

## **CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
PHONE: (831) 427-4863  
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# W14a

### **A-3-SLO-21-0061 (EUBLERA SECOND UNIT) NOVEMBER 17, 2021 HEARING EXHIBITS**

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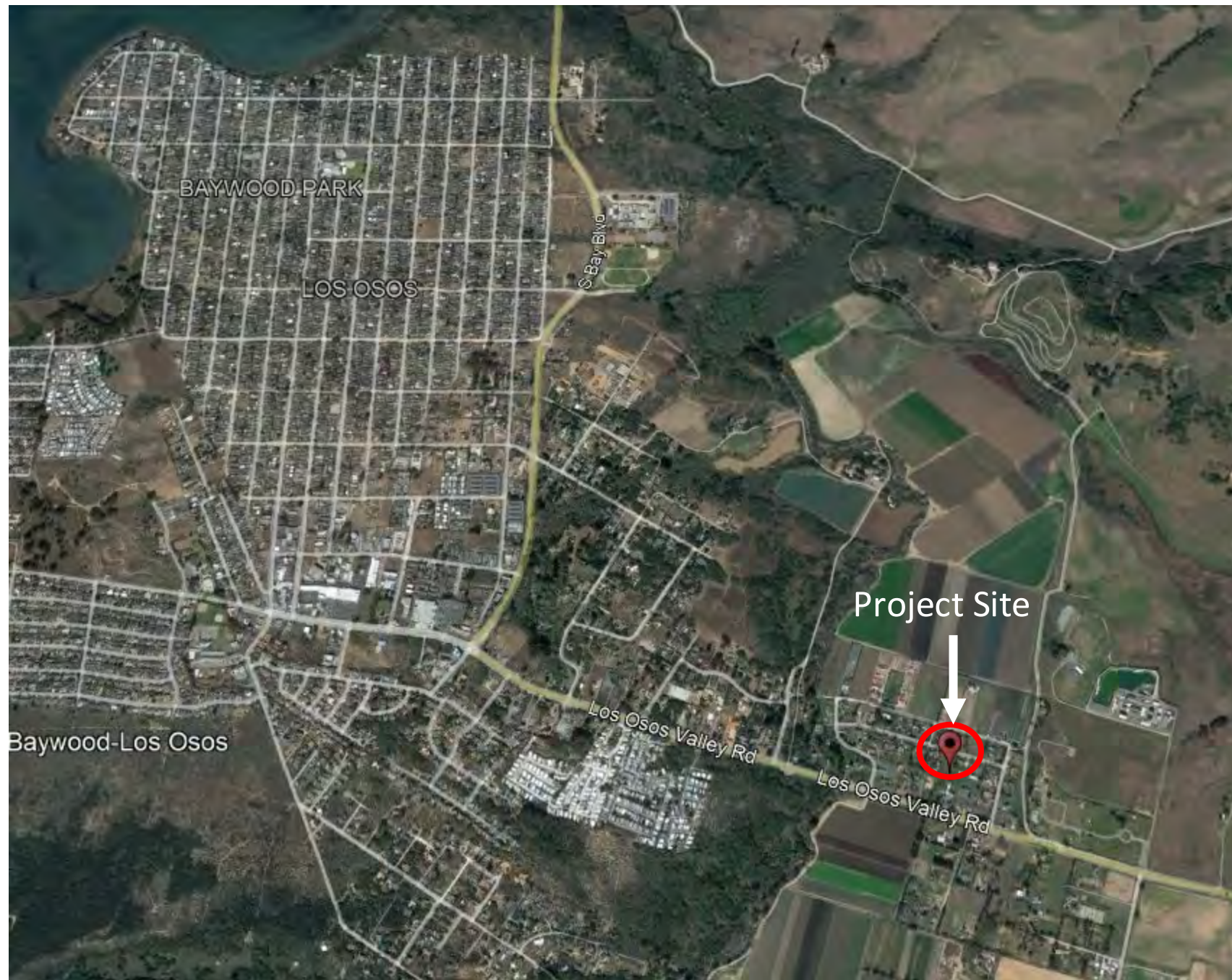
**Exhibit 4: Los Osos Groundwater Basin Map**

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# Project Location





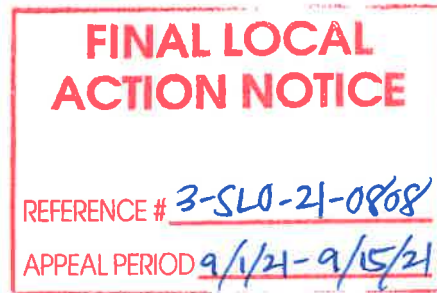




**COUNTY OF SAN LUIS OBISPO**  
**DEPARTMENT OF PLANNING & BUILDING**  
**TREVOR KEITH, DIRECTOR**

August 24, 2021

California Coastal Commission  
725 Front Street, Ste. 300  
Santa Cruz, CA 95060



**NOTICE OF FINAL COUNTY ACTION**

County File Number:	C-DRC2021-00003
Project Description:	The applicant has requested a permit to establish an accessory dwelling on the project site.
Project Site Address:	2011 Tapidero Ave., Los Osos, CA 93402 (outside URL)
Project Site APN:	074-353-017
Action Taking Body:	Department of Planning and Building ("Department")
Action Taken:	Approval, Ministerial
Action Date:	August 24, 2021
Conditions of Approval:	N/A
Local Appeal Periods:	Not applicable
Located Within Coastal Zone:	Yes
Appealable to Coastal Commission:	Yes
Attachments:	Attachment 1 – Findings Attachment 2 – ADU Compliance Review Form Attachment 3 – Plans

**RECEIVED**

**AUG 31 2021**

**CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA**

The Department's review of a Plot Plan application for Accessory Dwelling Unit(s) (ADU) is limited to a determination of consistency with the County's Local Coastal Plan (LCP) and California State Government Code Sections 65852.2 et. seq. (State ADU Law). Pursuant to CZLUO Section 23.08.169(d) and California State Government Code Section 65852.2(l), the County is not required to hold a public hearing for a request to construct ADU(s). Since the action taken on this application was ministerial and at the department staff level, a staff report was not required to be prepared. In lieu of a staff report, an ADU Compliance Review Form has been prepared and included in this notice as "Attachment 2".

