

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT  
 725 FRONT STREET, SUITE 300  
 SANTA CRUZ, CA 95060  
 PHONE: (831) 427-4863  
 FAX: (831) 427-4877  
 WEB: WWW.COASTAL.CA.GOV



# F11d

Appeal Filed: 11/16/2021  
 Action Deadline: 1/27/2022  
 Staff: Esme Wahl - SC  
 Staff Report: 12/3/2021  
 Hearing Date: 12/17/2021

## STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

**Appeal Number:** A-3-SLO-21-0075

**Applicant:** Shawn Stamback

**Appellant:** Los Osos Sustainability Group

**Local Government:** San Luis Obispo County

**Local Decision:** County coastal development permit number DRC2020-00232 approved by the San Luis Obispo County Planning Department on October 1, 2021.

**Project Location:** 1214 Santa Ysabel Avenue within the unincorporated community of Los Osos in San Luis Obispo County (APN 038-072-027).

**Project Description:** (1) Expand an existing roughly 580-square-foot detached garage by almost 200 square feet, and add a new second-story, roughly 600-square-foot, one-bedroom, one-bathroom guesthouse atop the expanded garage, with a 290-square-foot elevated second floor deck above the driveway apron; and (2) expand an existing roughly 1,000-square-foot single-story residence by 370 square feet to accommodate an expanded master bedroom and an additional bathroom.

**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 coastal development permit (CDP) that authorized the construction of a new guesthouse and the expansion of an existing single-family residential home and detached garage within 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 guesthouses, water supply and wastewater (including those that require denial of projects where an adequate water supply is not available), and 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).

**After reviewing the local record, staff recommends that the Commission find that the appeal raises a substantial LCP conformance issue.** Although called "guesthouses," which suggests that such structures are akin to second residential units (or accessory dwelling units), guesthouses under the County's LCP are intended to be quite different. The LCP prohibits the use of guesthouses independent from residential use associated with the principal residence and prohibits their use as a separate dwelling unit for rental. The intent of these provisions is that a guesthouse is akin to a residential expansion, providing adjunct and detached additional space to be used by the users of the main house on a site (and the LCP even equates them to a "home office"). This type of use is not a separate dwelling unit and the LCP prohibits such uses from containing cooking and laundry facilities. At the same time, the LCP's guesthouse provisions open the door to uses that may appear in some cases to go beyond that "residential expansion" concept, including allowing a wet bar area that some have argued could easily be turned into a kitchen,<sup>1</sup> and the potential for a guesthouse to be used as a separate residential unit notwithstanding LCP prohibitions against such use.

---

<sup>1</sup> The LCP explicitly allows a "wet bar... limited to a single sink and an under-counter refrigerator ... not ... located in a separate room."

With this in mind, the Appellant contends that the County-approved guesthouse<sup>2</sup> and related residential expansion will require the use of more water in a community where it has not been demonstrated that there are adequate water supplies for even existing development, let alone additional water-using development, and this will adversely impact groundwater and related ESHA resources. In that context the Appellant is making a two-fold argument. First, that a guesthouse with a bathroom and a wet bar, such as is the case here, represents new water-using development even if it is not an additional residential unit (i.e., in addition to the additional bathroom being added to the main house). And second, that a guesthouse is too easily converted and used for independent living facilities, and should be considered in the same way that new residential units are evaluated in terms of water supply. The distinction between a guesthouse and a second residential unit has been important in past cases because the Commission has not typically evaluated residential expansions the same as the addition of a new residential unit. The former has typically been understood as “spreading out” the same level of water use within a home unit as opposed to necessarily increasing overall water use, whereas the latter has been understood to be adding a separate new water-using residential unit to the mix (e.g., a potential doubling of water use). However, that may be a distinction without a difference in a community such as Los Osos where there does not appear to be an adequate and sustainable water supply for even existing development, and CDP decisions need to carefully examine such questions.

Specifically, 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. These questions require such analysis, and staff believes that the County’s lack of such analysis in this case is alone enough to warrant the Commission finding a substantial issue to explore such issues in this case, including in light of the questions raised about guesthouses.<sup>3</sup> And while this project has proposed to mitigate its water demands by

---

<sup>2</sup> This Appeal is limited to the guesthouse portion of the project, as the Appellant does not raise issues related to the expansion of the single-story residence.

