

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
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A-3-SLO-21-0005 (KIMBELL SECOND UNIT) MARCH 12, 2021 HEARING EXHIBITS

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Project Location



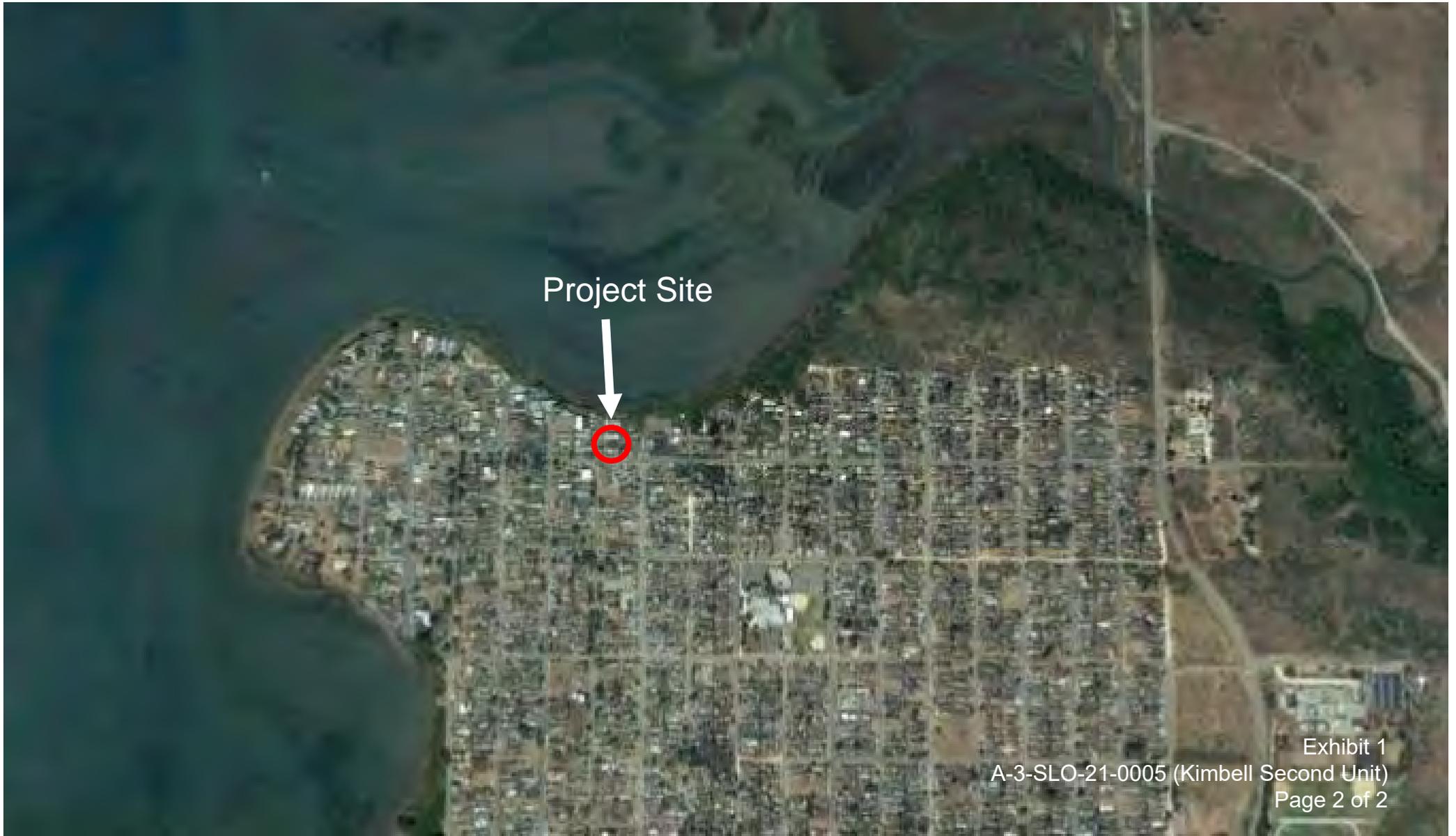
City of Morro Bay →

Morro Bay →

Project Site →

Los Osos →

Project Location





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

CORRECTED NOTICE

December 16, 2020

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

FINAL LOCAL ACTION NOTICE
REFERENCE # 3-SLO-21-1046
APPEAL PERIOD 12/30/20-1/13/21

NOTICE OF FINAL COUNTY ACTION

County File Number: PMTR2020-00883
Project Description: The applicant has requested a permit to establish an accessory dwelling on the project site
Project Site APN: 038-041-008
Action Taking Body: Department of Planning and Building ("Department")
Action Taken: Approval, Ministerial
Action Date (Corrected): December 16, 2020
Conditions of Approval: None
Local Appeal Periods: Not applicable
Located Within Coastal Zone: Yes
Appealable to Coastal Commission: Yes
Attachments: Attachment 1 - Findings
Attachment 2 - ADU Compliance Review Form
Attachment 3 - Plans

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

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

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

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

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

Sincerely,

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

cc:

Applicant

Marc Kimbell
1196 6th Street
Los Osos, CA 93402

Interested Parties

Los Osos Sustainability Group
Attn: Patrick McGibney
1177 3rd Street
Los Osos, CA 93402

Attachment 1 - Findings

1. The ADU Plot Plan application is consistent with the County's Local Coastal Plan (LCP) and California State Government Code Sections 65852.2 et. seq. (State ADU Law).
2. The applicant will be required to provide will-serve letters from the community water and sewer service providers.
3. Prior to approving the ADU Plot Plan, the Department provided public notice pursuant to Coastal Zone Land Use Ordinance (CZLUO) Section 23.02.070(b) and Section 23.08.169.
4. The Department will review the ADU for consistency with applicable building and construction codes prior to issuing a construction permit for the ADU, including the 2:1 water offset requirement for new structures in Los Osos.