The action may be appealable to the California Coastal Commission if it meets the appealable criteria in CZLUO Section 23.01.043 and Public Resources Code Section 30603(a). If this action is appealable, an appeal must be filed with the Coastal Commission in accordance with the requirements in Title 14 of the California Code of Regulations Section 13111.

Additionally, CZLUO Section 23.01.043 and applicable sections of the Coastal Act provide the California Coastal Commission 10 working days following the expiration of the applicable County appeal period to appeal the County's Final Action. This means the Applicant cannot commence development and the County cannot take any further administrative actions for the proposed development, including but not limited to, the request or issuance of a building permit, until the applicable County appeal period and the Coastal Commission Appeal period, including any suspension of the appeal period by the Coastal Commission pursuant to CZLUO 23.02.039, have expired without an appeal being filed.

Since this action was ministerial and was not appealable to the County Board of Supervisors or County Planning Commission, there was no County appeal period applicable for this application; and as such, the California Coastal Commission Appeal period may commence.

If you have any questions regarding the project, please contact Cory Hanh (Planner) at [chanh@co.slo.ca.us](mailto:chanh@co.slo.ca.us) or 805-781-5710.

Sincerely,

Daniela Chavez, Supervising Administrative Clerk  
County of San Luis Obispo  
Department of Planning & Building

cc:

Applicant

Romeo & Leonora Eublera  
1349 12<sup>th</sup> Street  
Los Osos, CA 93402

Interested Parties

J.H. EDWARDS COMPANY  
PO BOX 6070  
LOS OSOS , CA 93412

LOS OSOS SUSTAINABILITY GROUP  
ATTN: PATRICK MCGIBNEY  
1177 3RD STREET  
LOS OSOS, CA 93402

### **Attachment 1 - Findings**

1. The ADU Plot Plan application is consistent with the County's Local Coastal Plan (LCP) and California State Government Code Sections 65852.2 et. seq. (State ADU Law).
2. The applicant is required to provide evidence of adequate water supply and wastewater treatment prior to construction permit issuance.
3. Prior to approving the ADU Plot Plan, the Department provided public notice pursuant to Coastal Zone Land Use Ordinance (CZLUO) Section 23.02.070(b) and Section 23.08.169.
4. The Department will review the ADU for consistency with applicable building and construction codes prior to issuing a construction permit for the ADU.



**Attachment 2 – ADU Compliance Review Form**

This form serves to provide a summary of the review conducted for the proposed ADU project. The description of the standards listed in this form are representative of the applicable standards found in the Coastal Zone Land Use Ordinance (Local Coastal Program). For the full text of the standards, please refer to the Coastal Zone Land Use Ordinance. For the purpose of this form, “accessory dwelling unit” (ADU) shall mean the same as “secondary dwelling unit”.

County Permit Number: C-DRC2021-00003

APN: 074-353-017

Standard	Coastal Zone Land Use Ordinance	Proposed Project	Compliance with LCP
Accessory use	ADU shall be accessory to a primary dwelling	Accessory Use	Yes
Minimum site area	1 acre	1 acre	Yes (Note: Project site is not located within the Los Osos URL)
Setback, front	25 ft.	120 ft.	Yes
Setback, side	30 ft.	64 ft. and 29 ft.	No; However, Gov. Code Section 65852.2 does not allow for required minimum side setbacks to exceed 4 ft.
Setback, rear	30 ft.	98 ft.	Yes
Setback, interior	10 ft.	>10 ft.	Yes
Height	35 ft.	13 ft.	Yes
Size of ADU	Size of lot over 2 acres: 1,200 s.f.  Size of lot 2 acres or less: 800 s.f.	1,199 sq. ft.	No; However, Gov. Code Section 65852.2 allows a maximum ADU size of 1,200 sq. ft.
Design of ADU	Within URL and VRL, ADU must be designed to be compatible with the primary dwelling and avoid resembling a duplex	N/A; Project site not located within URL/VRL	N/A
Off-street parking	1 space per bedroom (max. 2 spaces)	2 spaces	2 spaces







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CENTRALCOAST@COASTAL.CA.GOV

**APPEAL FORM****Appeal of Local Government Coastal Development Permit****Filing Information (STAFF ONLY)****RECEIVED**

District Office: Central Coast

SEP 15 2021

Appeal Number: A-3-SLO-21-0061CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREADate Filed: Sept. 15, 2021Appellant Name(s): Los Osos Sustainability Group**APPELLANTS**

**IMPORTANT.** Before you complete and submit this appeal form to appeal a coastal development permit (CDP) decision of a local government with a certified local coastal program (LCP) to the California Coastal Commission, please review the appeal information sheet. The appeal information sheet describes who is eligible to appeal what types of local government CDP decisions, the proper grounds for appeal, and the procedures for submitting such appeals to the Commission. Appellants are responsible for submitting appeals that conform to the Commission law, including regulations. Appeals that do not conform may not be accepted. If you have any questions about any aspect of the appeal process, please contact staff in the Commission district office with jurisdiction over the area in question (see the Commission's contact page at <https://coastal.ca.gov/contact/#/>).

**Note regarding emailed appeals.** Please note that emailed appeals are accepted ONLY at the general email address for the Coastal Commission district office with jurisdiction over the local government in question. For the North Coast district office, the email address is CentralCoast@coastal.ca.gov. An appeal emailed to some other email address, including a different district's general email address or a staff email address, will be rejected. It is the appellant's responsibility to use the correct email address, and appellants are encouraged to contact Commission staff with any questions. For more information, see the Commission's contact page at <https://coastal.ca.gov/contact/#/>.

## Appeal of local CDP decision

### Page 2

#### 1. Appellant information<sup>1</sup>

Name: Los Osos Sustainability Group ("LOSG")  
Mailing address: 1124 Nipomo Street, Suite C, San Luis Obispo, CA 93401  
Phone number: (805) 593-0926  
Email address: babaknaficy@sbcglobal.net

How did you participate in the local CDP application and decision-making process?

