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 Staff: Esme Wahl - SC
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 Hearing Date: 11/17/2021

STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal Number: A-3-SLO-21-0061

Applicant: Romeo and Leonora Eublera

Appellant: Los Osos Sustainability Group

Local Government: San Luis Obispo County

Local Decision: County coastal development permit number C-DRC2021-00003 approved by the San Luis Obispo County Planning Department on August 24, 2021.

Project Location: 2011 Tapidero Avenue on the outskirts of the unincorporated community of Los Osos in San Luis Obispo County (APN 074-353-017).

Project Description: Construction of a detached, one-story, 1,199-square-foot, three-bedroom second residential unit on a property with an existing approximately 2,100-square-foot home.

Staff Recommendation: Substantial Issue Exists

IMPORTANT HEARING PROCEDURE NOTE

Please note that at the hearing for this item the Commission will not take testimony on staff's substantial issue recommendation unless at least three Commissioners request it. Commissioners may ask questions of the Applicant, aggrieved persons (i.e., generally persons who participated in some way in the local permitting process), the Attorney General, the Executive Director, and their proxies/representatives prior to determining whether or not to take such testimony. If the Commission does decide to take such testimony, then it is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify these time limits). Only the

Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify during this substantial issue phase of the hearing. Other interested parties may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will then review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does *not* raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

SUMMARY OF STAFF RECOMMENDATION

San Luis Obispo County approved a CDP that authorized the construction of a new secondary dwelling unit on a developed lot occupied by an existing single-family residential home on the outskirts and inland side of the unincorporated community of Los Osos. The appeal contends that the County-approved project is inconsistent with numerous San Luis Obispo County Local Coastal Program (LCP) provisions related to water supply (including those that require denial of projects where an adequate water supply is not available); environmentally sensitive habitat area (ESHA) protection (including where an over-drafted groundwater basin can adversely impact wetlands and marshes, coastal streams and adjacent riparian areas, and marine habitats); and secondary dwelling unit standards (because the approved second unit is larger than allowed by the LCP). Moreover, the appeal contends that the County impermissibly used state ADU law as the legal standard of review for the CDP application rather than the standards of the certified LCP.

After reviewing the local record, staff recommends that the Commission find that the appeal raises a substantial LCP conformance issue. With respect to water supply, the LCP requires all development in the County to be served by an adequate and sustainable water supply and requires denial of a proposed project should such service not be available. Los Osos is a community that has traditionally suffered from an inadequate water source, including because there is a lack of available water, and the water available has been degraded by seawater intrusion (and high salinity levels) and elevated nitrate contamination (from decades of septic system discharge). The Los Osos Valley Groundwater Basin, which is the sole source of water for the entire community and the source for this particular project, is still critically over-drafted beyond its safe yield, and the County did not analyze or evaluate how or why the project would be served by a sustainable water source as the LCP requires. And, in fact, based on available information, it appears that there is not an adequate and sustainable water supply to serve this new development. For these reasons, the County's approval of a CDP for this project raises a substantial LCP conformance issue.

Further, the LCP limits the size of secondary dwelling units to a maximum of 800 square feet at this location, but the County's approval authorizes construction of a nearly 1,200-square-foot, three-bedroom detached residence that is 50% larger than the maximum allowed by the LCP. Although the County's approval acknowledges this clear LCP inconsistency, the County approved the CDP by relying on state ADU law as opposed

to the certified LCP standards. The standard of review for CDPs is the certified LCP, including in cases where state ADU law may provide a different prescription (and thus the Commission’s persistence in helping local governments to update their LCP ADU provisions, including where over a half dozen such LCP amendments have been approved by the Commission on just the Central Coast this year). In any case, the County’s approval of CDP for this project raises a substantial LCP conformance issue for this reason as well.

In sum, staff recommends that the Commission find that the appeal raises substantial LCP conformance issues and that the Commission take jurisdiction over the CDP application for the proposed project. If the Commission does so, then the de novo hearing on the merits of the CDP application would be scheduled for a future Commission meeting. The motion and resolution to effect this recommendation are found on page 4.