Attachment 2 – ADU Compliance Review Form

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

Standard	Coastal Zone Land Use Ordinance	Proposed Project	Compliance with LCP
Accessory use	ADU shall be accessory to a primary dwelling	Accessory use to single-family dwelling	Yes
Minimum site area	6,000 s.f.	6,250 s.f.	No; However, Gov. Code 65852.2 does not allow for the imposing of requirements on minimum lot size
Setback, front	10 ft.	N/A Located to rear of existing building	Yes
Setback, side	3 ft.	4 ft. 25 ft. and 11 in.	Yes
Setback, rear	5 ft.	10 ft. and 11 in.	Yes
Setback, interior	10 ft.	13 ft.	Yes
Height	Max. 28 ft.	15 ft.	Yes
Size of ADU	Size of lot over 2 acres: 1,200 s.f. Size of lot 2 acres or less: 800 s.f.	800 s.f.	Yes
Design of ADU	Within URL and VRL, ADU must be designed to be compatible with the primary dwelling and avoid resembling a duplex	Compatible	Yes
Off-street parking	1 space per bedroom (max. 2 spaces)	2	Yes

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CDP Appeal

Appeal to the California Coastal Commission of a local CDP decision

1. Filing information

Appeal number: A-3-SLO-21-0005
 District: Central Coast District Office
 Date appeal filed: 1/11/2020

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2. Commissioner appellant information

Appellants: Commissioners Erik Howell and Linda Escalante

3. Local CDP decision being appealed

Local government name: San Luis Obispo County
 Local government approval body: Department of Planning and Building
 Local government CDP application number: PMTR2020-00883
 Local government CDP decision: Approval, Ministerial
 Date of local government CDP decision: 12/16/2020

Location and description of the development that was approved or denied by the local government.

1196 6th St., Los Osos

The applicant has requested a permit to establish an accessory dwelling unit on the project site.

**Appeal of local CDP decision
Page 2**

4. Grounds for this appeal

See attached.

5. Commissioner Howell certification

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

Commissioner signature:

DocuSigned by:
Erik Howell
012ABBAAT2D04GE

Date signed:

01/11/2021

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Appeal of local CDP decision
Page 2

4. Grounds for this appeal

See attached.

5. Commissioner Escalante certification

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

Commissioner signature:

DocuSigned by:

CF7DAD569086480

Date signed:

01/08/2021

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On December 16, 2020 San Luis Obispo County approved a coastal development permit (CDP) for the construction of a secondary dwelling unit in the community of Los Osos. The County's approval raises questions of consistency with County Local Coastal Program (LCP) policies related to the adequacy of water supply and wastewater services, the protection of environmentally sensitive habitat areas (ESHA), and secondary dwelling units as follows.

With respect to water and wastewater, LCP Public Services Policy 1 requires all development to be served by adequate water and wastewater services, and *requires* denial of a proposed project should such services not be available. With respect to ESHA, LCP Environmentally Sensitive Habitats Policy 1 allows only uses dependent on the resource within such habitat areas, and only when such allowable uses are sited and designed in a manner that does not significantly disrupt habitat values. All three of these issues (water, wastewater, and ESHA) are of paramount concern in Los Osos, a community that has traditionally suffered from inadequate water supply (including in terms of water coming from an overdrafted groundwater basin historically suffering from nitrate contamination) and inadequate wastewater services (including historically leaking individual septic systems affecting the Morro Bay Estuary). Moreover, all of Los Osos, including its residential areas, has been recognized as ESHA by the Commission, including due to much of it being critical habitat for the federally endangered Morro shoulderband snail.

The Commission recognized all of these constraints when it approved the County's Los Osos Wastewater Project (LOWWP) in 2010 through CDP A-3-SLO-09-055/069 that approved a new community wastewater treatment facility. Because of potential for that project to induce growth, including growth dependent on a water supply for which sustainable pumping/use limits and the amount of development that could be supported within those limits had not yet been identified, and including growth with the potential for ESHA impacts requiring a more proactive and comprehensive protocol for addressing such impacts (including via a United States Fish and Wildlife Service-approved Habitat Conservation Plan (HCP) for the community then being developed), the Commission explicitly prohibited additional development reliant on the LOWWP until such time as appropriate growth limits and allowances were developed (including the HCP) and certified as part of the LCP. Thus, unless and until the LCP's Estero Area Plan (i.e., through the Los Osos Community Plan, which is part of the Estero Area Plan) is amended to identify sustainable buildout limits for Los Osos based on the actual availability of water and wastewater services, and based on measures designed to protect ESHA, the County's LOWWP is *prohibited* from serving new development on undeveloped properties. Although the lot here already contains a residential unit, the LOWWP approval is clear that new residential units that utilize water and wastewater service, including completely separate new second units as is the case here, 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.