☐ Did not participate    ☐ Submitted comment    ☐ Testified at hearing    ☒ Other

Describe: LOSG provided general feedback to San Luis Obispo County  
regarding concerns about the ministerial approval of ADU  
projects that rely on the conflict between Gov. Code 65852.2  
and the currently approved SLO County LCP.

If you did *not* participate in the local CDP application and decision-making process, please identify why you should be allowed to appeal anyway (e.g., if you did not participate because you were not properly noticed).

Describe: Participation in the approval process for this particular project  
was curtailed because the project was approved ministerially.

Please identify how you exhausted all LCP CDP appeal processes or otherwise identify why you should be allowed to appeal (e.g., if the local government did not follow proper CDP notice and hearing procedures, or it charges a fee for local appellate CDP processes).

Describe: San Luis Obispo County does not provide for appeal of ministerial  
permits. Furthermore, County planning designated the project  
"submitted" but not "approved" pending expiration of the Coastal  
Commission appeal period.

<sup>1</sup> If there are multiple appellants, each appellant must provide their own contact and participation information. Please attach additional sheets as necessary.

## Page 3

Local government name:	San Luis Obispo County
Local government approval body:	Planning & Building Department Staff
Local government CDP application number:	C-DRC2021-00003
Local government CDP decision:	<input checked="checked" type="checkbox"/> CDP approval <input type="checkbox"/> CDP denial
Date of local government CDP decision:	

Describe: Please see page 3 attachment titled "Project Description."

3 Very few local CDP denials are appealable, and those that are also require submittal of an appeal fee. Please see the [appeal information sheet](#) for more information.



## Appeal of local CDP decision

### Page 4

#### 3. Applicant information

Applicant name(s):

Romeo and Leonora Eublera

Applicant Address:

1349 12th Street, Los Osos, CA 93402

#### 4. Grounds for this appeal<sup>4</sup>

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP or to Coastal Act public access provisions. For appeals of a CDP denial, grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions. Please clearly identify the ways in which the development meets or doesn't meet, as applicable, the LCP and Coastal Act provisions, with citations to specific provisions as much as possible. Appellants are encouraged to be concise, and to arrange their appeals by topic area and by individual policies.

Describe: Please see page 4 attachment titled "Appeal Grounds."

<sup>4</sup> Attach additional sheets as necessary to fully describe the grounds for appeal.

## Appeal of local CDP decision

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#### 5. Identification of interested persons

On a separate page, please provide the names and contact information (i.e., mailing and email addresses) of all persons whom you know to be interested in the local CDP decision and/or the approved or denied development (e.g., other persons who participated in the local CDP application and decision making process, etc.), and check this box to acknowledge that you have done so.

☒ Interested persons identified and provided on a separate attached sheet

#### 6. Appellant certifications

I attest that to the best of my knowledge, all information and facts in this appeal are correct and complete.

Print name Patrick McGibney for Los Osos Sustainability Group

Patrick McGibney  
Signature

Date of Signature 9/15/21

#### 7. Representative authorization<sup>5</sup>

While not required, you may identify others to represent you in the appeal process. If you do, they must have the power to bind you in all matters concerning the appeal. To do so, please complete the representative authorization form below and check this box to acknowledge that you have done so.

☒ I have authorized a representative, and I have provided authorization for them on the representative authorization form attached.

<sup>5</sup> If there are multiple appellants, each appellant must provide their own certification. Please attach additional sheets as necessary.

<sup>6</sup> If there are multiple appellants, each appellant must provide their own representative authorization form to identify others who represent them. Please attach additional sheets as necessary.

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SAN FRANCISCO, CA 94105-2219  
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**DISCLOSURE OF REPRESENTATIVES**

If you intend to have anyone communicate on your behalf to the California Coastal Commission, individual Commissioners, and/or Commission staff regarding your coastal development permit (CDP) application (including if your project has been appealed to the Commission from a local government decision) or your appeal, then you are required to identify the name and contact information for all such persons prior to any such communication occurring (see Public Resources Code, Section 30319). The law provides that failure to comply with this disclosure requirement prior to the time that a communication occurs is a misdemeanor that is punishable by a fine or imprisonment and may lead to denial of an application or rejection of an appeal.

To meet this important disclosure requirement, please list below all representatives who will communicate on your behalf or on the behalf of your business and submit the list to the appropriate Commission office. This list could include a wide variety of people such as attorneys, architects, biologists, engineers, etc. If you identify more than one such representative, please identify a lead representative for ease of coordination and communication. You must submit an updated list anytime your list of representatives changes. You must submit the disclosure list before any communication by your representative to the Commission or staff occurs.

Your Name Patrick McGibney for Los Osos Sustainability Group

CDP Application or Appeal Number \_\_\_\_\_

**Lead Representative**

Name Babak Naficy  
Title Attorney  
Street Address 1124 Nipomo Street, Suite C  
City San Luis Obispo  
State, Zip CA 93401  
Email Address babaknaficy@sbcglobal.net  
Daytime Phone (805) 593-0926

Your Signature Patrick McGibney

Date of Signature 9/15/21

Additional Representatives (as necessary)

Name Eva Ulz  
Title Certified Law Student  
Street Address. 1124 Nipomo Street, Suite C  
City San Luis Obispo  
State, Zip CA 93401  
Email Address evaulz@nafcylaw.com  
Daytime Phone (805) 593-0926

Name \_\_\_\_\_  
Title \_\_\_\_\_  
Street Address. \_\_\_\_\_  
City \_\_\_\_\_  
State, Zip \_\_\_\_\_  
Email Address \_\_\_\_\_  
Daytime Phone \_\_\_\_\_

Name \_\_\_\_\_  
Title \_\_\_\_\_  
Street Address. \_\_\_\_\_  
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Name \_\_\_\_\_  
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Street Address. \_\_\_\_\_  
City \_\_\_\_\_  
State, Zip \_\_\_\_\_  
Email Address \_\_\_\_\_  
Daytime Phone \_\_\_\_\_

Your Signature Patrick McGibney

Date of Signature 9/15/21



### PROJECT DESCRIPTION

The project (the “Project”) is a ministerial approval by the San Luis Obispo County Department of planning and building for a “Plot Plan” application to construct an accessory dwelling unit (“ADU”) in Los Osos, an unincorporated area of San Luis Obispo County. The local plan number is C-DRC2021-00003.