<sup>3</sup> And on this point staff notes that the Commission has found substantial issue on five second residential unit projects in Los Osos since March 2021 for water supply (and other) concerns, and it is important to better understand the differences and distinctions, if any, that should apply to guesthouses versus second units. This is particularly relevant as it appears that the “market” is adjusting to these Commission decisions on second units by looking to gain approvals of guesthouses with less rigorous CDP analyses (and the County has apparently been approving guesthouses without CDPs, without required public hearings, and with only building permits, in recent times). And, in fact, the County initially referred to this project as an “ADU” before changing the language in its final approval documents (and the same has occurred in other applications for guesthouses).

offsetting its anticipated water usage via a retrofitting program,<sup>4</sup> 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.

In addition, the Appellant contends that the County's approval cannot be found consistent with the LCP's wastewater services provisions because it cannot be served by the Los Osos Wastewater Project (LOWWP, approved by the Commission in 2010). That is because the Commission's 2010 CDP prohibits wastewater service to undeveloped properties until the Los Osos Community Plan has been developed and certified as part of the LCP, where the intent is that that plan will be the vehicle to identifying sustainable growth limits (with respect to water supply, wastewater capacities, and ESHA concerns), and that, until that time, it is not appropriate to facilitate additional growth and intensification of development and use in the community.<sup>5</sup> The project would be served by the LOWWP even though it appears that this is not allowed (which would mean that the project cannot be accommodated by wastewater services and requiring denial for the same reason as water supply). The County did not evaluate such issues, presenting another reason for the Commission to find a substantial issue in order to explore such issues as it relates to guesthouses.

Finally, the health of ground and surface waters are inextricably linked in Los Osos, and as such, the use of water from the Los Osos Valley Groundwater Basin to serve the project not only raises groundwater concerns, but also the way in which it could adversely affect streams, creeks, riparian corridors, wetlands, and other surface water resources, as well as the Morro Bay Estuary, all of which are protected ESHA where such impacts are not allowed. The County, in its decision here, did not identify these potential ESHA problems, did not evaluate them, and did not ensure that ESHA is protected as the LCP requires, thus presenting another ground to find substantial issue.

In sum, the County's approval of the CDP for this project raises a series of important questions about how to understand and evaluate new growth in Los Osos when there are severe water supply limitations, and when the Commission-required Los Osos Community Plan (intended to provide a framework for allowable growth in the community, particularly given the significant water supply and ESHA constraints) remains incomplete. Thus, staff recommends that the Commission find that the appeal raises substantial LCP conformance issues with respect to water supply, wastewater services, and ESHA protection, and that the Commission take jurisdiction over the CDP application for the proposed project. If the Commission does so, then the de novo

---

<sup>4</sup> The County's approval requires compliance with the water conservation requirements for the Los Osos Valley Groundwater Basin per their non-LCP 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.

<sup>5</sup> The Commission has interpreted this limitation as if affects "undeveloped properties" to extend to developed properties where there is an intensification of use (e.g., such as adding second residential units to developed sites and adding new units to existing visitor-serving facilities (hotels, motels, etc.).

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 7.

TABLE OF CONTENTS

1. MOTION AND RESOLUTION ..... 7

2. FINDINGS AND DECLARATIONS ..... 7

    A. Project Location and Description ..... 7

    B. San Luis Obispo County Approval..... 8

    C. Appeal Procedures ..... 8

    D. Summary of Appeal Contentions ..... 10

    E. Substantial Issue Determination ..... 10

        1. Water Supply and Wastewater..... 10

        2. ESHA ..... 21

        3. The “Five Substantial Issue” Factors..... 23

3. APPENDICES ..... 25

    A. Substantive File Documents ..... 25

    B. Staff Contact with Agencies and Groups ..... 25

**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 – Commission Staff’s Letters Regarding LOWWP CDP

## 1. MOTION AND RESOLUTION

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeals were 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-21-0075 raises no substantial issue with respect to the grounds on which the appeals have 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-21-0075 presents a substantial issue with respect to the grounds on which the appeals have 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 1214 Santa Ysabel Avenue in the northeastern portion of the community of Los Osos, about a block inland from the Elfin Forest portion of the Morro Bay Estuary at the corner of 13th Street and Santa Ysabel Avenue. Los Osos is an unincorporated coastal 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. The Los Osos community is located directly adjacent to Morro Bay and its estuary, 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 found nowhere else in the world.