The County approved the Los Osos Community Plan and HCP in December, but has not yet submitted the plans to the Commission for certification. Thus, the LCP has not yet been amended to establish sustainable buildout limits in Los Osos and development of second units on properties such as this one is premature. The County did not make any findings explaining why or how such an approval was consistent with the LOWWP's terms and conditions that prohibit wastewater service in a case like this, how or why the project would be served by adequate water and wastewater services as required by the LCP (particularly given the lack of wastewater services alone explicitly *requires* denial per the LCP), did not provide will-serve letters for water or wastewater, and only stated that 2:1 water retrofits would be required (without providing any documentation confirming

Kimbell

the efficacy of the retrofits). In addition, the County did not make any ESHA findings at all, did not require any biological surveys prior to approval in order to understand the potential ESHA impacts, nor did the approval provide for any mitigation measures to address potential temporary and permanent habitat impacts.

In addition, the County approved the project according to an Accessory Dwelling Unit (ADU) ordinance that has been approved by the County, but has not yet been certified by the Commission. The County has processed ten ADU projects in the last month while utilizing the uncertified ADU ordinance as the standard of review, rather than existing certified LCP secondary dwelling unit standards. Thus, in addition to the issues described above, this current project is also inconsistent with LCP standards because the project site does not meet the LCP's minimum lot size required to establish a second unit. The project site is 6,250 square-feet and the LCP prohibits second units on lots smaller than 12,000 square feet. Thus the project is inconsistent with the LCP's secondary dwelling unit standards as well.

In short, the County's approval raises significant questions regarding LCP compliance with respect to adequacy of water and wastewater services, ESHA protection, and secondary dwelling unit standards. The County has approved a CDP for the project prior to identifying sustainable buildout limits and ESHA mitigation that must be codified through the required LCP amendment, and pursuant to an uncertified ADU ordinance. For all of these reasons, the County's approval warrants Commission consideration regarding LCP conformance.

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Appeal of local CDP decision

1. Appellant information¹

Name: _____

Mailing address: _____

Phone number: _____

Email address: _____

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

Did not participate Submitted comment Testified at hearing Other

Describe: _____

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

Describe: _____

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

Describe: _____

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

Appeal of local CDP decision

2. Local CDP decision being appealed²

Local government name: _____

Local government approval body: _____

Local government CDP application number: _____

Local government CDP decision: CDP approval CDP denial³

Date of local government CDP decision: _____

Please identify the location and description of the development that was approved or denied by the local government.

Describe: _____

² Attach additional sheets as necessary to fully describe the local government CDP decision, including a description of the development that was the subject of the CDP application and decision.

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

5. Appellant certification⁵

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

Print name _____

Patrick McGibney

Signature

Date of Signature _____

5. Representative authorization⁶

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

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

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

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

LOCATION AND DESCRIPTION OF THE DEVELOPMENT

The project is located at street address 1196 6th St, Los Osos, CA 93402, assessor's parcel number 06079-038-041-008. The 6,250 square foot lot has an existing two-story 1,029 square foot primary dwelling with a garage below.

The project would add a detached 800 square foot two-bedroom accessory dwelling unit (ADU) and two on-site parking spaces. The project would use Los Osos Community Services District water service and the Los Osos Sewer. The project may not make final connections until phase two of the Los Osos Sewer is open. The applicant will be required to provide will-serve letters.

The permit application was received by the San Luis Obispo County Planning and Building Department, the agency that grants development permits for unincorporated areas including Los Osos, on July 21, 2020. The project was approved ministerially by County staff pursuant to California Government Code section 65852.2(l) and County of San Luis Obispo Code section 23.08.169(d).

The County submitted a notice of final action for the project on December 16, 2020. The included findings state that the project is consistent with the County's Local Coastal Plan (LCP). However, the ADU Compliance Review Form states that the project is not consistent with the LCP due to the size of the lot, but that the various provisions of California Government Code section 65852.2 limiting restrictions on ADU size based on the size of the overall lot are controlling.

GROUNDS FOR THIS APPEAL

I. Coastal Development Permits (CDP) for Accessory Dwelling Units (ADU) must conform with the San Luis Obispo County Local Coastal Program (LCP) Implementation Plan ADU provision.

The County of San Luis Obispo (County) appears to believe that the provisions of California Government Code section 65852.2, including subsection (a)(4) which states that “an accessory dwelling unit ordinance that fails to meet the requirements of this subdivision . . . shall be null and void and that agency shall . . . apply the standards established in this subdivision . . . until the agency adopts an ordinance that complies,” supersede the ADU provisions in its LCP. This is incorrect as a matter of law. The currently certified provisions of the County’s LCP—including Coastal Zone Land Use Ordinance 23.08.169, last amended in 2018—must be applied to all ADU permit applications within the County’s Coastal Zone.

A. California Government Code section 65852.2 does not supersede currently certified provisions of the San Luis Obispo County LCP.

“Nothing in this section shall be construed to supersede or in any way alter or lessen the effect of the California Coastal Act . . . except that the local government shall not be required to hold public hearings” for ADU permits. Cal Gov’t Code § 65852.2 (l). The inclusion of the public hearing provision in this subsection is significant because of its limiting effect. “It is a settled rule of statutory construction that where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes.” In re Jennings (2004) 34 Cal.4th 254, *citing* People v. Norwood (1972) 26 Cal. App. 3d 148. No other provision of the State ADU law besides those related to

Law Office of Babak Naficy

Coastal Commission Appeal of SLO County CDP PMTR2020-00883

Additional Sheet 1 of 4 | Attached to Appeal Form Page 4

GROUNDS FOR THIS APPEAL

public hearings, including the prohibition on lot size limits, may supersede, alter, or lessen the effect of the Coastal Act.