The Project site is located at street address 2011 Tapadero Avenue, Los Osos, CA 93402, assessor’s parcel number 074-353-017. The 0.99 acre-lot has an extant 2,100 square foot residential dwelling.

The Project would add a free-standing three-bedroom 1,199 square foot ADU and related improvements, including a retention basin for drainage and two additional on-site parking spaces. County staff prepared an “ADU Compliance Review Form” in lieu of a staff report and virtually no project information is available on the County’s “Permit View” web portal. Therefore, many of the project details pertinent to an analysis of Local Coastal Program (“LCP”) compliance, including information about proposed water and sewage, are unavailable. Local permit number PMTR2021-00896, submitted July 6, 2021, also appears to seek approval for construction of an ADU on the same parcel, however it is unclear whether this is an earlier submission for substantially the same project or if it is an additional permit request.

The application for the Project was submitted to the County on July 16, 2021. A Notice of Tentative Action was mailed to surrounding property owners informing them that the County would approve the project on August 19, 2021, with an “estimated final effective date of this approval” on September 10, 2021. The County mailed the Notice of Final Action to the Coastal Commission on August 24, 2021. To date, the Project is marked “Submitted” in the County’s public “Permit View” portal, rather than “Approved.” According to County planning staff, the Project will not be considered approved until the expiration of the coastal appeal period.

## GROUNDS FOR APPEAL

### I. INTRODUCTION

This appeal follows and is predicated on substantially the same grounds as an earlier group of appeals<sup>1</sup> filed in January 2021 by Los Osos Sustainability Group. Commissioners Escalante and Howell also appealed the same projects.

Coastal Commission (the “Commission”) staff reports for the March 12, 2021 hearing on those appeals recommended finding substantial Local Coastal Program (“LCP”) conformance issues because sustainable growth limits have not been identified under the Los Osos Community Plan (“LOCP”)—not yet approved by the Commission—or pursuant to Special Condition 6 of the Los Osos Wastewater Coastal Development Permit (“LOSWW CDP”) and/or the mandated but as-yet-undeveloped Los Osos groundwater basin management plan. Staff also pointed out that the entirety of Los Osos is considered environmentally sensitive habitat area (“ESHA”) and the County’s habitat conservation plan (“HCP”) has not yet been approved as an addition to the LCP either. All these issues remain outstanding.

Finally, the County impermissibly relied then, as it does here, on Government Code section 65852.2 to approve accessory dwelling unit (“ADU”) projects that do not comply with size limits in the current LCP.

### II. GROUNDWATER AND ESHA ISSUES

Appellant Los Osos Sustainability Group (“LOSG”) has previously urged the Coastal Commission to direct San Luis Obispo County not to approve any more ADUs or any other type of new development that uses water or sewer services in Los Osos until and unless the Commission approves the LOCP, thereby setting

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<sup>1</sup> Coastal Commission Appeal Nos. A-3-SLO-21-0002, A-3-SLO-21-0003, A-3-SLO-21-0004, A-3-SLO-21-0005, A-3-SLO-21-0006, A-3-SLO-21-0007, and A-3-SLO-21-0008.

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buildout limits that reflect the availability of sustainable water supplies and sewer services. Before approving the LOCP and thereby authorizing new development in Los Osos and Baywood, the Commission will be able to ensure that the groundwater basin will be able to sustainably meet current needs, and that valuable coastal resources including ESHA are preserved. As the Commission has already acknowledges, current data does not show the basin is sustainable.

When the Commission considered and eventually approved the LOSWWP CDP in 2010, a staff report recognized the complex problems that affect the continued viability of the groundwater basin on which the residents of Los Osos currently and forever must rely:

[P]otential buildout under the LCP is significantly constrained, including due to public service constraints, habitat, and rural/agricultural protection. Thus, it is not clear at the current time that buildout of that degree is possible, nor whether it could be found consistent with the LCP. The County has committed to rectifying buildout issues through an LCP amendment following the LOWWP. Specifically the proposed project includes condition 86, which states: (Consistent with condition of approval #34 from CDP A-3-SLO-03-113). To prevent wastewater treatment system from inducing growth that cannot be safely sustained by available water supplies, the sewer authority is prohibited from providing service to existing undeveloped parcels within the service area, unless and until the Estero Area Plan is amended to incorporate a sustainable buildout target that indicates that there is water available to support such development without impacts to wetlands and habitats.

The LCP addressed these concerns by including policies that prohibit residential and commercial development unless the availability of water supply and sewer service is established. In recognition of these constraints (as well those caused by the prevalence of ESHA throughout the area), the 2010 LOWWP CDP (CDP A-3-SLO-09-055/069) explicitly prohibits additional residential and

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San Luis Obispo, CA 93401

commercial development reliant on the LOWWP until the County establishes appropriate limits on growth based on the basin's true carrying capacity based on "conclusive evidence" of an adequate water supply, adequate sewer treatment capacity, and ESHA protection.

Condition of Approval No. 6 specifically provides:

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.

Condition 6 has not been satisfied because the Commission has yet to vet or approve the LOCP.

Moreover, the recently proposed LOCP does not present "conclusive evidence" of an adequate water supply and fails to adequately analyze the myriad of complex factors that affect the reliability of Los Osos water supplies. As more thoroughly explained in LOSG's detailed comments to the County, the LOCP and EIR are woefully inadequate because both documents simply assume that the implementation of the mitigation measures identified in the Los Osos Basin Plan will eventually reverse sea water intrusion that continues to threaten the long-term viability of the water supplies. This conclusion is not supported by the monitoring reports and other data. Sea water intrusion and nitrite contamination continue to threaten the viability of the Los Osos groundwater basin casting doubt on the availability of water supplies for the current residents, let alone new development.