The project site is currently occupied by an approximately 1,000-square-foot single story single-family residence and a detached nearly 600-square-foot single story garage.<sup>6</sup>

---

<sup>6</sup> Note that the County's approval documents identify the garage as 506 square feet, but the approved project plans show it to be 579 square feet. The County identified the existing home as 997 square feet.

The County-approved project would (1) expand the detached garage by almost 200 square feet on the first floor, and add a new second-story, roughly 600-square-foot,<sup>7</sup> one-bedroom, one-bathroom guesthouse atop the expanded garage, with a 290-square-foot elevated second floor deck above the driveway apron for guesthouse users; and (2) expand the residence by 370 square feet to accommodate an expanded first floor master bedroom and an additional bathroom. Total first floor coverage at the site would increase by about 550 square feet. All told, the approved garage/guesthouse/deck expansion would nearly triple the size of the garage (and make it larger ultimately than the home on the site, even with the home expansion), and overall square footage at the site would more than double to some 3,000 square feet.<sup>8</sup>

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

### **B. San Luis Obispo County Approval**

On October 1, 2021 the San Luis Obispo County Planning Department approved a CDP for the project. The County's Final Local Action Notice was received in the Coastal Commission's Central Coast District Office on November 1, 2021 (see **Exhibit 2**). The Coastal Commission's ten-working-day appeal period for this action began on November 2, 2021 and concluded at 5pm on November 16, 2021. One valid appeal was received during the appeal period (see **Exhibit 3**).

### **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 the project location is located seaward of the first public road, because guesthouses are special and conditional uses under the single-family residential land use designation that applies to this site, and because guesthouses are not the principally permitted use under the Residential Single-Family land use designation that applies to this site.

---

<sup>7</sup> Note that the County's approval documents identify the new guesthouse as 546 square feet, but the approved project plans show it to be 605 square feet.

<sup>8</sup> The existing home and garage are 1,576 square feet, and the newly expanded home (1,367 square feet) and newly expanded garage (1,368 square feet) total 2,735 square feet, and when the new 290 square feet elevated deck is added, the total is 3,025 square feet.

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.<sup>9</sup> At this stage, the Commission may only consider issues brought up by 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

---

<sup>9</sup> 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 substantial issue" (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 not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

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 Appellant contends that the County-approved project is inconsistent with numerous San Luis Obispo County Local Coastal Program (LCP) provisions related to guesthouses, water supply and wastewater (including those that require denial of projects where an adequate water supply is not available), and 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). See **Exhibit 3** for the Appellant's contentions.

#### **E. Substantial Issue Determination**

##### **1. Water Supply and Wastewater**

###### ***Applicable LCP Provisions***

The San Luis Obispo County LCP is made up of a Land Use Plan (LUP) (in two documents, the "Coastal Zone Framework" and the "Coastal Plan Policies" documents) and an Implementation Plan (IP) (identified as the "Coastal Zone Land Use Ordinance" (CZLUO)) that are applicable throughout the County's coastal zone, as well as all four LCP Area Plans that provide additional provisions applicable to each of four LCP-identified geographic areas.<sup>10</sup> Los Osos and the subject property are located within the area governed by the LCP's Estero Area Plan (EAP).

With respect to water supply and wastewater services, LUP Public Works Policy 1 indicates that development can only be approved if there are adequate services to serve such projects, and CZLUO Section 23.04.430 carries out this policy, requiring the County to find that adequate public 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.***

---

<sup>10</sup> The County's four coastal zone areas extend from north to south geographically, called out as North Coast, Estero, San Luis Bay, and South County areas.

