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F15b

Prepared March 7, 2022 for March 11, 2022 Hearing

To: Commissioners and Interested Persons

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

Subject: Additional hearing materials for F15b (Hadian SFD)

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

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

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March 4, 2022

VIA EMAIL

California Coastal Commission
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***Re: De Novo Hearings of A-3-SLO-21-0065 (Bookout) and A-3-SLO-21-0066 (Hadian)
set for March 11, 2022 (Agenda Items 15a and 15b)***

Dear Commissioners:

I. INTRODUCTION

This firm represents Mr. Bookout and Mr. Hadian, the respective applicants under the above-referenced projects (collectively, the “Applicants”).

Both projects for the construction of a single-family home have had an agreement with a governing body to supply water service dating back to 1969.

Both projects have been connected to the Cambria Community Services District (“CCSD”) since April 16, 2001, and, more importantly, both were deemed to be “existing water commitments” by the CCSD when it enacted its water moratorium in 2001 (“Moratorium”) and by the California Coastal Commission (“Commission”) when this Commission approved the 2007 amendment to the San Luis Obispo County North Coast Area Plan (“2007 LCP Amendment” or “LCP”).

Both projects have held will-serve letters from the CCSD since June 1, 2000 and those will-serve letters were reaffirmed in October 2020.

Both Applicants simply want to develop their properties in a manner identical to the other property owners in their subdivision tract and in accordance with the vested rights that have attached to their properties since as early as 1969 (but not later than 2000). And, most relevant to the matter now before this Commission, both are facing a potentially arbitrary and capricious decision which would strip them of their vested rights as collateral damage in the on-going rancorous relationship between this Commission and the CCSD.

We beseech this Commission to put aside its issues with the CCSD and, in good faith, consider these applications on their legal merits. Such a good faith consideration compels this

Commission to honor the vested rights of Mr. Bookout and Mr. Hadian and approve these two single-family residential applications.

The crux of this appeal is the Commission Staff's failure to acknowledge the differing water rights recognized by this Commission and the CCSD in:

- (i) the adoption of the 2001 Moratorium (a recognition required to prevent the Moratorium from being stricken as an illegal action); and
- (ii) the 2007 LCP Amendment.

In the prior consideration of an appeal of a similar project proposed by Mr. Hadian within the same subdivision tract, this Commission reached the incorrect and unlawful conclusion that there was only one type of water "right" recognized as an exemption under the 2001 Moratorium and the 2007 LCP Amendment. Commission Staff incorrectly and unlawfully labeled all such "rights" as "pipeline projects" and, without formal action by any governmental agency, declared that, after twenty years, there are no longer any "pipeline projects." As set forth below, it is unequivocal that neither of these projects are "pipeline projects," as that term is defined in the 2001 Moratorium and the 2007 LCP Amendment. Now, realizing its glaring error on the prior Hadian project, Commission Staff pivots to a position that ignores the Moratorium and the 2007 LCP Amendment and simply urges setting a blanket prohibition on *any* new development in Cambria until an alternative water supply is developed (with the exception of a few favored projects, such as the 33-unit People's Self-Help Housing project).

This prohibition would result in a *de facto* moratorium on any new development in Cambria regardless of the nature of water rights.¹ This prohibition is also entirely inconsistent with the legally required basis for the Moratorium and the express language of the 2007 LCP Amendment and deprives the Applicants of their vested rights to CCSD water in a manner consistent with other existing CCSD customers. The prohibition would deprive the Applicants of any economically viable use of their properties. Moreover, the legal effect of Commission Staff's position is that this Commission has the ability, without formal action or legally sufficient findings or supporting evidence, to amend both the CCSD Moratorium and the express language of the 2007 LCP Amendment.

¹ Apparently, this *de facto* moratorium can be waived if the Commission likes a project enough. This is evidenced by the recent approval of the 33-unit People's Self-Help Housing project (A-3-SLO-19-0033) which has a water usage factor many times that of these two proposed single-family homes. It would appear that the Commission's blanket statement of "no available water supply" is flexible for certain political and social reasons. It is impossible for the Applicants to consider the approval of the People's Self-Help project and not wonder how water can magically appear for a politically favored project yet, according to Commission Staff, be entirely lacking for any other citizen attempting to exercise their lawful, vested, and protected rights.