To make matters worse, the County recently adopted a Growth Management Ordinance ("GMO") that does not set any limits on the number of ADUs and other "exempt" housing the County may approve in Los Osos. Accordingly, the County's



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practice of approving ADUs without appropriate consideration of water supply and sewer limitations raises the specter of rampant ADU development in Los Osos as an end-run around the limits on development set by the LOWWP CDP. By approving coastal ADUs without any consideration of the individual or cumulative impact on water supplies, the County would set a dangerous precedent by creating the expectation that a coastal ADU is simply available for the asking, regardless of impacts on the water basin, unsustainable water supplies, impacts on habitat, the size of the ADU, whether it is consistent with the character of the area, or the total number of applications.

The LOSG also anticipates that the County will claim that approval of this ADU will not have an adverse impact on water supplies and will ensure an adequate water supply for the new development, current development, and ESHA because the ADU is subject to a Title 19, 2:1 retrofit ordinance. The County has even claimed on occasion that new development subject to this requirement provides a “net benefit” to the water supply. These claims are unavailing because compliance with Title 19 does not guarantee conformity with the Coastal Act policies reflected in the LCP and CZLUO provisions designed to ensure orderly and sustainable coastal development for the following reasons:

- a. The Title 19 retrofit requirement does not establish that the Groundwater Basin is sustainable and an adequate water supply exists for the current population, added population, and ESHA. The most recent Basin metrics and monitoring show seawater intrusion is continuing to move inland and threaten supply wells in the Basin and the true sustainable/safe yield of the Basin has not been established.
- b. The Title 19 requirement uses conservation potential at twice the rate of a program for current residents because approved new development uses half, and possibly more, of the offset (also see e. below). The

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Commission itself has in the past recognized that any remaining conservation potential in the Basin is needed and must be used to promote a sustainable Basin to meet the current needs and ESHA.

- c. The Title 19 program competes with and is entirely inconsistent the Special Condition 5 conservation program of the LOWWP CDP, which requires the County to spend \$5 million to “help Basin residents to reduce potable water use as much as possible” including with enforceable mechanisms as needed. If any additional conservation potential exists (as evidenced by use of the Title 19 program) it ought to be realized by the County through expenditure of the portion of the \$5 million that remains unspent (based on Annual Monitoring Reports prepared for the Basin Management Committee) because the goal of the Special Condition 5 was to reduce the overall water demand in the basin, and not to use the conservation potential to approve new ADUs other development that increases the water demand
- d. Although the Title 19 Ordinance has a provision for verifying the effectiveness of the program, the provision has not been used and there has been no follow-up review or study, to our knowledge, to confirm actual long-term reductions in water use from the program. In fact, in the past two months, the County has merely commenced the process of hiring consultants to evaluate the Title 19 program.
- e. The retrofit formula for the program assumes ADUs use half the water of single-family homes, so it does not offset the water use of many ADUs (e.g., larger ADUs and ADUs on properties) that may well use more than the assumed amount. Further, water use has gone up in 2020 and 2021 due to COVID 19.

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### III. INCONSISTENCY WITH CURRENT LCP

The County continues to insist that Government Code section 65852.2 supersedes the ADU provisions in its own LCP. This is incorrect as a matter of law. The currently certified provisions of the County's LCP—including CZLUO section 23.08.169, last amended in 2018—must be applied to all ADU permit applications within the County's Coastal Zone. "Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act . . . except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units." Gov't Code § 65852.2, subd. (j).

It is important to note that the LCP embodies and effectuates the policies and concerns of the Coastal Act and the County's authority to issue Coastal Development Permits ("CDPs") in accordance with the LCP, which is delegated by the Commission. Charles A. Pratt Constr. Co. v. California Coastal Com. (2008)162 Cal. App. 4th 1068, 1075. The County has no authority to issue ADUs in contravention of the LCP, including policies that are intended to protect and preserve the Los Osos water supplies, sewer capacity, and ESHA.

Here, the County's ADU Compliance Report admits that the 1,199 square foot ADU proposed by the Project exceeds the 800 square foot limit for a 1-acre lot in CLUZO section 23.08.169, subdivision (g)(1), but relies on Government Code section 65852.2 as authority for ignoring the currently LCP size limit. As explained in LOSG's January 2021 ADU appeals, so long as the County's Coastal ADU Ordinance has not been certified by Coastal Commission, the County's existing LCP remains the standard with which coastal ADUs must comply. In other words, the LCP is not rendered void as to ADUs in the meantime. Consistent with section 65852.2, subdivision (j), in an April 2020 Guidance Memo to the planning directors of coastal cities and counties, Coastal Commission executive director John

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Ainsworth advised that despite a spate of recent updates to the state law, “existing ADU provisions contained in certified LCPs are not superseded by Government Code section 65852.2 and continue to apply to CDP applications for ADUs until an LCP amendment is adopted.”

The Project also includes a violation of setback requirements, for which the County again attempts to rely on state law for an exception. The appeal should be granted on this basis.

#### IV. PROCEDURAL CONCERNS

LOSG is deeply concerned that the County at least appears to be attempting to circumvent Coastal Commission appeal of its most recent Los Oso ADU approvals by characterizing this Project as “submitted,” rather than approved, even after the Notice of Final Action was mailed to the Commission. County staff seemed to indicate that approval will only be finalized once the 10-day coastal appeal period has passed. This apparent change in policy invites confusion about whether and when a project has actually been approved and is therefore appealable.

#### V. CONCLUSION

The Commission should grant LOSG’s appeal of this Project because the County persists in approving ADUs in Los Osos, thereby ignoring substantial issues regarding water, sewer, and ESHA that have been recognized by the Commission in prior appeals of similar ADU projects. Furthermore, the Project is inconsistent with the current LCP and such inconsistency cannot be excused by Government Code section 65852.2. Finally, LOSG seeks recommendation from the Commission to the County that (1) the County cease approving ADUs in Los Osos until the LOCP has been approved and the LCP has been amended and (2) the County must increase transparency regarding the status of coastal zone appealable projects.