*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. (emphasis added)*

**CZLUO 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 provisions, the Coastal Plan and the Estero Area Plan include additional provisions that speak to protecting the Los Osos Valley 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:

**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 biological productivity of coastal waters. In the interim, where there 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.*

**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.** (emphasis added)*

***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.*

***Los Osos Water Supply and Wastewater Background***

The LCP and its EAP recognize that Los Osos has long suffered from inadequate public services,<sup>11</sup> 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 have historically been 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 Valley 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 1970’s, the Central Coast Regional Water Quality Control Board (RWQCB) and other health agencies began to raise environmental health and safety concerns regarding the use of septic systems in Los Osos (i.e., there was no sewer service at that time). 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,

---

<sup>11</sup> Note that 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.

and adopted a wastewater discharge prohibition for a portion of the Los Osos area (known as the Prohibition Zone) within which additional septic systems to accommodate development were prohibited. 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 pollution problem in Los Osos 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 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 that 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 (LOCSD). The LOCSD 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 LOCSD board suspended construction and the project was abandoned.

In 2006, wastewater authority for the Los Osos area was returned from the LOCSD to the County. The County embarked on an extensive alternatives evaluation 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).<sup>12</sup>

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 in order 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.

---

<sup>12</sup> Due to the manner in which 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.

Thus, a sustainable basin management program is critical to ensure that future development is 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 approved the LOWWP subject to Special Condition 6, which states:

***Wastewater Service to Undeveloped Properties.*** *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.*

Per the Commission's 2010 adopted CDP findings:

*Special Condition 6 of this permit limits wastewater service to undeveloped properties within the service area unless and until the Estero Area Plan is amended to identify appropriate and sustainable buildout limits. This requirement builds on County conditions 86 and 92 requiring an HCP be prepared to address the potential for ESHA impacts as a result of community buildout. The HCP is intended to carry out LCP ESHA protection requirements and be effectively implemented before development of vacant land begins to occur and before providing service to undeveloped parcels. ...*

*Therefore, similar to the proposed project (i.e., via incorporated County condition 86), Special Condition 6 prohibits the provision of wastewater service to undeveloped properties within the service area 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.*

In short, and in tandem with the rest of the CDP terms and conditions, the Commission's 2010 CDP prohibits wastewater service to undeveloped properties until the Los Osos Community Plan has been developed and certified as part of the LCP, where the intent is that that plan will be the vehicle to identifying sustainable growth limits (including primarily with respect to water supply, wastewater capacities, and ESHA concerns), and that until that time it is not appropriate to facilitate additional

growth and intensification of development and use in the community.<sup>13</sup> Since that time, the LOWWP and its collections system have been constructed and have been operational since April 2016, but the Los Osos Community Plan has not yet been certified.<sup>14</sup>

While the wastewater 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, the LOWWP is prohibited from serving undeveloped properties within Los Osos. As discussed below, this prohibition applies to the project here as well. In addition, the Commission found that availability of wastewater service capacity alone "must not induce new growth inconsistent with other resource protection policies of the LCP" and that "Public Works policies 1 and 6 require that adequate public services be available for new development." In other words, even if a wastewater connection were available, the LCP still requires newly proposed development to provide conclusive evidence that adequate public services, including water, is available to serve the development without causing adverse impacts to coastal resources.

To help address water supply issues, the Los Osos Basin Plan<sup>15</sup> was drafted by the three Los Osos water purveyors<sup>16</sup> 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 growth rates and limits in Los Osos that can be implemented through the new Los Osos Community Plan (which would be added to the EAP).

---

<sup>13</sup> And the Commission has interpreted this limitation as if affects "undeveloped properties" to extend to developed properties where there is an intensification of use (e.g., such as adding second residential units to developed sites, adding new units to existing visitor-serving facilities (hotels, motels, etc.), etc.) (see Commission staff letters on this issue in Exhibit 4).

<sup>14</sup> The County has submitted the draft plan to the Commission for review, but is still working on developing the required supporting documentation. It is currently preliminarily anticipated that the plan will be brought to the Commission for action in early 2022.

<sup>15</sup> 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 was created by these parties.

<sup>16</sup> LOCSD, GSWC, and S&T.

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 Committee<sup>17</sup> 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.<sup>18</sup> In fact, chloride levels in the Basin have gone up 41% since 2018, and if they increase another 25%, the Basin will no longer be at a threshold that is acceptable for public drinking water. 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.