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EXHIBITS

- Exhibit 1 – Location Maps
- Exhibit 2 – County’s Final Local CDP Action Notice and Project Plans
- Exhibit 3 – Appeal of County’s CDP Decision
- Exhibit 4 – Los Osos Groundwater Basin Map
- Exhibit 5 – Commission ADU memo

1. MOTION AND RESOLUTION

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for de novo hearing and action. To implement this recommendation, staff recommends a **no** vote on the following motion. Failure of this motion will result in a future de novo hearing on the CDP application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission determine that Appeal Number A-3-SLO-21-0061 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a **no** vote.*

Resolution to Find Substantial Issue: *The Commission hereby finds that Appeal Number A-3-SLO-21-0061 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

2. FINDINGS AND DECLARATIONS

A. Project Location and Description

The County-approved project is located at 2011 Tapidero Avenue on the outskirts of the unincorporated coastal community of Los Osos. Los Osos is a community of about 15,000 residents that is located in central San Luis Obispo County at the southern end of Morro Bay and roughly due west of the City of San Luis Obispo. Los Osos also abuts Morro Bay, which is a designated State and National Estuary that is well known as one of the most important biologic and wetland resources in California's coastal zone. Los Osos is also mostly located atop an ancient dune system formed by centuries of wind-blown sand coming from the southern end of Morro Bay. As a result, the terrain consists primarily of gently rolling hills and sandy soils. The sandy soils of Los Osos, its connection to Morro Bay, and its generally mild marine climate have combined to produce a unique coastal ecosystem that is home to a wide variety of uniquely adapted plant and animal species, some of which are protected sensitive species that are found nowhere else in the world. As a result, the Commission has generally found all of Los Osos' undeveloped lands to constitute an environmentally sensitive habitat area (ESHA).

Los Osos derives its water entirely from the Los Osos Valley Groundwater Basin, which is bounded on the north by Park Ridge, on the south by Irish Hills, on the west by Morro Bay, and on the east by a drainage divide separating Los Osos Valley from San Luis

Valley (see **Exhibit 4** for a map of the Los Osos Valley Groundwater Basin).¹ In 2015 the Los Osos Valley Groundwater Basin was designated by the California Department of Water Resources (DWR) as a high priority basin due to its “condition of critical overdraft.” The overdraft has resulted in poor water quality from seawater intrusion and high salinity levels, and also from decades of septic system discharge that has resulted in elevated nitrate levels. In short, and as explained in more detail subsequently, the issue of achieving a sustainable water source to serve Los Osos, including both in terms of water quality and quantity, remains acute. The County has also designated water supply constraints in Los Osos at the highest level of constraint (i.e., LOS III) in the LCP’s Resource Management System.² The goal of the resource management system is to determine population growth based off the resources required to support that growth. Water supply LOS III occurs when the maximum safe yield of a resource has been met or exceeded and requires intervention in order to protect public safety and the environment.

The project site is one acre in size, is located within a subdivision of larger-lot residences on the outskirts of town, and is currently developed with an approximately 2,100-square-foot single-family residential home. The County-approved project includes the construction of a new 1,199-square-foot, one-story, three-bedroom, detached secondary dwelling unit³ on the same site. The site is served by a private well that extracts water from the Los Osos Valley Groundwater Basin, and wastewater is addressed via an on-site septic system; the second unit would also be served by the same well and septic system.

See **Exhibit 1** for location maps and **Exhibit 2** for the County-approved project plans.

B. San Luis Obispo County Approval

On August 24, 2021, the San Luis Obispo County Planning Department ministerially (and without a public hearing)⁴ approved a CDP for the project. The County’s Final Local CDP Action Notice was received in the Coastal Commission’s Central Coast District Office on August 31, 2021 (see **Exhibit 2**). The Coastal Commission’s ten-working-day appeal period for this action began on September 1, 2021 and concluded at 5pm on September 15, 2021. One valid appeal was received during the appeal period (see **Exhibit 3**).

¹ See LCP Estero Area Plan Figure 7-7.

² The LCP’s Resource Management System, or RMS, is used to identify the degree of various constraints in the County, including in terms of water supply, and uses a system ranging from Level of Severity (LOS) I (i.e., Resource Capacity problem) to LOS III (i.e., Resource Capacity Met or Expected). At LOS III, the LCP indicates “that the capacity (maximum safe yield) of a resource has been met or exceeded and creates a deficiency of sufficient magnitude that drastic actions must be taken to protect public health and safety.” And Los Osos has been at LOS III since the inception of the RMS.

³ Now more commonly referred to as accessory dwelling units, or “ADUs,” but still regulated as “secondary dwelling units” in the certified LCP.

⁴ Under the Coastal Act and the certified LCP, a public hearing is required for all appealable CDP decisions, so the process employed by the County here was LCP inconsistent.

C. Appeal Procedures

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This County CDP decision is appealable to the Commission because secondary dwelling units are not the principally permitted use under the Residential Suburban land use designation that applies to this site.

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP and/or to Coastal Act public access provisions. For appeals of a CDP denial, where allowed (i.e., such appeals are only allowed in extremely limited circumstances – see description of appealable actions, above), the grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions.