CDP APPEAL

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*Local Application No. C-DRC2021-00003*

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LIST OF INTERESTED PARTIES

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Los Osos Sustainability Group  
Attn: Patrick McGibney  
1177 3<sup>rd</sup> Street  
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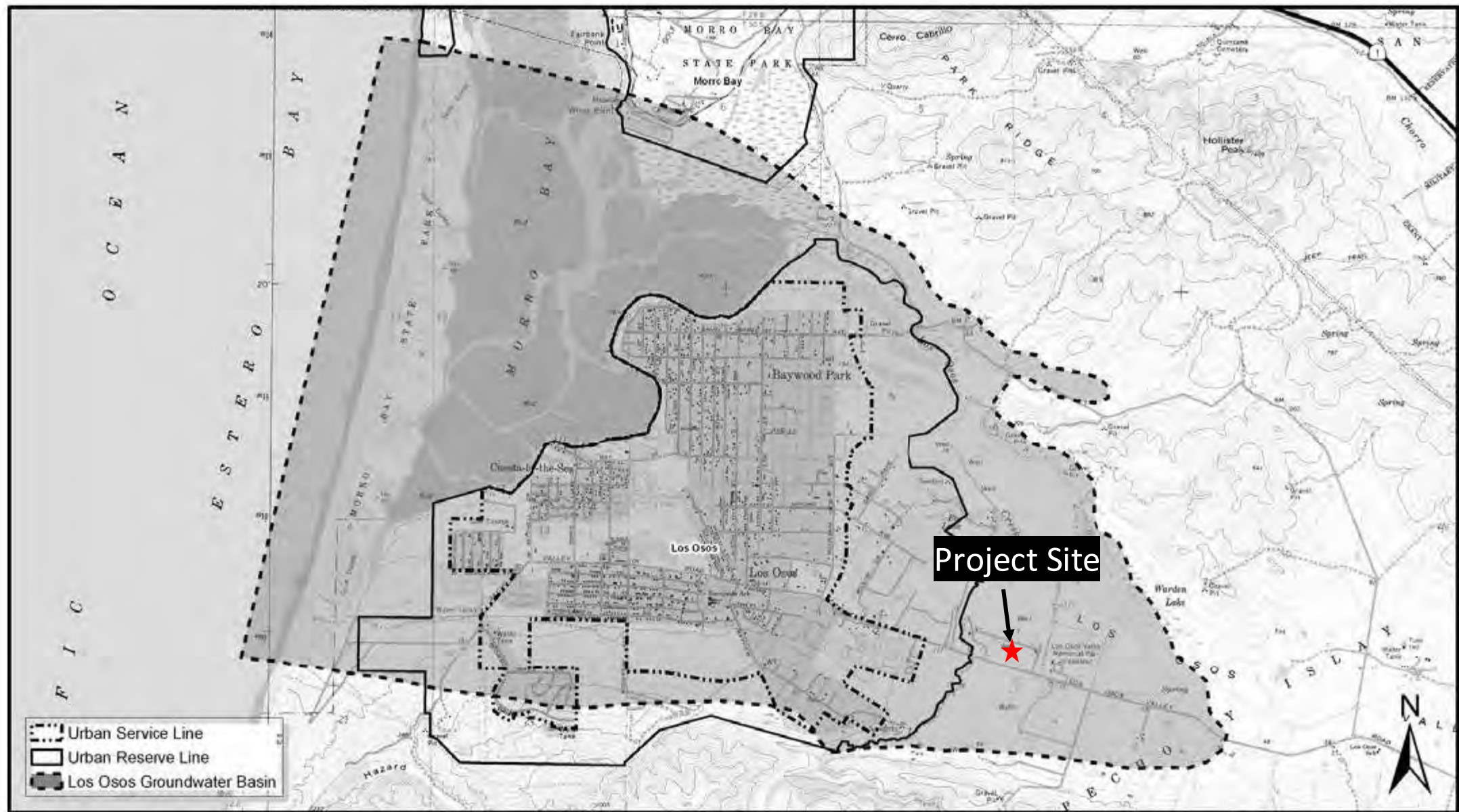


Figure 7-7: Los Osos Groundwater Basin

**CALIFORNIA COASTAL COMMISSION**

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To: Planning Directors of Coastal Cities and Counties  
From: John Ainsworth, Executive Director  
Re: Implementation of New ADU Laws  
Date: April 21, 2020

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The Coastal Commission has previously circulated two memos to help local governments understand how to carry out their Coastal Act obligations while also implementing state requirements regarding the regulation of accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs"). As of January 1, 2020, AB 68, AB 587, AB 670, AB 881, and SB 13 each changed requirements on how local governments can and cannot regulate ADUs and JADUs, with the goal of increasing statewide availability of smaller, more affordable housing units. This memo is meant to describe the changes that went into effect on January 1, 2020, and to provide guidance on how to harmonize these new requirements with Local Coastal Program ("LCP") and Coastal Act policies.

**Coastal Commission Authority Over Housing in the Coastal Zone**

The Coastal Act does not exempt local governments from complying with state and federal law "with respect to providing low- and moderate-income housing, replacement housing, relocation benefits, or any other obligation related to housing imposed by existing law or any other law hereafter enacted." (Pub. Res. Code § 30007.) The Coastal Act requires the Coastal Commission to encourage housing opportunities for low- and moderate-income households. (Pub. Res. Code § 30604(f).) New residential development must be "located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it" or in other areas where development will not have significant adverse effects on coastal resources. (Pub. Res. Code § 30250.) The creation of new ADUs in existing residential areas is a promising strategy for increasing the supply of lower-cost housing in the coastal zone in a way that may be able to avoid significant adverse impacts on coastal resources.

This memorandum is intended to provide general guidance for local governments with fully certified LCPs. The Coastal Commission is generally responsible for Coastal Act review of ADUs in areas that are not subject to fully certified LCPs. Local governments that have questions about specific circumstances not addressed in this memorandum should contact the appropriate district office of the Commission.

## **Overview of New Legislation**<sup>1</sup>

The new legislation effective January 1, 2020 updates existing Government Code Sections 65852.2 and 65852.22 concerning local government procedures for review and approval of ADUs and JADUs. As before, local governments have the discretion to adopt an ADU ordinance that is consistent with state requirements. (Gov. Code § 65852.2(a).) AB 881 (Bloom) made numerous significant changes to Government Code section 65852.2. In their ADU ordinances, local governments may still include specific requirements addressing issues such as design guidelines and protection of historic structures. However, per the recent state law changes, a local ordinance may not require a minimum lot size, owner occupancy of an ADU, fire sprinklers if such sprinklers are not required in the primary dwelling, or replacement offstreet parking for carports or garages demolished to construct ADUs. In addition, a local government may not establish a maximum size for an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom. (Gov. Code § 65852.2(c)(2)(B).) Section 65852.2(a) lists additional mandates for local governments that choose to adopt an ADU ordinance, all of which set the “maximum standards that local agencies shall use to evaluate a proposed [ADU] on a lot that includes a proposed or existing single-family dwelling.” (Gov. Code § 65852.2(a)(6).)