Additionally, since the Los Osos Community Plan has not yet been certified, Special Condition 6's prohibition on providing wastewater services to new development on undeveloped lots is still in effect.<sup>19</sup> The County has previously recognized that wastewater service to undeveloped parcels is currently prohibited, including through informational brochures that are distributed to Los Osos homeowners and prior denials of new sewer connections to undeveloped properties.<sup>20</sup> Additionally, Commission staff has repeatedly informed the County and property owners of the prohibition (see **Exhibit 4**), including to explain that Special Condition 6 was intended to limit any expansion of wastewater service to facilitate increased growth and development in the community absent updated buildout planning and thus must be interpreted broadly. The Commission, too, has found that the CDP's prohibition on new wastewater service does

---

<sup>17</sup> Made up of representatives from LOCSD, GSWC, S&T, and the County.

<sup>18</sup> 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.

<sup>19</sup> The Coastal Commission has previously approved amendments to CDP A-3-SLO-09-055/069 to allow for expansions of the service area of the LOWWP in order to serve already developed properties so as to better protect coastal resources, such as in June 2016 to allow the Monarch Grove area to be added to the service area to avoid continued use of the area's failing wastewater treatment package plant. The Commission found that those amendments were consistent with the intent of the CDP and Special Condition 6 because they provided for an immediate solution to the community's wastewater service issues with regard to existing development while not facilitating increased, growth-inducing development until the EAP is updated.

<sup>20</sup> See, for example, County CDP Application DRC2015-00092 (Novy SFD), denied by the County on September 2, 2016.

not only apply to new development on completely vacant parcels,<sup>21</sup> but also to projects that include significant intensifications of use and significant expansions on already-developed properties, and where property owners may have previously purchased wastewater or water saving credits.<sup>22</sup> And the Commission's LOWWP approval is clear that new additional residential units that utilize water and wastewater service above the baseline at the time of the Commission's 2010 approval are not appropriate and thus prohibited from connecting to the LOWWP until the Estero Area Plan (and sustainable growth limits in relation to water, wastewater, and ESHA, and an accompanying HCP to address ESHA) is amended and certified by the Commission.

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, and until sustainable buildout limits are identified and the Los Osos Community Plan is approved, water supply and wastewater services remain a constraint to new development in Los Osos under the LCP.

### ***Appeal Contentions***

The Appellant contends that the County-approved project is inconsistent with the aforementioned groundwater resources and water supply provisions. As such, the Appellant raises issues related to increased water and wastewater use due to the approved guesthouse. Specifically, the contentions indicate 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; and 3) the Commission prohibited additional residential approvals without appropriate consideration of water supply and sewer limitations (imposed by Special Condition 6 in CDP A-3-SLO-09-055/069).

---

<sup>21</sup> See, for example, A-3-SLO-19-0180 (Shear Development LLC SFDs), denied by the Commission on July 7, 2020.

<sup>22</sup> Los Osos residents have previously inquired whether properties that have secured wastewater or water saving credits (otherwise known as "Title 19 Retrofit Certificates", where title 19 is not part of the LCP) could be developed prior to the EAP update. In terms of wastewater credits, the RWQCB has indicated that any credits available from past actions were intended for properties that were already eligible to connect to the sewer. For example, if someone has a property that is eligible to connect to the community sewer system and wants to build prior to being hooked up to the sewer, then that person could utilize a credit to install a temporary septic system. However, as detailed above, only already-developed properties are eligible for sewer connections at this time and thus those properties would not need a temporary septic credit. In terms of water saving certificates, these certificates alone do not entitle one to development at this time. Although these water conservation certificates were previously issued to properties in the septic prohibition zone, the certificate does not guarantee the right to develop parcels upon completion of the sewer, but rather once the parcel is eligible to connect to the sewer system. As described above, the key threshold before wastewater service can be provided to any undeveloped property is certification of a Los Osos Community Plan as a portion of the Estero Area Plan by the Coastal Commission.

The Appellant also contends that while guesthouses are technically limited in the LCP for residential use associated with the main dwelling only, it is unlikely that this is how they will be used in actuality. Further, the Appellant argues that the County is using guesthouses as a loophole to build secondary units because the Commission has recently found that a number of County-approved secondary units raised a substantial conformance issue with the County's LCP (specifically with regard to water, wastewater, and ESHA constraints) and has taken jurisdiction over the CDP applications for these projects.<sup>23</sup>

See the complete appeal documents in **Exhibit 3**.