The appellants and Commission Staff repeatedly claim that the applications should be denied because the CCSD does not have adequate water to serve its “existing customers,” and, therefore, all development within Cambria, unless favored by this Commission for some political reason (e.g. affordable housing), should be prohibited. This claim belies the fact that through:

- (i) a series of agreements concerning these projects dating back to 1969;
- (ii) a settlement agreement concerning these projects entered into in 1999;
- (iii) a will-serve letter issued in 2000 and reaffirmed in October 2020;
- (iv) the connection of the subject properties to the CCSD water system in 2001;
- (v) the express recognition of certain “existing” water rights—including those held by the Applicants—in the adoption of the 2001 Moratorium;
- (vi) the express reaffirmation, by this Commission, of those existing water rights in the 2007 LCP Amendment;
- (vii) water connection and surcharge fees payments (not placeholder fee) paid in 2000; and
- (viii) payment of monthly water service and usage fees (not placeholder fees) since connection to the CCSD water system in 2001,

it is clear and inarguable that the Bookout and Hadian properties are and have been existing customers of the CCSD for over twenty years. As such, they are entitled to the same rights and allocations of other existing CCSD customers on the identical terms and conditions afforded all CCSD customers. The Applicants are legally entitled to share in the available CCSD water supply and cannot be subject to a *de facto* moratorium. The Moratorium and the 2007 LCP Amendment recognized those rights. This Commission cannot now, by fiat, simply deprive them of their rights. Such a deprivation exceeds this Commission’s authority and results in significant legal consequences.

II. FACTS

The subject subdivision consists of approximately 382 acres officially known as Tract 1804 and, unofficially, as the Leimert Tract. The property is the remaining part of larger holdings held, at one time, by the Walter H. Leimert Company (“Leimert”).

In 1969, Leimert entered into an agreement with the Cambria County Water District to supply water to its property, including that portion of which ultimately became Tract 1804. A copy of that agreement is attached as **Exhibit A**. In 1985, Leimert and the CCSD, the successor-in-interest to the Cambria County Water District, entered into a further agreement to provide water to the Leimert property, again including the future Tract 1804. A copy of that agreement is attached as **Exhibit B**.

In 1989, Leimert filed an application with the County of San Luis Obispo to subdivide the subject 382 acres into 18 single-family residential lots. The application was reviewed by this Commission which submitted several comments, including the necessity of locating building sites

to minimize impacts on the surrounding Monterey Pine Forest and approving a Monterey Pine Forest Mitigation Program. A copy of Assistant District Director Daniel Loomis' letter is attached as **Exhibit C**. Mr. Loomis' 1992 letter noted that at least part of Tract 1804 is located outside the Urban Services Line ("USL"). Because both the County's Land Use Ordinance and the North Coast Area Plan prohibited "new community water or sewer service" for properties outside the USL, the Commission questioned whether the application could be processed.

Subsequently, the County became concerned that the comment in Mr. Loomis' 1992 letter might mean that the subdivision map could not be processed without amending the USL to include Tract 1804. The issue was submitted to this Commission for a determination. On July 10, 1995, Mr. Loomis provided this Commission's position. A copy of the letter is attached as **Exhibit D**. In his 1995 letter, Mr. Loomis clarified that the comments in his 1992 letter were merely raising the issue and were not a determination that an amendment to the USL was necessary. In fact, Mr. Loomis went further and, in essence, said that the issue of water service to Tract 1804 had been settled before the Coastal Act:

It is our understanding now that the CCSD's water and sewer lines [serving Tract 1804] and boundary pre-date the LCP. Given this, we do not feel that the subdivision must be brought within the USL, especially since the proposed density outside the USL is appropriate and is consistent with the LCP.

In reliance on the determination made by Mr. Loomis, the County continued to process the subdivision application. Leimert also filed an application to request the interpretation of policies governing water service to Tract 1804. Copies of the application and the County's recommendation to approve the interpretation that Tract 1804 was within CCSD boundaries, based on the Assistant District Director Loomis' 1995 letter, are attached as **Exhibit E** and **Exhibit F** respectively.