The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. This step is often referred to as the "substantial issue" phase of an appeal. The Commission is required to begin its hearing on an appeal, addressing at least the substantial issue question, within 49-working days of the filing of the appeal unless the applicant has waived that requirement, in which case there is no deadline.

The Coastal Act and the Commission's implementing regulations are structured such that there is a presumption of a substantial issue when the Commission acts on this question, and the Commission generally considers a number of factors in making that determination.⁵ At this stage, the Commission may only consider issues brought up by

⁵ The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (California Code of Regulations, Title 14, (CCR) Section 13115(b)). CCR Section 13115(c) provides, along with past Commission practice, that the Commission may consider the following five factors when determining if a local action raises a significant issue: (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and the Coastal Act's public access provisions; (2) the extent and scope of the development; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. The Commission may, but need

the appeal. At the substantial issue hearing, staff will make a recommendation for the Commission to find either substantial issue or no substantial issue. If staff makes the former recommendation, the Commission will not take testimony or hold a full hearing on the substantial issue recommendation unless at least three Commissioners request it, and, if no such full hearing is requested, a substantial issue is automatically found. When the Commission does take testimony, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

If, following testimony and a public hearing, the Commission determines that the appeal does not raise a substantial issue, then the first step is the only step, and the local government's CDP decision stands. However, if the Commission finds a substantial issue, then the Commission takes jurisdiction over the underlying CDP application for the proposed project, and the appeal heads to the second phase of the hearing on the appeal.

In the second phase of the appeal, the Commission must determine whether the proposed development is consistent with the applicable LCP (and in certain circumstances the Coastal Act's public access and recreation provisions). This step is often referred to as the "de novo" review phase of an appeal, and it entails reviewing the proposed project in total. There is no legal deadline for the Commission to act on the de novo phase of an appeal. Staff will make a CDP decision recommendation to the Commission, and the Commission will conduct a public hearing to decide whether to approve, approve with conditions, or deny the subject CDP. Any person may testify during the de novo phase of an appeal hearing (if applicable).

D. Summary of Appeal Contentions

The appeal contends that the County-approved project is inconsistent with numerous LCP water supply, wastewater, and ESHA provisions, including those that require denial of projects where adequate water supply and wastewater services are not available, and where adverse effects to ESHA could occur. Thus, the appeal alleges that the County's approval raises significant questions regarding LCP compliance with respect to water, wastewater, and ESHA, including as it appears that there is not adequate water available for the approved project and impacts to ESHA from an over-drafted groundwater basin have not been thoroughly studied or mitigated. The appeal also contends that approving a secondary unit before the approval of the Los Osos Community Plan, and without the consideration of the individual and cumulative impact on water supplies, will set a bad precedent for future secondary unit approvals. Finally, the Appellant also contends that the project is inconsistent with the LCP's secondary dwelling unit standards because it exceeds the LCP's maximum allowed size, and that the County impermissibly used Government Code Section 65852.2 as the standard of

not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

review rather than the certified LCP. See **Exhibit 3** for the Appellant's full appeal document.

E. Substantial Issue Determination

1. Water and Wastewater

Applicable LCP Provisions and Background

The San Luis Obispo County LCP is divided geographically into four areas,⁶ each with its own area plan that forms part of the LCP's Land Use Plan (LUP). The LUP also includes two documents, one titled the "Coastal Zone Framework for Planning" and another the "Coastal Plan Policies" (Coastal Plan), and an Implementation Plan titled the "Coastal Zone Land Use Ordinance" (CZLUO). These three LCP components are applicable throughout all four LCP areas. The subject property is located within the area governed by the Estero Area Plan (EAP).

The Coastal Plan lays out the main objectives of the LCP. With respect to public services, Public Works Policy 1 states that the amount, location, and rate of development must be kept within the sustainable capacity of resources, services, and facilities. CZLUO Section 23.04.430 carries out this policy, requiring the County to find that adequate water and wastewater services exist prior to approving any new development in San Luis Obispo County. These provisions state:

Public Works Policy 1: Availability of Service Capacity. *New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable.*

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.*

In addition to these policies, the Coastal Plan and the Estero Area Plan (which provides more specific planning guidance for Los Osos and the surrounding areas) contain additional provisions that speak to protecting the Los Osos Groundwater Basin, as well as protecting against adverse impacts to wetlands, streams, riparian areas, marine habitats, and water supply and quality that are affected by the Basin, and that generally limit development so as to ensure protection of coastal resources. These provisions state:

⁶ The County's four areas are: North Coast, Estero, San Luis Bay, and South County.