### **Analysis**

Although called "guesthouses," which suggests that such structures are akin to second residential units (or accessory dwelling units), guesthouses under the County's LCP are intended to be quite different. The LCP prohibits the use of guesthouses independent from residential use associated with the principal residence and prohibits their use as a separate dwelling unit for rental. CZLUO Section 23.08.032.e defines and regulates guesthouses as a "Residential Accessory Use" and a "Special Use" as follows:

**CZLUO Section 23.08.032.e: Guesthouses/Home Office.** *A guesthouse (sleeping/home office facilities without indoor connection to the living area of a principal residence) may be established as a use accessory to a residence as follows:*

*(1) Limitation on use:*

*(i) A guesthouse may contain living area, a maximum of two bedrooms and one bathroom. A living area may include a wet bar, but such facility shall be limited to a single sink and an under-counter refrigerator, and shall not be located in a separate room. A guesthouse shall not be designed to contain or accommodate cooking or laundry facilities, and shall not be used for residential occupancy independent from the principal residence or as a dwelling unit for rental.*

*A home office may contain the same facilities as a guesthouse. This includes the restriction on containing or designing to accommodate cooking or laundry facilities separate from the principal residence. The home office shall not be used for residential occupation independent from the principal residence or as a dwelling unit for rental.*

*(ii) A guesthouse/home office shall not be allowed on any site containing a secondary dwelling established pursuant to Section 23.08.169 of this title.*

---

<sup>23</sup> See A-3-SLO-21-0004 (Wise Second Unit); A-3-SLO-21-0005 (Kimbell Second Unit); A-3-SLO-21-0007 (Bodine and Townsend Second Unit); A-3-SLO-21-0008 (Robertson Second Unit); and A-3-SLO-21-0061 (Eublera Second Unit).

*(iii) A guesthouse/home office in the Residential Multi-Family land use category shall satisfy the residential density provisions of Section 23.04.084 (Multi-Family Dwellings).*

*(iv) A guesthouse/home office shall not be provided an electric meter separate from the principal residence.*

*(2) Permit requirement: Plot Plan approval.*

*(3) Location: A guesthouse shall not be located more than 50 feet from the principal residence, or as otherwise approved through a Minor Use Permit, and shall not be located within any required setback area (see Section 23.04.100 - Setbacks).*

*(4) Floor area limitation. The maximum floor area allowed for a guesthouse is 40 percent of the habitable floor area of the main residence, up to a maximum of 600 square feet.*

The intent of this provision is that a guesthouse is akin to a residential expansion, albeit detached, providing adjunct additional space to be used by the users of the main house on a site (and the LCP even equates them to a “home office”). The LCP does not intend for such guesthouses to be separate dwelling units (and the LCP explicitly prohibits cooking and laundry facilities). At the same time, the LCP guesthouse provisions open the door to uses that may appear in some cases to go beyond that “residential expansion” concept,<sup>24</sup> including requiring them to be detached structures without a connection to the main house and allowing a wet bar area that some have argued could easily be turned into a kitchen. These provisions might allow a guesthouse to be used as a separate residential unit notwithstanding LCP prohibitions against such use.

The Appellant contends that the County-approved guesthouse will require the use of more water in a community where it has not been demonstrated that there are adequate water supplies for even existing development, let alone additional water-using development, and this will adversely impact groundwater and related ESHA resources. In that context the Appellant is making a two-fold argument. First, that a guesthouse with a bathroom and a wet bar, such as is the case here, represents new water-using development even if it is not an additional residential unit. And second, that a guesthouse is too easily converted into independent living facilities and should be considered in the same way that new residential units are evaluated in terms of water supply. The distinction has been important in past cases because the Commission has not typically evaluated residential expansions the same as bringing a new residential unit online. The former has typically been understood as “spreading out” water use

---

<sup>24</sup> And, at 600 square feet with a 290-square-foot deck, it appears that the guesthouse is larger than is allowed by the LCP (per CZLUO Section 23.08.032.e(4)). Specifically, a guesthouse can be up to 40% of the size of the habitable floor area of the main house, or a max of 600 square feet, whichever is less. Here, the existing main house is 997 square feet, and the proposed expanded main house is 1,367 square feet, and 40% is 399 square feet and 547 square feet, respectively. The approved guesthouse is larger than 40% of the floor area in both cases. This inconsistency would be even more severe if the 40% is to be applied to the main house as is, and/or if the 290-square-foot guesthouse deck were added in (and there is some question as to how the LCP is meant to be interpreted on these points).

within a home unit as opposed to necessarily increasing total water use, whereas the latter has been understood to be adding a separate new water-using residential unit to the mix (e.g., a potential doubling of water use). However, that may be a distinction without a difference in a community such as Los Osos where there does not appear to be an adequate and sustainable water supply for even existing development, and CDP decisions need to carefully examine such questions.