An environmental impact report ("EIR") was prepared to analyze the potential environmental impacts and to consider mitigation measures for Tract 1804. A copy of the certified EIR is attached as **Exhibit G**. (The Monterey Pine Forest Mitigation and Mitigation Monitoring Program were included in the certified EIR.) The draft EIR was reviewed by Coastal Planner, Steven Guiney, who made several comments, including (i) the necessity of the open space areas requiring guarantees that such areas remain undeveloped; and (ii) the need to set building sites on each lot, including the Applicants' lots, in a manner that would eliminate the environmental impact of the development. Mr. Guiney reiterated that due to the pre-existing contract with the CCSD for water service, an amendment to the USL was not necessary for Tract 1804 to proceed. A copy of the comments, including the County's responses, are attached as **Exhibit H**. Mr. Guiney's comments were in line with the EIR's suggested modified lot lines and the location of the building envelopes, which Mr. Guiney referred to it as the "environmentally superior alternative."

On July 10, 1997, the County of San Luis Obispo, after full review by Commission Staff, certified the EIR and approved tentative Tract Map 1804. The subdivision map, as approved, authorized “a cluster division of a 380-acre site into 18 residential lots ranging in size from approximately 1.3 acres to 91 acres, and open space easements encompassing a minimum of 342 acres (90 percent) of the project site.” The conditions of approval for the Development Plan are attached as **Exhibit I**.

The development sites under the approved Tract Map were clustered near public roads to minimize intrusion on the surrounding environment, including the Monterey Pine Forest. The Tract Map approval also contained the condition that “operable water facilities [shall be] *immediately* available for connection to the parcels created.” The conditions of approval for Tract 1804 are attached as **Exhibit J**. Again, it is important to note that this Commission was involved in every step of the subdivision process, from the date the application for Tract 1804 was filed in 1989 until the final Tract Map was recorded in 2000.

After the approval of the tentative Tract Map, a dispute arose between Cambria West (Leimert) and the CCSD. The CCSD believed Tract 1804 should be listed as part of the CCSD’s water waiting list. Leimert argued it had priority to water connection based on its 1969 agreement. The dispute resulted in a lawsuit filed in the San Luis Obispo County Superior Court. A copy of the Petition for Peremptory Writ of Mandate is attached as **Exhibit K**. In 1999, the parties entered into an agreement settling the lawsuit. A copy of the settlement agreement is attached as **Exhibit L**. Under the settlement agreement, subject to certain terms and conditions, the CCSD agreed to provide water service to the lots created by Tract 1804. Among the conditions of the settlement were the requirements that (i) CCSD would issue a will-serve letter for all eighteen lots in Tract 1804; (ii) lot owners would institute and maintain stringent water conservation measures to minimize their water footprint; (iii) each lot would be connected and metered to the CCSD water system; (iv) upon installation, Leimert and successor lot owners would be billed immediately for water services; and (v) the CCSD would treat each lot owner the same as any other existing residential CCSD customer.

Given the settlement agreement, Cambria West was able to meet all conditions of approval to record the final Tract Map. On June 1, 2000, the CCSD issued a “will-serve” letter for Tract 1804, and the final Tract Map was recorded. A copy of the 2000 “will-serve” letter is attached as **Exhibit M**, a copy of the final Tract Map recorded on June 23, 2000 is attached as **Exhibit N**, and a copy of Tract 1804 Sheet C-6 is attached as **Exhibit O**.

All potential residential lots within Tract 1804, including the Bookout and Hadian properties, were connected to the CCSD water system with meters installed on or before April 16, 2001. A copy of the letter confirming installation is attached as **Exhibit P**.

From the date of connection and continuing through today, all lot owners within Tract 1804, have been paying the standard water usage charges in effect at the time, including actual water used, ordinary standby, and minimum monthly user charges. In short, since April 16, 2001, the owners of the Hadian and Bookout properties have been and continue to be existing customers of the CCSD and, as such, are entitled to the same rights and subject to the same burdens as all other existing CCSD customers. There is no legal or legitimate basis for differentiating among existing CCSD customers, regardless of whether their property is improved. Thus, it is important to note that approval of the subject applications will not open the door to a rush of building applications in Cambria. Rather, as described more fully below, Mr. Bookout and Mr. Hadian belong to a very small group of potential applicants who were existing customers of the CCSD at the time the Moratorium was adopted.

It is no secret that Cambria has water issues. The problem has been present for decades and continues to this day. During the late 1990s and into 2001, the CCSD, working with this Commission, grappled with the issue. In order to address the issue, the CCSD retained the respected engineering firm of Kennedy Jenks Consultants to determine Cambria's water supply capability. A copy of the Kennedy Jenks water report is attached as **Exhibit Q**.