Some local governments have already adopted ADU ordinances. Existing or new ADU ordinances that do *not* meet the requirements of the new legislation are null and void, and will be substituted with the provisions of Section 65852.2(a) until the local government comes into compliance with a new ordinance. (Gov. Code § 65852.2(a)(4).) However, as described below, existing ADU provisions contained in certified LCPs are not superseded by Government Code section 65852.2 and continue to apply to CDP applications for ADUs until an LCP amendment is adopted. One major change to Section 65852.2 is that the California Department of Housing and Community Development (“HCD”) now has an oversight and approval role to ensure that local ADU ordinances are consistent with state law, similar to the Commission’s review of LCPs. If a local government adopts an ordinance that HCD deems to be non-compliant with state law, HCD can notify the Office of the Attorney General. (Gov. Code § 65852.2(h).)

If a local government does *not* adopt an ADU ordinance, state requirements will apply directly. (Gov. Code § 65852.2(b)–(e).) Section 65852.2 subdivisions (b) and (c) require that local agencies shall ministerially approve or disapprove applications for permits to create ADUs. Subdivision (e) requires ministerial approval, whether or not a local government has adopted an ADU ordinance, of applications for building permits of the following types of ADUs and JADUs in residential or mixed use zones:

- One ADU or JADU per lot *within* a proposed or existing single-family dwelling or existing space of a single-family dwelling or accessory structure, including an expansion of up to 150 square feet beyond the existing dimensions of an existing accessory structure; with exterior access from the proposed or existing single-family

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<sup>1</sup> This Guidance Memo only provides a partial overview of new legislation related to ADUs. The Coastal Commission does not interpret or implement these new laws.

dwelling; side and rear setbacks sufficient for fire and safety; and, if a JADU, applicant must comply with requirements of Section 65852.22; (§ 65852.2(e)(1)(A)(i)-(iv))

- One detached, new construction ADU, which may be combined with a JADU, so long as the ADU does not exceed four-foot side and rear yard setbacks for the single family residential lot; (§ 65852.2(e)(1)(B))
- Multiple ADUs within the portions of existing multifamily dwelling structures that are not currently used as dwelling spaces; (§ 65852.2(e)(1)(C))
- No more than two detached ADUs on a lot that has an existing multifamily dwelling, subject to a 16-foot height limitation and four-foot rear yard and side setbacks. (§ 65852.2(e)(1)(D))

ADUs and JADUs created pursuant to Subdivision (e) must be rented for terms greater than 30 days. (Gov. Code § 65852.2(e)(4).)

### **What Should Local Governments in the Coastal Zone Do?**

#### **1) Update Local Coastal Programs (LCPs)**

Local governments are required to comply with both these new requirements for ADUs/JADUs and the Coastal Act. Currently certified provisions of LCPs are not, however, superseded by Government Code section 65852.2, and continue to apply to CDP applications for ADUs until an LCP amendment is adopted. Where LCP policies directly conflict with the new provisions or require refinement to be consistent with the new laws, those LCPs should be updated to be consistent with the new ADU provisions to the greatest extent feasible, while still complying with Coastal Act requirements.

As noted above, Section 65852.2 expressly allows local governments to adopt local ordinances that include criteria and standards to address a wide variety of concerns, including potential impacts to coastal resources. For example, a local government may address reductions in parking requirements that would have a direct impact on public access. As a result, we encourage local governments to identify the coastal resource context applicable in a local jurisdiction and ensure that any proposed ADU-related LCP amendment appropriately addresses protection of coastal resources consistent with the Coastal Act at the same time that it facilitates ADUs/JADUs consistent with the new ADU provisions. For example, LCPs should ensure that new ADUs are not constructed in locations where they would require the construction of shoreline protective devices, in environmentally sensitive habitat areas, wetlands, or in areas where the ADU's structural stability may be compromised by bluff erosion, flooding, or wave uprush over their lifetime. Our staff is available to assist in the efforts to amend LCPs.

Please note that LCP amendments that involve purely procedural changes, that do not propose changes in land use, and/or that would have no impacts on coastal resources may be eligible for streamlined review as minor or de minimis amendments. (Pub. Res. Code § 30514(d); Cal. Code Regs., tit. 14, § 13554.) The Commission will process ADU-specific LCP amendments as minor or de minimis amendments whenever possible.

## **2) Follow This Basic Guide When Reviewing ADU or JADU Applications**

### **a. Check Prior CDP History for the Site.**

Determine whether a CDP was previously issued for development of the lot and whether that CDP limits, or requires a CDP or CDP amendment for, changes to the approved development or for future development or uses of the site. The applicant should contact the appropriate Coastal Commission district office if a Commission-issued CDP limits the applicant's ability to apply for an ADU or JADU.

### **b. Determine Whether the Proposed ADU or JADU Qualifies as Development.**

Any person "wishing to perform or undertake any development in the coastal zone" shall obtain a CDP. (Pub. Res. Code § 30600.) Development as defined in the Coastal Act includes not only "the placement or erection of any solid material or structure" on land, but also "change in the density or intensity of use of land[.]" (Pub. Res. Code § 30106.) Government Code section 65852.2 states that an ADU that conforms to subdivision (a) "shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot." (Gov. Code § 65852.2(a)(8).)