Specifically, as described above, 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 services 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 project, is still critically over-drafted beyond its safe yield, and the County did not analyze or evaluate how or whether the project would be served by a sustainable water source as the LCP requires. Rather, the County deferred questions about the adequacy of water supply to the construction permit stage (i.e., requiring evidence of an LOCSD will-serve letter for the project at that time), suggesting that such questions are ministerial condition compliance questions. They are not. The LCP requires such analysis at the discretionary CDP review and approval stage. The County's lack of such analysis in this case is alone enough to warrant the Commission finding a substantial issue to explore such issues, including in light of the questions raised about guesthouses.<sup>25</sup>

Further, while this project has proposed to mitigate its water demands by offsetting its anticipated water usage via a retrofitting program,<sup>26</sup> 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 does not mean that it can meet LCP water availability requirements. In other words, when a project is proposed based on water supplied from an already over-

---

<sup>25</sup> And on this point, it is noted that the Commission has found substantial issue on five second residential unit projects in Los Osos since March 2021 for water supply (and other) concerns, and it is important to better understand the differences and distinctions, if any, that should apply to guesthouses versus second units. This is particularly relevant as it appears that the "market" is adjusting to these Commission decisions on second units by looking to gain approvals of guesthouses with lesser CDP analysis (and the County has apparently been approving guesthouses without CDPs, without required public hearings, and with only building permits, in recent times). And, in fact, the County initially referred to this project as an "ADU" (see **Exhibit 2** for the initial County project referral and comments thereto) before changing the language in its final approval documents (and the same has occurred in other guesthouse cases).

<sup>26</sup> The County's approval requires compliance with the water conservation requirements for the Los Osos Valley Groundwater Basin per their non-LCP 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.

extracted Basin where the demand is already greater than its supply, such as the case here, even projects with offsets and retrofits cannot address that core problem and be found LCP consistent. Rather, the reviewing authority must affirmatively show that long-term and sustainable water supplies are ready and available to serve the proposed development.

In addition, the Appellant contends that the County's approval cannot be found consistent with the LCP's wastewater services provisions because it cannot be served by the Los Osos Wastewater Project under the terms and conditions described above. It also cannot be served by a septic system as the site is located in the prohibition zone where septic systems are not allowed. As a result, the project cannot be provided wastewater services. Ultimately, the County, in its action, did not evaluate such issues, but did condition the project for evidence of an adequate septic system to serve the project (see County condition 8 in **Exhibit 2**). Such a condition is curious at best because septic is not allowed at this location. It is unclear how the project is expected to be provided wastewater services, presenting another reason for the Commission to find a substantial issue in order to explore such issues as it relates to guesthouses. In addition, if the County were to connect the project to the LOWWP when that is prohibited by the Commission's 2010 LOWWP CDP, the County would be in violation of that CDP.

In sum, the County's approval of the CDP for this project raises a series of important questions about how to understand and evaluate new growth in Los Osos when there are severe water supply limitations, and when the Commission-required Los Osos Community Plan (intended to provide a framework for allowable growth in the community, particularly given the significant water supply and ESHA constraints) remains incomplete. For all the above reasons, the County's approval of a CDP for the proposed project raises a substantial LCP conformance issue.