The County’s LCP is not indefinitely excused from noncompliance with the State ADU law, but neither is it rendered void as to ADUs in the meantime. Consistent with § 65852.2 (l), in an April 2020 Guidance Memo¹ to the planning directors of coastal cities and counties, Coastal Commission executive director John Ainsworth advised that despite a spate of recent updates to the state law, “existing ADU provisions contained in certified LCPs are not superseded by Government Code section 65852.2 and continue to apply to CDP applications for ADUs until an LCP amendment is adopted.”

B. San Luis Obispo County Code Title 23 Implements the San Luis Obispo County LCP and is a provision of the County’s LCP.

Title 23 of the San Luis Obispo County Code implements the San Luis Obispo County LCP and was adopted pursuant to the authority vested in the County by the Coastal Act. San Luis Obispo County (SLOC) Code §§ 23.01.010 (a) and 23.01.020; Cal Pub Resources Code § 30500 (a) (“Each local government lying, in whole or in part, within the coastal zone shall prepare a local coastal program for that portion of the coastal zone within its jurisdiction”). The development review processes described in Title 23—including section 23.08.169 – Secondary Dwelling Units—are conducted under authority explicitly delegated to the County by the Coastal Act. Cal Pub Resources Code § 30519 (following certification of an LCP, the Coastal Commission authority for development review is delegated to the local

1

<https://documents.coastal.ca.gov/assets/rflg/California%20Coastal%20Commission%20ADU%20Memo%20dated%20042120.pdf>, accessed 1/12/2021.

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Coastal Commission Appeal of SLO County CDP PMTR2020-00883

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government implementing the LCP). See Schneider v. California Coastal Com. (2006) 140 Cal.App.4th 1339, 1344-1345.

The fact that the County’s LCP Implementation Plan is codified as Title 23 of the County Code and termed “Coastal Zone Land Use Ordinance” does not alter its character as a certified provision of the County LCP and not solely a local ordinance. “Under the Coastal Act's legislative scheme, however, the LCP and the development permits issued by local agencies pursuant to the Coastal Act are not solely a matter of local law, but embody state policy.” Charles A. Pratt Constr. Co. v. California Coastal Com. (2008) 162 Cal. App. 4th 1068, 1075.

II. San Luis Obispo County CDP PMTR2020-01207 does not conform with the San Luis Obispo County LCP

The County’s LCP does not permit any ADU to be developed on a lot of this size, in this location.

A. ADUs are not allowed within the South Bay Urban Area where the CDP site is located unless certain provisions (not here met) are satisfied.

Secondary Dwelling Units, also known as ADUs, are excluded from areas of the County’s Coastal Zone where the associated “density increases . . . would create adverse cumulative effects on essential community services.” SLOC Code § 23.08.169 (c) (1). These limits are consistent with the State ADU law, which allows a local agency to “designate areas . . . where accessory dwelling units may be permitted . . . based on the adequacy of water and sewer services . . .” Cal Govt Code § 65852.2 (a)(1)(A).

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Coastal Commission Appeal of SLO County CDP PMTR2020-00883

Additional Sheet 3 of 4 | Attached to Appeal Form Page 4

GROUNDS FOR THIS APPEAL

One such area of exclusion is South Bay, Los Osos “as defined by the Land Use Element, Estero area plan.” SLOC Code § 23.08.169 (c)(1)(i). The Estero area plan² describes the South Bay urban area as the western end of Los Osos Valley, bounded by Los Osos Creek on the east, Montana de Oro on the west, Morro Bay on the north, and Irish Hills on the South. As explained in the introduction to this Appeal, the severely limited groundwater supply and sewage capacity of the Los Osos area are well documented and currently under debate in the context of the Los Osos Community Plan, which was recently approved by the County but has not yet been submitted to the Coastal Commission.

Detached ADUs **may** only be allowed³ in the South Bay urban area where the site of the CDP is at least:

- 12,000 square feet and served by community water and sewer;
- One acre (net) and served by community water and on-site sewage; or
- 2.5 acres (net) and served by on-site water and sewage.

Ibid. ADUs attached to or incorporated within a primary residence are not mentioned in the exception to the exclusion so it appears they are disallowed entirely within the South Bay urban area.

The site of the CDP that is the subject of this appeal is a 6,250 square foot lot within the South Bay urban area. Therefore, no detached ADU is allowed because it does not meet the 12,000 square foot minimum.

²

<https://www.slocounty.ca.gov/Departments/Planning-Building/Forms-Documents/Plans-and-Elements/Area-Plans/Coastal-Zone.aspx>, accessed 1/12/2021.

³ Note that the language of this subsection does not guarantee that an ADU will be granted a ministerial permit even if the lot size is sufficient; the ADU “may” be permitted, indicating that a discretionary decision must be made. SLOC Code §23.08.169 (c)(1)(i).

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Coastal Commission Appeal of SLO County CDP PMTR2020-00883

Additional Sheet 4 of 4 | Attached to Appeal Form Page 4

INTRODUCTION

This is one of eight (8) related appeals from San Luis Obispo County's approval of accessory dwelling units (ADU) in the community of Los Osos by Los Osos Sustainability Group (LOSG), on whose behalf these appeals are filed. LOSG urges the Coastal Commission to grant these appeals and to direct San Luis Obispo County not to approve any more ADUs or any other type of new development that uses water or sewer services in Los Osos until and unless the Coastal Commission (Commission) has approved the Los Osos Community Plan (LOCP) thereby setting buildout limits that reflect the availability of water supplies and sewer services. In the course of its review of the LOCP, which the County has yet to submit to the Commission for review, the Commission will be able to ensure that future development will not jeopardize the resources needed to meet the needs of current development, and valuable coastal resources including Ecologically Sensitive Habitats (ESHA) are preserved.