Based on the findings and recommendations of the Kennedy Jenks water report, the CCSD, with the cooperation of this Commission, adopted a Moratorium on new water connections to the community water system for development. A copy of the Moratorium (CCSD Ordinance 2-2000) is attached as **Exhibit R**.

In adopting the Moratorium, the CCSD made it clear that certain properties were exempt from the Moratorium because they were already connected, metered, or otherwise committed. "Existing Commitments" is expressly defined in the Moratorium as:

*"Existing Commitments"- Service commitments made to District customers, including Active Service Commitments, **Non-Active Service Commitments**, and Parks/Landscaping/Irrigation Commitments, as established by Section 2.5-3. The Table of Existing Commitments in **Exhibit B** inventories Non-Active Service Commitments and Parks/Landscaping/Irrigation Commitments. (Bold added).²*

The Moratorium goes on to define "Non-Active Service Commitments" as:

*This category consists of parcels with what the District has determined have pre-existing (**grandfathered**) commitments for service, but which do not*

² Note the reference to "District customers" which demonstrates that, as of November 15, 2001, the owners of the Bookout and Hadian properties were **existing CCSD customers**.

have active service uses. Non-Active Service parcels are listed by current Assessor Parcel Number (“APN”), prior APN (if applicable), address, account number (if any) and status, including the type (single-family residential, multi-family residential, commercial, or affordable housing) and number of EDUs assigned. (Bold Added)

Most definitive for our purposes is that the entire Tract 1804, including the Bookout and Hadian properties, are individually and expressly identified as Non-Active Service Commitments/Grandfathered Meters on Exhibit B to the Moratorium. It simply cannot be denied that the Bookout and Hadian properties, as of November 15, 2001, and continuing through today, have been Existing Water Service Commitments and are exempt from the restrictions of the Moratorium.

It is also critical that, at the time it adopted the Moratorium, and based on the Kennedy Jenks water report, the CCSD individually reviewed each Existing Commitment and allocated a measurement labeled “EDU” (Equivalent Dwelling Unit) to project the anticipated use. Each of the eighteen lots in Tract 1804 was assigned one EDU for residential single-family water service. Based on those calculations, the CCSD found that the demands of the Existing Commitments amounted to approximately 202 EDUs and expressly found that it had a sufficient water supply to meet those Existing Commitments. In other words, upon adopting the Moratorium, the District established vested rights for Existing Commitments and committed a portion of the CCSD water supply to meeting those commitments. This Existing Commitment status was on an equivalent basis with the status of customers who were actively using water at the time the Moratorium was adopted. No distinction is drawn between active and inactive and, based on state and federal Constitutional principles protecting property rights, no distinction can be drawn. An Existing Commitment is an existing customer and, whether active or not, has equal rights to demand and utilize a portion of the CCSD water supply.

It is important to be very clear on another issue relating to the Moratorium and the properties that were expressly exempt from its restrictions. There is a subclass of Existing Commitments that are referenced as “pipeline projects.” The term is very apt because it literally describes projects that are at a certain point in the development pipeline. In brief, a “pipeline project” is one that has a “will-serve” letter from the CCSD and a project application pending with the County. “Pipeline projects” were not connected to the CCSD system at the time of the Moratorium, but they were exempted from the reach of the Moratorium out of a sense of “fairness” (and almost certainly to avoid potential litigation); however, a “pipeline project” was not a CCSD customer. In terms of vested rights and taking principals, a “pipeline project” has a lesser claim to water service than an existing paying customer actually connected to the CCSD water system with a paid for meter in place. The Bookout and Hadian properties were existing customers and **not** “pipeline projects.”

We focus on the definition of a “pipeline project” because, in the consideration of an earlier project application by Mr. Hadian and elsewhere, Commission Staff has shown a tendency to lump Existing Commitments and “pipeline projects” together, while proclaiming that no more “pipeline projects” exist. A copy of the 2019 Hadian Staff Report is attached as **Exhibit S**. Whether or not any “pipeline projects” remain has absolutely no bearing on the consideration of this matter. The Bookout and Hadian properties are pre-Moratorium existing customers and are not “pipeline projects.”