Public Works Policy 6: Resource Management System. *The county will implement the Resource Management System to consider where the necessary resources exist or can be readily developed to support new land uses. Permitted public service expansions shall ensure the protection of coastal natural resources including the bio- logical productivity of coastal waters. In the interim, where they are identified public service limitations, uses having priority under the Coastal Act shall not be precluded by the provision of those limited services to non-priority uses.*

Public Works Policy 10: Encouraging Development within the Urban Services Line. *During the periodic update of the Local Coastal Program, including area plan updates, the County and California Coastal Commission should require new or expanded urban development to be located within the Urban Services Line (USL) of coastal communities. The USL defines areas where the capital improvement program and community plans should schedule extensions of public services and utilities needed for urban development. Proposals to increase urban density or intensity of urban land uses outside of the USL should be discouraged. Other nonregulatory methods to encourage infilling of development within communities may include greenbelt programs, transfer of development credits programs, agricultural conservation easements, and open space initiatives.*

Coastal Watersheds 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.*

Coastal Watersheds 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 data base for the Resource Management System and shall be supplemented by all available private and public water resources 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 optimum populations of marine organisms, and for the protection of human health.*

ESHA Policy 11: Regional Water Quality Control Board "208" Program. *California Regional Water Quality Control Board shall administer programs identified through the "208" nonpoint source studies to ensure protection of coastal wetlands and water quality. ...*

EAP Rural Land Use Policy 1: *Protect ground water supplies for agriculture. ...*

EAP Public Facilities, Services, and Resources: Areawide Water Supply.

Monitor water demand through the Resource Management System to assure that new development can be supported by available water supplies without depleting groundwater supplies and/or degrading water quality.

EAP Environmental, Cultural Resources Policy A: Areawide Water Quality.

Maintain, and where feasible, restore the quality and biological productivity of coastal waters, streams, wetlands, estuaries, and lakes in order to protect human health and maintain optimum populations of marine and other wildlife.

The Commission in its past LCP and CDP actions associated with the San Luis Obispo County LCP has consistently understood “adequate” services in relation to water and wastewater to mean that a sustainable water supply and adequate wastewater capacity exists to accommodate new development in a manner that will not lead to adverse coastal resource impacts, and applies that understanding again in this case.

The EAP recognizes that Los Osos has long suffered from inadequate services, particularly related to water supply and wastewater capacity. The EAP states that “[p]erhaps no factor is of greater concern today than the future availability of potable water for Los Osos” and that “Los Osos is confronted with two basic problems[:]. Groundwater extraction levels are rapidly increasing while groundwater quality is showing indications of possible deterioration.” Because Los Osos wastewater was traditionally handled through septic disposal within the same groundwater basin that supplies the community’s potable water, the EAP states the two issues are “closely interrelated” due to a combination of highly permeable soils, high groundwater tables, and extensive community development that led to inadequately treated septic discharges into ground and surface water. As a result, water supply and wastewater service questions are generally inextricably linked in Los Osos.

The EAP acknowledges the community’s need to resolve the interrelated issues of water and wastewater, particularly in relation to the important coastal resources impacted by such constraints. These include impacts to the Los Osos Groundwater Basin, the Morro Bay Estuary, and other sensitive habitats found throughout Los Osos. The EAP identified the need to create community-wide programs to deal with water and wastewater service constraints, but also recognized the need for any public service projects to identify the appropriate “extent and density of development and its impact on groundwater quantity and quality.”

Such service constraints in Los Osos are not new, but rather have been identified for decades as needing resolution. Beginning in the early 1970s, the California Central Coast Regional Water Quality Control Board (RWQCB) and other resource and public health agencies began to raise environmental health and safety concerns regarding the use of septic systems in Los Osos. The RWQCB took a series of steps to address these concerns, beginning with adopting an interim Basin Plan in 1971 that included a provision prohibiting septic system discharges in much of Los Osos after 1974. In 1983, the RWQCB subsequently determined that the situation was worsening, and adopted a wastewater discharge prohibition for a portion of the Los Osos area known as the

Prohibition Zone. In 1988, the RWQCB also established a discharge moratorium that effectively halted all new construction and all major expansions of existing development until a solution to the septic tank pollution problem could be developed and implemented.