When the Coastal Commission considered and eventually approved the Los Osos Wastewater Project (LOWWP) in 2010, it recognized the complex problems that affect the continued viability of the groundwater basin on which the residents of Los Osos currently and forever must rely. In this regard, a Commission staff report explained:

potential buildout under the LCP is significantly constrained, including due to public service constraints, habitat, and rural/agricultural protection. Thus, it is not clear at the current time that buildout of that degree is possible, nor whether it could be found consistent with the LCP. The County has committed to rectifying buildout issues through an LCP amendment following the LOWWP. Specifically the proposed project includes condition 86, which states: *(Consistent with condition of approval #34 from CDP A-3-SLO-03-113). To prevent wastewater treatment system from inducing growth*

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that cannot be safely sustained by available water supplies, the sewer authority is prohibited from providing service to existing undeveloped parcels within the service area, unless and until the Estero Area Plan is amended to incorporate a sustainable buildout target that indicates that there is water available to support such development without impacts to wetlands and habitats.

The LCP addressed these concerns by including policies that prohibit residential and commercial development unless the availability of water supply and sewer service is established. In recognition of these constraints (as well those caused by the prevalence of ESHA throughout the area), the Coastal Development Permit (CDP) that the Commission issued in connection with the LOWWP in 2010 (CDP A-3-SLO-09-055/069) explicitly prohibits additional residential and commercial development reliant on the LOWWP until the County establishes appropriate limits on growth based on the basin's true carrying capacity based on "conclusive evidence" of an adequate water supply, adequate sewer treatment capacity, and ESHA protection.

Condition of Approval No. 6 specifically provides:

Wastewater Service to Undeveloped Properties. 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.

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Condition 6 has not been satisfied because the County has yet to submit the LOCP for consideration to the Commission, and the LOCP thus has not been vetted or approved by the Commission.

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

To make matters worse, the County recently adopted a Growth Management Ordinance (GMO) that does not set any limits on the number of ADUs and other “exempt” housing the County may approve in Los Osos. Accordingly, the County’s practice of approving ADUs without appropriate consideration of water supply and sewer limitations raises the specter of rampant ADU development in Los Osos as an end-run around the limits on development set by the Coastal Development Permit the Coastal Commission issued in connection with the Los Osos Wastewater Project (LOWWP). By approving coastal ADUs without any consideration of the individual or cumulative impact on water supplies, the County would set a dangerous precedent by creating the expectation that a coastal ADU is simply available for the asking, regardless of impacts on the water basin, unsustainable water

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supplies, impacts habitat, the size of the ADU, whether it is consistent with the character of the area, or the total number of applications.

LOSG's appeal of the eight ADUs should be granted because, as explained in detail in our attached appeal forms, the County's approval process ignores the Coastal Act, the LCP and the County's own Coastal Zone Land Use Ordinance (CZLUO), which clearly require the County to consider the availability of water before approving any ADUs. ADUs are subject to San Luis Obispo County Code §23.08.169 - Secondary Dwelling Units - which prohibits Secondary Dwelling Units in the South Bay, because it is understood that secondary dwelling units are "incompatible with existing development, or the density increase resulting from secondary units pursuant to this section would create adverse cumulative effects on essential community services and natural features. Such services and features include but are not limited to water supplies, storm drainage facilities, roadway traffic capacities, and soils with "limited suitability for septic system sewage disposal or subject to erosion" (i.e., outside of the wastewater service area). The Code provides an exception under certain circumstances, providing that the County "may" allow an ADU within a Residential Single-Family land use category, for example where "the site area is 12,000 square feet or larger and the site is served by community water and sewer; ..." These provisions make it clear that the County must consider the ADUs' potential impact on water supplies and sewer services, which in turn means that County may not consider the ADUs consistency with §23.08.169 on a ministerial basis. The discretionary nature of the County's process for approving ADUs in the South Bay means the County was required to conduct environmental review as required by the California Environmental Quality Act (CEQA). Protecting Our Water & Env'tl. Res. v. Cty. of Stanislaus, (2020) 10 Cal. 5th 479, 501

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“when an ordinance contains standards which, if applicable, give an agency the required degree of independent judgment, the agency may not *categorically* classify the issuance of permits as ministerial.”)

Pursuant to §23.08.169, the County could not lawfully approve these ADUs on a ministerial basis, without any consideration as to whether these ADUs would result individually or cumulatively in significant impacts on water supplies, sewer or ESHA.

LOSG anticipates that the County will claim its approval of these ADUs was consistent with the State regulation of ADUs, in particular, the provisions of Government Code §65852.2, which generally govern the processing of ADU applications by cities and counties. It appears that the County believes the provisions of §65852.2 trump and supersede the provisions of the County’s Local Coastal Plan, including but not limited to the provision of the County Code §23.08.169. The County’s position is wrong as a matter of law because the County’s position is specifically inconsistent with Government Code §65852.2(l), according to which, §65852.2 cannot be construed to “supersede or in any way alter or lessen the effect of or application of the California Coastal Act of 1976 ...” It is important to note that the LCP embodies and effectuates the policies and concerns of the Coastal Act and the County’s authority to issue Coastal Development Permits (CDPs) in accordance with the LCP, which is delegated by the Commission. Charles A. Pratt Constr. Co. v. California Coastal Com. (2008)162 Cal. App. 4th 1068, 1075. The County has no authority to issue ADUs in contravention of the LCP, including §23.08.169 and LCP policies that are intended to protect and preserve the Los Osos water supplies, sewer capacity and ESHA.

