

CALIFORNIA COASTAL COMMISSION

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F11d

Prepared December 13, 2021 for December 17, 2021 Hearing

To: Commissioners and Interested Persons

From: Kevin Kahn, Central Coast District Manager
Esme Wahl, Coastal Planner

**Subject: Additional hearing materials for F11d
Appeal Number A-3-SLO-21-0075 (Stamback SFD Addition and
Guesthouse, Los Osos)**

This package includes additional materials related to the above-referenced hearing item as follows:

Additional correspondence received in the time since the staff report was distributed

J. H. EDWARDS COMPANY
A REAL PROPERTY CONCERN
Specializing in Water Neutral Development

December 10, 2021

California Coastal Commission
725 Front Street #300
Santa Cruz, CA 95060
Attention: Esme Wahl, Coastal Planner

Subject: 1214 Santa Ysabel Ave., Los Osos – County File No.: DRC2020-00232
(Stamback)

Dear Ms. Wahl,

As you know, my firm represents Shawn and Tiffany Stamback, the applicants under the above referenced application. We are in receipt of your letter dated December 9, 2021 in connection with an alleged appeal from the Los Osos Sustainability Group (LOSG).

Mr. McGibney, representing LOSG, is a self-proclaimed “chronic appellant”. As such, Mr. McGibney is well versed in the procedure and requirements regarding the appeal process relative to approved projects at both the local and state level. Moreover, the LOSG is represented by legal counsel, in the form of the Law Office of Babak Naficy in San Luis Obispo. The idea that the LOSG was misled or confused by County staff is incongruous, given the experience and superior knowledge of both the appellant and legal counsel.

Background

On October 1, 2021 the above referenced application was considered as a consent item on the San Luis Obispo County Planning Department Hearing agenda. The staff recommendation was for approval of the application and no formal hearing was requested for the item. Mr. Gibney, on behalf of LOSG submitted a letter in advance of the Planning Department Hearing raising concerns about the project and provided virtual oral testimony during public comment for items on the consent agenda. The administrative hearing officer, at the close of public testimony, considered the matter and approved it in block with the consent agenda. Clearly, the LOSG had established standing at this juncture.

However, Section 23.01.042 of the Coastal Zone Land Use Ordinance (CZLUO) contains provisions for appeals of decisions of the Planning Department or Planning Commission. More specifically, CZLUO Section 23.01.042 b.(2) in pertinent part provides, “Any decision of the Planning Commission or Zoning Administrator pursuant to this title may be appealed to the Board of Supervisors.”

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Specifics of the appeal process were made available to the applicants and LOSG in at least four public notices.

1. The LOSG was mailed a written notice of the October 1, 2021 hearing which included appeal procedures for aggrieved persons.
2. The agenda for the October 1, 2021 Planning Department Hearing contains specific directions on appeal rights and opportunities.
3. The staff report for the item at the bottom of the cover page includes instructions on the parameters related to appealing an Administrative Hearing Officer decision to the Board of Supervisors. On the top of the page the local effective date of the approval, was indicated as October 15, 2021.
4. Following the conclusion of the meeting the Administrative Hearing Officer verbally reiterated the appeal requirements and provisions. Quoting Administrative Hearing Officer Foster, "These items can be appealed to the Board of Supervisors with the appropriate paperwork being filed with the Planning and Building Department."

Consequently, Mr. McGibney was informed on multiple occasions and in multiple formats what the local appeal procedures were in connection with the subject application. Coupled with past experience and the presence of legal counsel, it is not possible there was confusion on the part of LOSG regarding the proper local appeal procedures, notwithstanding any representations made by County Planning staff.

Furthermore, the assertion by the LOSG that because the application included a guest house and as a result was a ministerial permit, is completely misplaced. Minor Use Permit/Coastal Development Permits (MUP/CDP) are discretionary by definition and not ministerial. Additionally, ministerial permits are not subject to Planning Department Hearings. It was clear on the face on the application and the staff report it was a MUP/CDP.

The exhaustion of local appeals is a legal requirement to maintain standing for approved development or permits to be appealed to the California Coastal Commission. CZLUO Section 23.01.043 b. Exhaustion of local appeals provides, "... an aggrieved party may appeal a County action on a Coastal Development application to the Coastal Commission **only** after all possible local appeals pursuant to Section 23.01.042 have been exhausted." Mr. McGibney possessed the information, the proper notifications and had the experience, including legal counsel, sufficient to file a timely local appeal to the County Board of Supervisors and failed to do so. In no way, shape or form was the LOSG "denied the right of appeal."

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Conclusion

Mr. McGibney on behalf of LOSG maintained standing in connection with the above application until 5:00pm on October 15, 2021 when he failed to comport with CZLUO Section 23.01.042 b.(2) and as a result lost any continued standing with further appeal rights.

Contrary to the conclusion in your letter, the appeal filed by the LOSG with your office on November 16, 2021 is invalid. As a result, any further consideration of the subject application by the California Coastal Commission would be improper. Therefore, the scheduled Substantial Issue Determination set for hearing on December 17, 2021 should be removed from the agenda.