There were a series of attempts to address the identified ground and surface water pollution issues in Los Osos through construction and operation of a wastewater treatment project. In 1990, the Coastal Commission approved an amendment to the Estero Area Plan that would have allowed a conventional wastewater collection and treatment plant on rural agricultural land off Turri Road, which was subsequently abandoned in favor of an alternative site at South Bay Boulevard and Pismo Avenue. A County-approved CDP for a wastewater treatment project at this site was appealed to the Coastal Commission, but ultimately no action was taken by the Commission in order to allow the community an opportunity to pursue potential alternative wastewater projects. In 1998 a local ballot measure formed the Los Osos Community Services District (LOCSO). The LOCSO pursued a new CDP for a conventional wastewater collection and treatment project for a plant in the middle of town at the Tri-W site along Los Osos Valley Road. The Commission approved an LCP amendment in 2002 to allow a wastewater treatment plant at that site. In 2004, the Commission, on appeal, approved the project with conditions. Project construction commenced at the Tri-W site in 2005, but a newly elected LOCSO board suspended construction and the project was abandoned.

In 2006, wastewater authority for the Los Osos area was returned from the LOCSO to the County. The County embarked on an extensive alternatives analysis to evaluate potential solutions to deal with the disposal of the wastewater for existing development. The County ultimately approved the Los Osos Wastewater Project (LOWWP), which provided for the construction and operation of a community sewer system, including a treatment plant on 30 acres located about one-half mile inland of Morro Bay, collection/disposal/reuse facilities, and all associated development and infrastructure. The County's approval of a CDP and a CDP amendment for the LOWWP project were appealed to the Coastal Commission and, upon a finding of substantial issue, the Commission subsequently approved the project with a series of special conditions in 2010 (CDP A-3-SLO-09-055/069).⁷

Although the Commission recognized the immediate need for the LOWWP to resolve issues of groundwater contamination caused by the existing individual septic systems, the Commission also noted that the County had not done the planning necessary to determine the appropriate level of additional future development and growth within Los Osos that could be accommodated while avoiding coastal resource impacts. As noted in the EAP, and in the Commission's approval of the LOWWP, the issues of water and wastewater are interrelated due to their impacts to the groundwater basin. Thus, a sustainable basin management program is critical to ensure that future development is

⁷ Due to the way the County acted on the CDP for the LOWWP (an overall approval action followed by an amendment action to modify a portion of the project), there are two Coastal Commission permit numbers associated with the project.

limited to an environmentally sustainable level. The Commission was concerned with several potential growth inducement impacts of the LOWWP, including on a water supply for which sustainable pumping/use limits and the amount of development that could be supported within those limits had not been identified. The Commission was also concerned with potential growth-inducement impacts to ESHA resources and found that there was a need to proactively and comprehensively plan for growth and mitigate impacts (including via a United States Fish and Wildlife Service-approved Habitat Conservation Plan (HCP)). With these concerns in mind, the Commission required that the EAP be updated “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”⁸ as part of its LOWWP CDP action.

While the waste disposal portion of Los Osos’ two-part water supply and wastewater issues has begun to be resolved by the development and operation of the LOWWP, Los Osos has yet to resolve its water supply issue. The Los Osos Valley Groundwater Basin remains critically over-drafted past its safe yield, presenting the natural environment and the community of Los Osos with a wide range of challenges, including potential increased costs for groundwater treatment, rendering wells unusable, threats to agriculture, and adverse effects to the surrounding wetlands and marine environment. Thus, unless and until the EAP is amended to identify sustainable buildout limits, including in terms of water usage/supply and ESHA considerations, neither the County nor the Commission are in a position of being able to say definitively that development can be served by an adequate/sustainable water supply.⁹ In fact, the LCP still requires newly proposed development to provide conclusive evidence that adequate services exist, including in terms of water supply, to serve the development without causing adverse impacts to the coastal resources identified above.

To help better understand and manage the Basin, the Los Osos Basin Plan¹⁰ was drafted by the three Los Osos water purveyors¹¹ and San Luis Obispo County starting in 2015 as a means to better manage Basin water resources, and to establish appropriate safeguards and triggers that would help to determine when the Basin was no longer being over drafted and could be considered to be an available and sustainable water source, including because extraction no longer exceeded safe yield. The goal is to use the data obtained by the Basin Plan’s annual monitoring reports to develop future

⁸ Adopted Commission findings from CDP A-3-SLO-09-055/069.

⁹ The County has drafted and submitted an update to the LCP’s EAP addressing Los Osos (via a Los Osos Community Plan that would be added to the EAP) to the Commission for review, and it is expected to come before the Commission in early 2022.

¹⁰ In August 2008, an Interlocutory Stipulated Judgment (ISJ) between the Los Osos Community Services District (LOCSD), Golden State Water Company (GSWC), the S&T Mutual Water Company (S&T), and the County was approved by the Superior Court of the State of California for the County of San Luis Obispo. In 2015, under the ISJ, the Los Osos Basin Plan (LOBP) was created by these Parties.