Conversion of an existing legally established room(s) to create a JADU or ADU within an existing residence, without removal or replacement of major structural components (i.e. roofs, exterior walls, foundations, etc.) and that do not change the size or the intensity of use of the structure may not qualify as development within the meaning of the Coastal Act, or may qualify as development that is either exempt from coastal permit requirements and/or eligible for streamlined processing (Pub. Res. Code §§30106 and 30610), see also below. JADUs created within existing primary dwelling structures that comply with Government Code Sections 65852.2(e) and 65852.22 typically will fall into one of these categories, unless specified otherwise in a previously issued CDP or other coastal authorization for existing development on the lot. However, the conversion of detached structures associated with a primary residence to an ADU or JADU may involve a change in the size or intensity of use that would qualify as development under the Coastal Act and require a coastal development permit, unless determined to be exempt or appropriate for waiver.

### **c. If the Proposed ADU Qualifies as Development, Determine Whether It Is Exempt.**

Improvements such as additions to existing single-family dwellings are generally exempt from Coastal Act permitting requirements except when they involve a risk of adverse environmental effects as specified in the Commission's regulations. (Pub. Res. Code § 30610(a); Cal. Code Regs., tit. 14, § 13250.) Improvements that qualify as exempt development under the Coastal Act and its implementing regulations do not require a CDP from the Commission or a local government unless required pursuant to a previously issued CDP. (Cal. Code Regs., tit. 14, § 13250(b)(6).)

Typically, the construction or conversion of an ADU/JADU contained within or directly attached to an existing single-family residence would qualify as an exempt improvement to a single-family residence. (Cal. Code Regs., tit. 14, § 13250(a)(1).) Guest houses and “self-contained residential units,” i.e. detached residential units, do not qualify as part of a single-family residential structure, and construction of or improvements to them are therefore not exempt development. (Cal. Code Regs., tit. 14, § 13250(a)(2).)

d. If the Proposed ADU is Not Exempt from CDP Requirements, Determine Whether a CDP Waiver Is Appropriate.

If the LCP includes a waiver provision, and the proposed ADU or JADU meets the criteria for a CDP waiver the local government may waive the permit requirement for the proposed ADU or JADU. The Commission generally has allowed a waiver for proposed *detached* ADUs if the executive director determines that the proposed ADU is de minimis development, involving no potential for any adverse effects on coastal resources and is consistent with Chapter 3 policies. (See Pub. Res. Code § 30624.7.)

Some LCPs do not allow for waivers, but may allow similar expedited approval procedures. Those other expedited approval procedures may apply. If an LCP does not include provisions regarding CDP waivers or other similar expedited approvals, the local government may submit an LCP amendment to authorize those procedures.

e. If a Waiver Would Not Be Appropriate, Review CDP Application for Consistency with Certified LCP Requirements.

If a proposed ADU constitutes development, is not exempt, and is not subject to a waiver or similar expedited Coastal Act approval authorized in the certified LCP, it requires a CDP. The CDP must be consistent with the requirements of the certified LCP and, where applicable, the public access and recreation policies of the Coastal Act. The local government then must provide the required public notice for any CDP applications for ADUs and process the application pursuant to LCP requirements, but should process it within the time limits contained in the ADU law if feasible. Once the local government has issued a decision, it must send the required final local action notice to the appropriate district office of the Commission. If the ADU qualifies as appealable development, a local government action to approve a CDP for the ADU may be appealed to the Coastal Commission. (Pub. Res. Code § 30603.)

**Information on AB 68, AB 587, AB 670, and SB 13**

**JADUs – AB 68 (Ting)**

JADUs are units of 500 square feet or less, contained entirely within a single-family residence or existing accessory structure. (Gov. Code §§ 65852.2(e)(1)(A)(i) and 65852.22(h)(1).) AB 68 (Ting) made several changes to Government Code section 65852.22, most notably regarding the creation of JADUs pursuant to a local government ordinance. Where a local



government has adopted a JADU ordinance, “[t]he ordinance may require a permit to be obtained for the creation of a [JADU].” (Gov. Code § 65852.22(a).) If a local government adopts a JADU ordinance, a maximum of one JADU shall be allowed on a lot zoned for single-family residences, whether they be proposed or existing single-family residences. (Gov. Code § 65852.22(a)(1).) (This formerly only applied to *existing* single-family residences. Now, proposals for a new single-family residence can include a JADU.) Efficiency kitchens are no longer required to have sinks, but still must include a cooking facility with a food preparation counter and storage cabinets of reasonable size relative to the space. (Gov. Code § 65852.22(a)(6).) Applications for permits pursuant to Section 65852.22 shall be considered ministerially, within 60 days, if there is an existing single-family residence on the lot. (Gov. Code § 65852.22(c).) (Formerly, complete applications were to be acted upon within 120 days.)

If a local government has *not* adopted a JADU ordinance pursuant to Section 65852.22, the local government is required to ministerially approve building permit applications for JADUs within a residential or mixed-use zone pursuant to Section 65852.2(e)(1)(A). (Gov. Code § 65852.22(g).) That section is detailed in bullet points on pages two-three of this memorandum and refers to specific ADU and JADU approval scenarios.

#### **Sale or Conveyance of ADUs Separately from Primary Residence – AB 587 (Friedman)**

AB 587 (Friedman) added Section 65852.26 to the Government Code to allow a local government to, by ordinance, allow the conveyance or sale of an ADU separately from a primary residence if several specific conditions all apply. (Gov. Code § 65852.26.) This section only applies to a property built or developed by a qualified nonprofit corporation, which holds enforceable deed restrictions related to affordability and resale to qualified low-income buyers, and holds the property pursuant to a recorded tenancy in common agreement. Please review Government Code Section 65852.26 if such conditions apply.

#### **Covenants and Deed Restrictions Null and Void – AB 670 (Friedman)**

AB 670 added Section 4751 to the California Civil Code, making void and unenforceable any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an ADU or JADU on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code.

#### **Delayed Enforcement of Notice to Correct a Violation – SB 13 (Wieckowski)**

SB 13 (Wieckowski) Section 3 added Section 17980.12 to the Health and Safety Code. The owner of an ADU who receives a notice to correct a violation can request a delay in enforcement, if the ADU was built before January 1, 2020, or if the ADU was built after January 1, 2020, but the jurisdiction did not have a compliant ordinance at the time the request to fix the violation was made. (Health & Saf. Code § 17980.12.) The owner can request a delay of five (5) years on the basis that correcting the violation is not necessary to protect health and safety. (Health & Saf. Code § 17980.12(a)(2).)