## 2. ESHA

### ***Applicable LCP Provisions***

The LCP includes a robust policy framework to prevent adverse impacts to the Morro Bay Estuary, coastal watersheds, wetlands, streams, creeks, and riparian habitats. These include LCP provisions that require protection of the long-term integrity of groundwater basins and that prohibit extractions that adversely affect coastal waters. These policies include:

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

***ESHA Policy 7: Protection of Environmentally Sensitive Habitats. Coastal***

*wetlands are recognized as environmentally sensitive habitat areas. The natural ecological functioning and productivity of wetlands and estuaries shall be protected, preserved and where feasible, restored.*

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

**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. (emphasis added)*

**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.** (emphasis added)*

### **Appeal Contentions**

The appeal contends that ground and surface waters are inextricably linked, and as such, the use of water from the Los Osos Valley Groundwater Basin to serve the project will not only diminish the groundwater basin, but it will also adversely affect streams, creeks, riparian corridors, wetlands, and other surface water resources, as well as the Morro Bay Estuary, all of which are protected ESHA and such impacts are not allowed.

### **Analysis**

As described in the water supply findings above, the project would be served by a water supply derived solely from a groundwater basin that is already over-drafted for even existing levels of development, let alone new water-using development such as the County approved here. And, as described above, the health of surface water resources (such as streams, creeks, riparian corridors, wetlands, and the Morro Bay Estuary) is interconnected with the health of the groundwater basin. As a result, there is the potential for a water-using project such as this to exacerbate impacts on such surface water resources, all of which are ESHA under the LCP. The County in its decision here did not identify these potential ESHA impacts, did not evaluate them, and did not ensure that ESHA is protected as the LCP requires.<sup>27</sup> Thus, the County's CDP approval raises

---

<sup>27</sup> In addition, the site is mapped in the EAP as an area occupied by Los Osos dune sands, known to provide habitat to a variety of species, including the federally endangered Morro shoulderband snail. The

a substantial LCP conformance issue of with regard to the LCP's ESHA policies.

### 3. 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 a de novo CDP 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, the degree of factual and legal support for the local government's decision, weighs heavily in favor of finding substantial issue. The County failed to analyze whether the project has an adequate and sustainable water supply, whether the project has access to wastewater services, and whether the project might adversely impact protected ESHA under the LCP. Rather, the County deferred questions about the adequacy of water and wastewater services to the construction permit stage, and framed those questions as ministerial issues at that point. The County did not identify ESHA impacts as an issue applicable to this proposed project. The LCP requires the County to assess and verify LCP conformance at the time a CDP is reviewed and approved, including as it relates to water supply, wastewater services, and ESHA protection. The County did not do that in this case, and thus its decision lacks factual and legal support for its finding that the project is LCP consistent. 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 residential development as approved by the County is not that large, and is confined to one site. On its own, this factor alone does not support a finding of substantial issue.

---

Commission has typically found that even the developed area of Los Osos constitutes ESHA for this reason, although it is typically a site specific analysis and conclusion. Here, the County did not evaluate that question. And here, the proposed residential expansion would cover an additional roughly 550 square feet at the site, where it is possible such coverage could affect such habitat, and may not be allowable under the LCP.

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 streams, creeks, riparian corridors, wetlands, the Morro Bay Estuary and its watershed are being negatively impacted due to a lack of water supply and impacts from seawater intrusion and nitrate contamination. 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 this factor 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 water supply under the guise of being guesthouses by itself also heavily supports a finding of substantial issue. That the County also did not evaluate ESHA or wastewater services in its approval only further exacerbates such an issue. In addition, the guesthouse portion of the project raises a slew of important and complicated LCP issues, and it appears that direction from the Commission on LCP interpretation in that regard is also critical. Conversely, a no substantial issue finding would create an adverse precedent for future interpretation of the LCP. Such a precedent could potentially lead to significant new development in the form of guesthouses that could be converted into full second units in an area with well-known and dire public service constraints, and ESHA constraints. Therefore, the fourth factor also supports a finding of substantial issue.

Finally, regarding the fifth factor, the project raises issues of regional significance, including due to the recent history of statewide drought (which could continue) 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.

For the reasons stated herein, the Commission finds that Appeal Number A-3-SLO-21-0075 raises substantial LCP conformance issues in terms water supply, wastewater services, and ESHA protection. 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 Documents<sup>28</sup>**

- File for Coastal Development Permit Appeal Number A-3-SLO-21-0075
- “*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.

#### **B. Staff Contact with Agencies and Groups**

- San Luis Obispo County Planning and Building Department

---

<sup>28</sup> These documents are available for review in the Commission’s Central Coast District office.