¹¹ The LOCSD, GSWC, and S&T.

growth rates and limits in Los Osos that can be implemented through a new Los Osos Community Plan (which would be added to the EAP). The Basin Plan identified that the two main threats to the groundwater basin are water quality degradation and seawater intrusion. To address these threats, the Basin Plan has identified a series of basin metrics (such as nitrate levels, chloride levels, seawater intrusion, and groundwater levels) as a basis for understanding the health of the Basin. The Basin Management Committee¹² releases an annual groundwater monitoring report, which includes monitoring of these metrics and provides recommendations based on the results. The three water purveyors as well as the County, the Basin Management Committee, the public, and regulatory agencies use these metrics and the annual Basin Reports to help to objectively assess the health and sustainability of the Basin. Currently, the target level set by the Basin Plan for groundwater elevation is 8 feet or higher; the chloride level target is 100 mg/L or lower; and the nitrate level target is 10 mg/L or lower. Based on the 2020 Annual Report, none of the metrics have been met.¹³ And the County continues to designate water supply constraints in Los Osos at the highest level of constraint (i.e., LOS III) in the LCP's Resource Management System, which indicates that the maximum safe yield of the basin has been met or exceeded, and that any further development will impact public health and safety.

In sum, the LCP includes a series of provisions which require adequate water and wastewater services for new development, yet the community still does not have an adequate water supply at this time, including as evidenced by the Los Osos Basin Plan 2020 report. Until and unless there is conclusive evidence that adequate water services exist, public services remain a constraint to new development in Los Osos under the LCP.

Appeal Contentions

The appeal contends that the County-approved project is inconsistent with the above-cited LCP groundwater resources and water supply provisions. Specifically, the contentions state that public services within Los Osos are inadequate to serve new development because: 1) data show that the Basin is not a sustainable water source; 2) sustainable buildout limits must be identified in the Los Osos Community Plan and approved by the Commission before any further development is allowed; 3) the Commission prohibited additional residential and secondary unit approvals without appropriate consideration of water supply and sewer limitations (imposed by Special Condition 6 in CDP A-3-SLO-09-055/069); and 4) it is unlikely water consumption will be adequately offset by the Title 19 retrofit ordinance. See the complete appeal document in **Exhibit 3**.

¹² Made up of representatives from Los Osos Community Services District, Golden State Water Company, S&T Mutual Water Company, and the County of San Luis Obispo.

¹³ And to be clear, the Basin Plan currently does not have any LCP standard of review status, including as it is not a part of the LCP. Rather, it is one tool that can be used to help all parties to collectively understand the health of the Basin.

Analysis

The County-approved project would use water from an on-site well that extracts water from the Los Osos Valley Groundwater Basin to serve the approved secondary unit. As indicated above, LCP Public Works Policy 1 requires a demonstration of adequate and sustainable service capacity, and CZLUO Section 23.04.430 requires denial of a CDP if adequacy of services cannot be shown. LCP Coastal Watersheds Policy 1 prohibits the safe yield of the basin to be exceeded, and LCP Coastal Watersheds Policy 2 requires that groundwater levels be maintained in such a way that wetland and stream water quality is sufficient to provide for optimum habitat health. The EAP echoes this in its Areawide Water Supply policy that requires that the County "... assure that new development can be supported by available water supplies without depleting groundwater supplies and/or degrading water quality." While these LCP provisions clearly require proof of an adequate water supply, the County did not provide any evidence or analysis that an adequate water supply is available to serve the proposed development. And, in fact, all available evidence points to the exact opposite, as detailed above. Further, LCP Public Works Policy 6 requires that "where they are identified [RMS] public service limitations, uses having priority under the Coastal Act shall not be precluded by the provision of those limited services to non-priority uses." Here, there are clearly public service limitations, yet the County did not analyze how this lower priority project may preclude priority Coastal Act development.

Further, while this project has proposed to mitigate its water demands by offsetting its anticipated water usage via a retrofitting program,¹⁴ there are multiple concerns with this approach, including that it does not address nor is it consistent with other LCP requirements that only allow a level of development commensurate with the safe yield groundwater extraction level, and because the efficacy and ability of retrofits to provide bona fide, long-term water savings have not been borne out. Furthermore, in areas with water supply limitations, simply offsetting a proposed development's estimated water usage may not be an appropriate means to find that it can meet LCP water availability requirements (e.g., if a project is proposed in an overdrafted groundwater basin where the demand is already greater than its supply, it may not be appropriate for the reviewing authority to find that public services are available to serve the development just because the project is required to offset water usage in the area, including because if the project is no longer able to offset water usage for whatever reason, public services have not been secured for the development). Instead, a reviewing authority must affirmatively show that long-term and sustainable water supplies are ready and available to serve the proposed development. In other words, retrofitting is an insufficient tool to overcome known existing water deficiencies in the Los Osos groundwater basin, particularly for low LCP-priority secondary units.