INTRODUCTION

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

- a. The Title 19 retrofit requirement does not establish that the Groundwater Basin is sustainable and an adequate water supply exists for the current population, added population, and ESHA. The most recent Basin metrics and monitoring show seawater intrusion is continuing to move inland and threaten supply wells in the Basin and the true sustainable/safe yield of the Basin has not been established.
- b. The Title 19 requirement uses conservation potential at twice the rate of a program for current residents because approved new development uses half, and possibly more, of the offset (also see E below). The Commission itself has in the past recognized that any remaining conservation potential in the Basin is needed and must be used to promote a sustainable Basin to meet the current needs and ESHA.
- c. The Title 19 program competes with the Special Condition 5 conservation program of the LOWWP CDP, which requires the County to spend \$5 million to “help Basin residents to reduce potable water use as much as possible” including with enforceable mechanisms as needed. If any additional conservation potential exists (as evidenced by use of

INTRODUCTION

the Title 19 program) it ought to be realized by the County through expenditure of the portion of the \$5 million that remains unspent (based on Annual Monitoring Reports prepared for the Basin Management Committee).

- d. Although the Title 19 Ordinance has a provision for verifying the effectiveness of the program, the provision has not been used and there has been no follow-up review or study, to our knowledge, to confirm actual long-term reductions in water use from the program.
- e. The retrofit formula for the program assumes ADUs use half the water of single-family homes, so it does not offset the water use of many ADUs (e.g., larger ADUs and ADUs on properties) that may well use more than the assumed amount. Further, water use has gone up in 2020 due to COVID 19.

We incorporate by reference our letter to the Commission dated October 1, 2020, with attachments, which include various cited documents and letters submitted to the SLO County Planning and Building Department between August 25, 2015 and August 11, 2020. We also include by reference our letter to the SLO Board of Supervisors dated December 15, 2020.

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August 3, 2017

Mark Hutchinson, Deputy Director
San Luis Obispo County Department of Public Works
County Government Center, Room 206
San Luis Obispo, CA, 93408

**Subject: Your letter to Dan Carl (Central Coast District Director) dated July 25, 2017
regarding potential amendments to CDP A-3-SLO-09-055/069 (Los Osos
Wastewater Project)**

Dear Mr. Hutchinson:

We received the above-referenced letter from you on July 31, 2017 in which you indicate that the County Board of Supervisors authorized the landowner of a property at 2045 Pine Street in Los Osos (Rick Kirk) to apply to the Coastal Commission: to amend the County's coastal development permit (CDP) for the Los Osos Wastewater Project (CDP A-3-SLO-09-055/069) to include the subject parcel (APN 074-052-033) in the Wastewater Service Area; and to clarify the applicability of CDP A-3-SLO-09-055/069 conditions to this and other undeveloped properties in the Los Osos area subject to the Estero Area Plan. The purpose of this letter is to respond to both of those issues, and to provide direction to the County on the nature of the requirements that continue to adhere by virtue of CDP A-3-SLO-09-055/069.

As you know, CDP A-3-SLO-09-055/069 Special Condition 6 **prohibits** wastewater service to undeveloped properties unless and until the Estero Area Plan is updated to identify appropriate and sustainable buildout limits, and that update is certified as an LCP amendment by the Coastal Commission. The County has been working on the required update to the Los Osos component of the Estero Area Plan, including the complementary Habitat Conservation Plan, for many years, but that update remains incomplete at the County level, and thus it has never been submitted to the Coastal Commission. Importantly, the LCP growth and buildout standards applicable to Los Osos that were required by the Coastal Commission to be updated have not yet been updated. As a result, and as we have discussed with you and your staff and other County staff in other departments, per the CDP **undeveloped properties are not allowed wastewater service at this time.**

With respect to potential amendments to the CDP to potentially add properties to the wastewater service area, such as the aforementioned request related to the property at 2045 Pine Street, the intent of the CDP (including Special Condition 7 allowing for it to be amended under certain circumstances) is **not** to facilitate development of undeveloped properties in Los Osos absent the required LCP update. On the contrary, and as we have discussed with you and your staff and other County staff at the time of the original CDP approval, as well as since then, the intent of the potential amendment provision of the CDP is to consider minor modifications that address potential anomalies associated with **already developed** properties. For example, the Coastal

Commission approved a service area adjustment through a CDP amendment in June 2016 to allow the Monarch Grove area to be added to the service area so as to better protect coastal resources by connecting that area to the wastewater plant instead of continuing use of their failing package plant. At the same time, it is clear under the CDP that undeveloped properties (including significant intensifications of use and expansions on developed properties (e.g., such as the proposed expansion of the Sea Pines Golf Resort and Morro Shores Mobile Home Park), cannot be allowed sewer service and/or be brought into the service area absent the required Estero Area Plan LCP update. The County acknowledged and agreed to be bound by these terms and conditions when it accepted the CDP to construct the Los Osos Wastewater system.

