 10 2020

Dear Commissioner Wilson,

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Principal Planner

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EX PARTE COMMUNICATION DISCLOSURE FORM

RECEIVED

OCT 07 2019

Filed by Commissioner: Erik Howell

- 1) Name or description of project: Shear Project (Friday F11A)
- 2) Date and time of receipt of communication: September 30, 2019 at 3:00 pm
- 3) Location of communication: Pismo Beach
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
- 4) Identity of person(s) initiating communication:
C.M. Florence, AICP
- 5) Identity of person(s) on whose behalf communication was made:
Shear Development Co., LLC
- 6) Identity of persons(s) receiving communication:
Erik Howell
- 7) Identity of all person(s) present during the communication:
C.M. Florence, Emily Ewer, Erik Howell

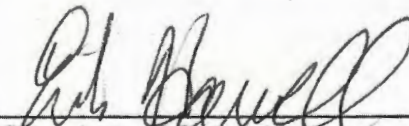
Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

I participated in a briefing with representatives of the applicant. They assert that special condition number #6 of the Coastal Development permit for the Los Osos Wastewater Treatment Plant has been misapplied to this application. These home sites are not "undeveloped" in the same sense as those contemplated by the Commission when it approved the special conditions for the treatment plant.

First and foremost, these properties are interspersed among previously approved homes that were part of the initial subdivision. The 1996 approved subdivision included eight (8) lots. In 2004, only four (4) were developed with Regional Water Quality Control Board approved septic systems because the community sewer system had not yet been constructed. Nonetheless, these parcels have been included in, accounted for, and are part of the established baseline conditions for not only the sewer treatment plant design but also the Community Plan, the Basin Plan, and the Habitat Conservation Plan (HCP) for the Morro Bay Shoulderband Snails (MSS). The treatment plant is now operational.

Additionally, these parcels were the subject of an annexation agreement between the property owner and the now-defunct Los Osos Community Services District. The agreement required the payment of fees, tract improvements, an in-street sewer main, sewer lateral to all parcels, and service infrastructure for sewer service. In return, this agreement provided that the tract would be connected to the sewer system once it was constructed.

10/7/19
Date


Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Erik Howell

- 1) Name or description of project: Shear Project (Friday F11A)
- 2) Date and time of receipt of communication: October 13, 2019 at 9:00
- 3) Location of communication: Pismo Beach, telephone
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
- 4) Identity of person(s) initiating communication:
C.M. Florence, AICP
- 5) Identity of person(s) on whose behalf communication was made:
Shear Development Co., LLC
- 6) Identity of persons(s) receiving communication:
Erik Howell
- 7) Identity of all person(s) present during the communication:
C.M. Florence, Erik Howell

RECEIVED
OCT 14 2019

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

Ms. Florence contacted me regarding the letter written to the Commission by attorney Paul Beard on behalf of Shear Development Co., LLC. This letter has been provided to staff. She stated her belief that these lots are unique, not undeveloped, and not appealable to the Coastal Commission. She encouraged me to advocate for a hearing on substantial issue so that her clients can make this case directly to the Commission.

10/13/19
Date


Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.