As indicated above, there is no conclusive evidence showing that adequate water is available to serve this new development. The Los Osos Valley Groundwater Basin is

¹⁴ The County's approval requires compliance with the water conservation requirements for the Los Osos Groundwater Basin per the Title 19 ordinance (i.e., the "Retrofit-to-Build" program), which requires all new development that uses water from the Basin to retrofit older plumbing fixtures in existing homes and businesses to save twice the amount of water the new development would use.

still critically over drafted and is still being extracted above its safe yield, the County did not analyze or evaluate how or why the project can be served by a sustainable water source, and the project represents a lower-priority secondary dwelling unit on the periphery of town when the LCP prioritizes other types of development within town.¹⁵ For all these reasons, the County’s approval of a CDP for the proposed project raises a substantial LCP conformance issue.

3. Second Residential Unit Standards

Applicable LCP Provisions

The County-approved development is located within the Residential Suburban land use category, and the LCP allows for a second dwelling unit on certain sites with existing developed homes in that category. For sites where second residences are allowed, the LCP also includes a series of development standards, including identifying maximum secondary dwelling sizes:¹⁶

CZLUO Section 23.08.169.g.(1). *The following standards apply to all land use categories where secondary dwellings are allowed.*

SIZE OF LOT	MAXIMUM SIZE OF UNIT(1)	MAXIMUM DISTANCE FROM PRIMARY UNIT
6,000 sq. ft. - 1 acre.	800 square feet	50 feet
> 1 acre - 2 acres	800 square feet	50 feet
> 2 acres	1,200 square feet	250 feet

Notes:

(1) Includes attics greater than 6 feet in height, unconditioned storage space and lofts.

Here, the subject site is one acre, and thus the maximum size of an allowed second unit is 800 square feet.

¹⁵ While the Appellant also cites to CDP A-3-SLO-09-055-069 Special Condition 6’s current prohibition of wastewater service to undeveloped properties (stating that the project is prohibited pursuant to that condition), the subject parcel is located outside of the service boundary of the LOWWTP and is instead relying on on-site septic. Thus, that Special Condition and the contention are not entirely applicable to this project.

¹⁶ The County has submitted an LCP amendment to modify the LCP’s secondary dwelling unit standards, but that amendment application remains unfiled while the County continues to work on preparing and submitting required supporting information. Unless and until amendment is certified by the Coastal Commission, the standard of review for this project and other secondary unit projects is the existing LCP.

Appeal Contentions

The appeal contends that the County failed to use the proper standard of review, because it applied an uncertified ordinance rather than existing LCP standards. Moreover, the appeal contends that the County-approved project is inconsistent with existing LCP secondary dwelling unit standards.

Analysis

The County-approved secondary dwelling unit is 1,199 square feet, when the LCP-allowed maximum size is 800 square feet. The County correctly determined that the proposed project was LCP inconsistent on this point. However, the County instead applied state ADU laws as the CDP standard of review in finding that a 1,200-square-foot unit was LCP consistent, even though it is 50% larger than the maximum size allowed by the LCP. The County erred in its assessment. The standard of review for CDPs is the certified LCP, including in cases where state ADU law may provide a different prescription.¹⁷ It is actually immaterial whether the project meets state ADU laws because the standards of the certified LCP are not superseded by state ADU laws, and the current LCP secondary dwelling unit standards are the legal standard of review for this CDP application. The County found that the project was inconsistent with the LCP because the project exceeds the LCP's allowable maximum unit size. The County was correct in this assessment, though it did not reach the correct CDP result.

Despite the Commission's clear and consistent position that the state ADU laws do not supersede certified LCPs in the coastal zone, including as stated in an April 21, 2020 ADU memo that was sent to all local governments (see **Exhibit 5**), the County has processed CDP applications for secondary dwelling units using the uncertified ordinance as the standard of review, and has taken the position that the state ADU law does in fact supersede the certified LCP standards for CDPs. Although the new state ADU laws include provisions that preempt certain local ordinances with respect to ADUs, LCPs are not strictly a matter of local law and instead are extensions of the state Coastal Act policies implemented locally. The ADU law expressly states that the law is not intended to alter or lessen the effect of the Coastal Act, which by extension includes certified LCPs, and the state ADU laws do not preempt certified LCP standards (see California Government Code Section 65852.2(l)). Certified LCPs are thus not superseded by Government Code Section 65852.2 and continue to apply to CDP applications for secondary dwelling units until an LCP amendment changing the relevant provisions is adopted. Unless and until LCP updates that modify ADU provisions are certified, the LCP remains the legal standard of review for second unit development in the coastal zone. As such, this report analyzes the project for consistency under the standards set by the certified LCP.