As a result, please understand that we cannot support allowing undeveloped properties, such as the property at 2045 Pine Street, to be added to the service area or to be allowed wastewater service unless and until the LCP's Estero Area Plan is updated as required by CDP A-3-SLO-09-055/069. In addition, and as we have informed you and other County staff, including as recently as May 31, 2017 (i.e., in an email from Daniel Robinson in the Central Coast District Office to you and Kerry Brown of the County's Planning and Building Department) it would appear quite clear at this point that any application proposing to amend CDP A-3-SLO-09-055/069 to allow same **would be required to be rejected** by Coastal Commission staff because it would lessen and avoid the intended effect of the Commission's CDP approval (see California Code of Regulations Section 13166(a)). Again, the Commission required the County to update the Los Osos portion of the Estero Area Plan through an LCP amendment subject to certain criteria before any undeveloped properties in Los Osos can be served. Thus, unless and until the Estero Area Plan is updated as required, modifications to service area boundaries to include undeveloped properties and/or allowing wastewater service to undeveloped properties are not allowed by CDP A-3-SLO-09-055/069.¹

¹ In addition, questions have arisen recently about the potential to allow development on properties prior to the required Estero Area Plan update that have been awarded wastewater or water saving credits (otherwise known as 'Title 19 Retrofit Certificates') in the past. 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 wanted to build prior to being hooked up to the sewer, then they could utilize a credit to install a temporary septic system. However, as detailed above, only already developed properties are eligible for sewer connection at this time, and thus they would not need a temporary septic credit. In terms of the retrofit certificates, these certificates alone do not somehow entitle development at this time. Although these water conservation certificates were previously issued to properties in the septic prohibition zone, the certificate does not somehow guarantee the right to develop parcels upon completion of the sewer. As described above, the key threshold before wastewater service can be provided to any undeveloped property is certification of the Los Osos portion of the Estero Area Plan by the Coastal Commission.

In short, the requirements of the CDP prohibit the extension of wastewater service to undeveloped properties, and to do so would be a knowing and intentional violation of the CDP.²

We understand that the certain members of the community are interested in developing their properties now that the wastewater treatment plant is up and running, and we can appreciate their desire to do so, including after the significant efforts by many to bring the wastewater treatment plant and system in Los Osos online. At the same time, however, the County is obligated to finalize the update to the Los Osos portion of the Estero Area Plan through LCP amendment before that occurs, and that requirement has been in existence for over a decade, dating back to a similar requirement associated with the since abandoned wastewater treatment plant CDP approved by the Commission in 2004, and also because the County itself required the same as part of its approval of the wastewater treatment plant in late 2009 (i.e., County Condition 92, which was part of the County's proposed project before the Commission when the Commission approved CDP A-3-SLO-09-055/069 in 2010). We would strongly suggest that the County put its efforts towards completing the required LCP planning instead of pursuing any measures designed to avoid its CDP obligations.

Finally, despite the Board authorizing a private citizen to apply to amend the County's CDP, we note that it is the County that is the Permittee of the subject CDP, and it is the County that would have to be the Applicant for any amendment to it. The County could apply on an individual's or group's behalf, as was done for the Monarch Grove CDP amendment request described above, but the County would have to be the entity to request the amendment. We would not be able to accept an application by a private individual or group.

In closing, we again note that the Coastal Commission's CDP requirements that prohibit wastewater service to undeveloped properties in Los Osos are unambiguous, and we strongly suggest that the County recognize that requirement in all County actions (including in accepting any CDP applications, and in any County CDP actions).

We continue to be available to assist County staff as it attempts to complete the required LCP update, and we strongly recommend that the County concentrate its resources on those efforts. If you have any questions or wish to discuss this further, please contact me or Daniel Robinson of my staff at (831) 427-4863.

² We note that the County correctly denied a CDP for development of the proposed *Novy* residence on Pasadena Drive on these grounds in September 2016. We further note that on August 4, 2017 the County Planning Commission will hear a CDP application to develop another undeveloped property in Los Osos (i.e., the proposed *Watterworth* residence on Mitchell Drive), and the Planning Commission should deny this project for the very same reason. Again, approval of development that uses wastewater services on undeveloped properties would be a violation of the County's CDP, and would be subject to enforcement proceedings.

Mark Hutchinson
CDP A-3-SLO-09-055/069 Requirements
August 3, 2017
Page 4

Sincerely,

Dan Carl
District Director
Central Coast District Office
California Coastal Commission

cc: (via email)

Supervisor Bruce Gibson
Supervisor John Peschong
Supervisor Adam Hill
Supervisor Lynn Compton
Supervisor Debbie Arnold
Planning Commissioner Michael Multari
Planning Commissioner Julie Hawkins
Planning Commissioner Jim Harrison
Planning Commissioner Don Campbell
Marvin Rose, County Department of Planning and Building Interim Director
Wade Horton, County Public Works Department Director
Jeff Edwards (Representative for Rick Kirk)

CALIFORNIA COASTAL COMMISSION

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December 8, 2017

Kerry Brown
San Luis Obispo Department of Planning and Building
976 Osos Street Room 200
San Luis Obispo, CA 93408

Subject: Coastal Development Permit (CDP)/Minor Use Permit (DRC2017-00029)

Dear Kerry:

We are writing in regards to a proposed project to be heard at the December 15th meeting of the San Luis Obispo (SLO) Planning Department to construct four single family residences on four separate lots, located at 282 Mar Vista, 294 Mar Vista, 284 Highland Drive, and 289 Highland Drive in Los Osos (Shear Development Company LLC).