Sincerely,

Jeff Edwards

Cc: Shawn and Tiffany Stamback
Lan Landreth, SLO Co. Planning
Xzandrea Fowler, SLO Co. Planning
Trevor Keith, SLO Co. Planning Director
Brian Stack, SLO Co. County Counsel
Susan Craig, CCC Office Manager
Dan Carl, CCC Deputy Director



As the appellant of this project DRC2020-00232, the Los Osos Sustainability Group (LOSG) would like to thank Staff member Ms. Esma Wahl for such a thoroughly written Staff report, which we support, regarding the Stamback project.

Guesthouses in general, have become San Luis Obispo County's new ADUs. On March 12, 2021, the Coastal Commission found that Los Osos ADU projects approved by the County thus far raise a substantial issue, so the County is now counting on camouflaging ("junior") ADUs as guesthouses, and having them be approved without notice. They have even eliminated the required water offsets, rationalizing that a guesthouse is just an extension of the primary residence.

There are slight differences between guesthouses and ADUs, but due to the lack of oversight or enforcement by the County, these differences can be ameliorated and altered, which they frequently are, to ostensibly become ADUs. This is happening right now with a project on (724) Highland Drive in Los Osos. This was the first guesthouse that came to the attention of the LOSG. Here too we were told by the County that this project was ministerial and as such, was not appealable. Whether this was misinformation or disinformation, the result was the same; no appeal was filed, frustrating the neighbors to such an extent that they have retained an attorney and are considering a lawsuit. The five quotes below from various County Planners show some of the confusion caused by the mixed messages they have offered in relation to the Highland Drive Project.

"Most of the time in Los Osos we are used to seeing a Minor Use Permit which *would* require noticing. As a building permit which had its plans meet a series of standards, noticing was not required. Additionally, this site is not located in the Coastal Appealable Zone which would have required a Minor Use Permit."

"Building Permits are not scheduled for the Planning Department Hearing Officer. Building Permits are ministerial permits."

"Building permits are ministerial and as such are not appealable."

"I didn't find a project manager associated with it as it is a construction permit. Karen Nall had approved the Zoning Clearance but she retired earlier this year."

"The permit was for a detached guesthouse over a detached garage and deck. The only requirement in this area would be a construction permit because it is not located in the Coastal Appealable Zone (CAZ)"

This is the same kind of confusion the County gave regarding the Stamback project. Guesthouses have the same potential for additional water use as an ADU, the guidelines for their use and construction are murky and need to be clarified, and before any projects (such as guesthouses) that could or would use additional water from the Los Osos Ground water Basin are approved, there must be conclusive evidence proving the Basin is sustainable for the current population.

Please support Staff's recommendations of substantial issue.

Thank you,

Patrick McGibney
Chair, Los Osos Sustainability Group

From: CentralCoast@Coastal
To: Wahl, Esmé@Coastal
Subject: Fw: Public Comment on December 2021 Agenda Item Friday 11d - Appeal No. A-3-SLO-21-0075 (Stamback SFD Addition and Guesthouse, Los Osos).
Date: Thursday, December 9, 2021 5:52:10 PM
Importance: High

From: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Sent: Thursday, December 9, 2021 5:51 PM
To: Ron Munds <rmunds@losososcsd.org>
Subject: Re: Public Comment on December 2021 Agenda Item Friday 11d - Appeal No. A-3-SLO-21-0075 (Stamback SFD Addition and Guesthouse, Los Osos).

Hello,

This email will be shared with the Commissioners. The cut off time for us to receive correspondences is 5pm the Friday before the hearing (tomorrow).

Take Care,

Central Coast

From: Ron Munds <rmunds@losososcsd.org>
Sent: Thursday, December 9, 2021 3:42 PM
To: CentralCoast@Coastal <CentralCoast@coastal.ca.gov>
Subject: Public Comment on December 2021 Agenda Item Friday 11d - Appeal No. A-3-SLO-21-0075 (Stamback SFD Addition and Guesthouse, Los Osos).

Coastal Commission Staff,

I understand that this email will not be shared with Commissioners because of the timing of the submittal but I am compelled to express the view of the Los Osos Community Services District (LOCSD) regarding the grounds that this project is being appealed and staff interpretation of the Los Osos water supply. The project is within the water service area. It is the LOCSD opinion that a guest house, as defined by the County's LCP, is no different than any other residential remodel or room/bathroom addition. LOCSD does not oppose this type of development as long as it does not add a new dwelling unit, such as an accessory dwelling unit (ADU), and can be served by the existing water service and meter. Currently, LOCSD does not issue "will-serve" letters for new water meters for vacant parcels or developed parcels that require an additional water meter.

LOCSD is on record with the County of San Luis Obispo and the Coastal Commission expressing our concerns with the current water supply and it's ability to serve new development as envisioned in the updated Los Osos Community Plan. As the

General Manager of the LOCSD, I strongly disagree with the statement on Page 3 that asserts that there may not be enough water for existing development. This is not a true assertion, is not based on fact and is a precarious narrative to perpetuate in a public document. I would encourage the Coastal Commission staff to enter into a dialogue with the Los Osos water purveyors regarding water supply availability so to better understand the Los Osos water supply story.

Please feel free to contact me if you would like more information or have any questions.



Ron Munds

General Manager

Los Osos Community Services District

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