Because the County used the incorrect legal standard of review in analyzing the CDP application for the project, and because the project is inconsistent with the LCP's

¹⁷ And thus, the Commission's persistence in helping local governments to update their LCP ADU provisions, including where over a half dozen such LCP amendments have been approved by the Commission on just the Central Coast this year.

second residential unit provisions with respect to unit size (in addition to being inconsistent with LCP provisions requiring adequate water supply), the County's CDP approval raises a substantial LCP conformance issue.

4. The "Five Substantial Issue" Factors

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP conformance. Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue: 1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP; 2) the extent and scope of the development as approved or denied by the local government; 3) the significance of the coastal resources affected by the decision; 4) the precedential value of the local government's decision for future interpretations of its LCP; and 5) whether the appeal raises only local issues, or those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may find substantial issues for other reasons. In this case, these five factors, considered together, support a conclusion that the County's approval of CDP for this project *does* raise substantial LCP conformance issues.

Here, the first factor weighs most heavily in favor of finding substantial issue. The County found the development consistent with applicable LCP water supply policies without adequate factual or legal support. The County did not make any factual findings about how the project would be served by an adequate water source, notwithstanding the evidence that suggests the inadequate state of the groundwater basin to provide an adequate water supply for the project. Moreover, the County erroneously concluded that the state ADU law supersedes certified LCP policies, which is not accurate (nor supported by caselaw) and applied the incorrect standard of review regarding second units. Thus, the County has not provided adequate factual or legal support for its decision to allow the project in an area where public services are known to be inadequate. The County even acknowledges that the project is inconsistent with the LCP's secondary dwelling unit provisions. This factor, on its own, weighs heavily enough to support a determination that the appeal raises a substantial issue.

Regarding the second factor, the extent and scope of the development of a second unit as approved by the County is not that big in a vacuum. However, given the water supply and groundwater issues engendered for a whole community, and the cumulative effect of new development, it is still important in scope and thus weighs in favor of finding a substantial issue.

Regarding the third factor, the proposed project is located in an area where the depletion of groundwater adversely affects significant coastal resources. Resources such as wetlands, streams, the Morro Bay estuary and its watershed are being negatively impacted due to a lack of water supply and impacts from seawater intrusion

and other pollutants. As discussed above, the Los Osos community is located directly adjacent to Morro Bay, which is a designated State and National Estuary that is well known as one of the most important biologic and wetland resources in California's coastal zone. Therefore, the significance of the coastal resources affected here is high and supports a finding of substantial issue as well.

Regarding the fourth factor, because the project raises such important coastal resource protection concerns, allowing the LCP to be interpreted to allow for new residential development in areas without adequate services and inconsistent with secondary dwelling unit standards (as well as relying on the state ADU law as the legal standard of review and not the certified LCP), the precedential value for future interpretation of the LCP is high. Allowing such an interpretation to go forward could potentially lead to significant new development in an area with well-known and dire service constraints. Therefore, the fourth factor also supports a finding of substantial issue.

Finally, regarding the fifth factor, the project raises issues of regional and statewide significance, including due to the recent past history of statewide drought (which could recur) as such conditions relate to water availability, the importance of groundwater resources in San Luis Obispo County and Los Osos, and growth-inducing development issues in the Los Osos community and in the County more broadly. Thus, the fifth factor also supports a finding of substantial issue.

Taken together, each of the five factors individually support a finding of substantial issue. For the reasons stated herein, the Commission finds that Appeal Number A-3-SLO-21-0061 raises substantial LCP conformance issues in terms of water supply and related impacts (including to ESHA), and secondary dwelling unit standards. Therefore, the Commission finds that **a substantial issue** exists with respect to the County-approved project's conformance with the certified San Luis Obispo County LCP and takes jurisdiction over the CDP application for the proposed project.

3. APPENDICES

A. Substantive File Documents¹⁸

- “*Los Osos Basin Plan Groundwater Monitoring Program, 2020 Annual Report,*” Basin Management Committee. June 2021.
- “*Resource Summary Report,*” San Luis Obispo General Plan. August 18, 2020.
- File for Coastal Development Permit Appeal Number A-3-SLO-21-0061

B. Staff Contact with Agencies and Groups

- San Luis Obispo County Planning and Building Department

¹⁸ These documents are available for review in the Commission’s Central Coast District office.