As described accurately in the County's staff report, Special Condition #6 (as well as County project condition #86 and #92) of the Los Osos Wastewater Treatment Plant CDP A-3-SLO-09-055/069 prohibits development on vacant parcels at this time. Specifically, Special Condition 6 prohibits new development on undeveloped properties in the prohibition zone until such time as the Estero Area Plan has been amended and certified by the California Coastal Commission.

We are writing in support of the SLO County Planning staff's recommendation for denial in this case. Because the proposed project cannot hook up to the sewer based on the conditions of the LOWWP permit, and cannot utilize a septic system (the Regional Water Quality Control Board prohibition on new septic discharge is still in effect), the project cannot be approved at this time.

Please do not hesitate to contact me at (831) 427-4863 if you have any questions regarding the above letter of support.

Sincerely,

A handwritten signature in cursive script that reads "Daniel Robinson".

Daniel Robinson
Coastal Planner
Central Coast District Office

CALIFORNIA COASTAL COMMISSION

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August 29, 2016

San Luis Obispo County Department of Planning and Building
976 Osos Street Room 200
San Luis Obispo, CA 93408

**Subject: Frederick G. Novy Single-Family Dwelling (SFD), 1325 Pasadena Drive, Los Osos
(APNs 038-732-016 and -017)**

Dear Rob Fitzroy, Hearing Officer,

I am writing to express our support for the Planning Department's denial recommendation of the proposed SFD located on an undeveloped property at 1325 Pasadena Drive in Los Osos, which you will be considering at a Planning Department hearing on September 2, 2016. Initially the project proposed to obtain wastewater service from the new Los Osos Wastewater Treatment Plant (LOWWP); the project now includes a proposed onsite septic system.

We previously worked very closely with the County, the Regional Water Quality Control Board (RWQCB), and other interested parties on the LOWWP project, dating back to the approval of a coastal development permit (CDP) for that project in 2010 (Coastal Commission appeal number A-3-SLO-09-055/069). Approval of the Novy SFD project with a connection to the LOWWP would directly violate Special Condition 6 of CDP A-3-SLO-09-055/069, which states:

“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.”¹

As the County is aware, a Local Coastal Program (LCP) amendment to the Estero Area Plan for this purpose has not been certified by the California Coastal Commission (Commission), although we have had multiple discussions with the County's planning and building staff and have collaborated on draft portions of the Los Osos Community Plan (LOCP) to help expedite this process, and will continue to do so. Given this reality, however, wastewater service for the proposed Novy SFD may not be provided by the LOWWP at this time.

In terms of the project now including an onsite septic system, the RWQCB imposed a moratorium on current sewage discharges, new sources of sewage discharge, and increases in the

¹ Special Condition #6 is similar to County Condition of Approval #86 for the LOWWP, which is entitled “**No Service to Undeveloped Properties.**”

volume of existing sewage sources in the community of Baywood-Los Osos on January 8, 1988. The primary effect of the moratorium is that the County is prohibited from issuing any permits for new onsite sewage disposal systems (commonly called septic systems) within the prohibition area. Further, we also agree with the RWQCB that the “septic system credits” identified in their letter dated May 8, 2014 were intended to be temporary credits for lots that were already eligible to connect to the community sewer. Given that the Novy lots are not eligible to connect to the sewer at this time because the update to the Estero Area Plan has not been certified, these credits should not apply to the Novy property. Thus, because there is an ongoing moratorium, because the proposed project cannot hook up to the sewer based on Special Condition #6 of the LOWWP permit and cannot utilize a septic system based on the August 8, 2016 letter from RWQCB, the project will not have adequate means to dispose of wastewater, and therefore cannot be approved at this time. Based on the above reasons, Commission staff supports County staff’s recommendation of denial at this time.

While denial of the project is appropriate at this time, certification of the LOCP should appropriately guide future development of infill lots within the urban area of Los Osos in the future. When that occurs for this site, Commission staff believes that a wetland setback reduction should not be allowed. At this time, a reduction is recommended to be allowed from 75 to 62 feet. However, it does not appear that a single-family residence of nearly *4,000 square feet* (i.e., a 3,048-square-foot residence, with a 484-square-foot attached garage and a 351-square-foot attached workshop) is the “*minimum*” size that would enable a single-family residence to be established on the site, as required by CZLUO Section 23.07.172.(d)(2). We also do not agree that the site would be “*physically unusable*” for a single-family residence unless the setback was reduced, again as stated by CZLUO Section 23.07.172.(d)(2). Thus, Commission staff does not support the proposed reduction in the wetland setback given that it appears readily feasible, based on project plans associated with the project, for the project to be modified to provide consistency with the LCP’s 75-foot wetland setback requirement.

Thank you for the opportunity to share our thoughts on this project. We look forward to continuing to work with County staff on the Estero Area Plan update (LOCP), which will facilitate future approvals of proposed residences, such as the Novy SFD, within the urban area of Los Osos.

Sincerely,

Daniel Robinson
Coastal Planner
Central Coast District Office

cc: Brandi Cummings, San Luis Obispo County Department of Planning and Building
Jon Rokke, Central Coast Regional Water Quality Control Board
Jeff Edwards

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

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

Coastal Commission Authority Over Housing in the Coastal Zone

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

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

Overview of New Legislation¹

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

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

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

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

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

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

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

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

What Should Local Governments in the Coastal Zone Do?

1) Update Local Coastal Programs (LCPs)

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

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

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

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

a. Check Prior CDP History for the Site.

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

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

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

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

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

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

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

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

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

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

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

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

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

JADUs – AB 68 (Ting)

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

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

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

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

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

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

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

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

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