In 2007, the County was in the process of amending the North Coast Area Plan. This Commission considered a draft plan and provided comments and suggested changes. A copy of this Commission’s comments and recommended changes is attached as **Exhibit T**. Initially, we note that Commission Staff members Deputy Director Charles Lester, District Manager Steve Monowitz, and Analyst Jonathon Bishop recognized that certain properties and new development were exempted from the Moratorium. The memorandum showed a little confusion, at least in the discussion section, regarding “pipeline projects,” but what was clearly understood and discussed in some detail was the fact that, at the time of the Moratorium, the CCSD had determined that it had commitments to approximately 202 EDUs and that those commitments were a critical part of the consideration behind this Commission’s recommended amendment regarding Water Service in Cambria. Regardless of how they were labeled, this Commission’s 2007 LCP Amendment recommendations took into account the commitment of 202.31 EDUs.

The actual proposed amendment, which was adopted, follows the line of Commission Staff’s discussion.

1. ***Water Service in Cambria. Until such time as may be otherwise authorized through a coastal development permit approving a major public works water supply project for Cambria, new development not using CCSD connection or water service commitments existing as of November 15, 2001 (including those recognized as “pipeline projects” by the Coastal Commission on December 12, 2002 in coastal development permits A-3-SLO-02-050 and A-3-02-073), shall assure no adverse impacts to Santa Rosa and San Simeon Creeks. (Bold added).***³

This LCP Amendment, read in good faith and by its plain meaning, is entirely consistent with both Commission Staff’s discussion and the language, history, and intent of the Moratorium. The amendment, proposed with full knowledge of the 202.31 EDUs commitment, as evidenced by this Commission’s comments and recommendations, calls out two categories of “new development” that are **not** required to consider adverse impacts on Santa Rosa and San Simeon

³ A copy of the Staff Report (A-3-SLO-02-050) is attached as **Exhibit U**.

Creeks. The two categories are (i) “new development not using CCSD connection;” **or** (ii) “water service commitments existing as of November 15, 2001.” “Pipeline projects,” while mentioned, are clearly referenced as a subset of water service commitments and are irrelevant to the Bookout and Hadian properties. The Bookout and Hadian properties are indisputably “water service commitments existing as of November 15, 2001.” They are unequivocally exempt from the requirement to show no adverse impacts on Santa Rosa and San Simeon Creeks. That is because those impacts were already taken into account through the Kennedy Jenks water report and the Moratorium. There is absolutely no question that the Bookout and Hadian projects were both vested at the time the Moratorium was enacted and are exempt from the requirement of showing no adverse impact on Santa Rosa and San Simeon Creeks.

Despite having seemingly taken positions to the contrary, Commission Staff does seem to very grudgingly recognize that the Bookout and Hadian properties are “water commitments” under the 2007 LCP Amendment and are therefore exempt from the necessity of showing no adverse effect on the creeks. Nevertheless, Commission Staff now assumes a position that both violates and negates the 2007 LCP Amendment and the legally adopted Moratorium. That position being that, regardless of whether a property was exempt from the Moratorium and therefore exempt from considering impacts on Santa Rosa and San Simeon Creeks under the 2007 LCP Amendment, a coastal development permit cannot be granted unless the proposed project *independently* proves that there is sufficient water to support their already exempt development.

The absurdity of Commission Staff’s position is apparent when a single fact is considered. According to Commission Staff, the sole sources of water for the CCSD are Santa Rosa and San Simeon Creeks. Therefore, by requiring the Applicants to show an independent water source, Staff urges this Commission to turn the language of the 2007 LCP Amendment on its ear. Accepting the recommendation of Staff would require this Commission to act in direct contradiction to the 2007 LCP Amendment. Commission Staff is urging this Commission to not approve the Bookout and Hadian projects unless the projects can show that their water source, which is solely from the CCSD which, in turn, means solely from Santa Rosa and San Simeon Creeks, will not be adversely impacted. This is nonsensical and in direct contradiction to the Moratorium and the 2007 LCP Amendment.⁴

Further, in addition to being violative of the Moratorium and the 2007 LCP Amendment, the position urged by Commission Staff will result in a taking. In fact, it is a classic example of a taking. Mr. Bookout and Mr. Hadian are property owners whose properties have been connected

⁴ It is also puzzling how Commission Staff can claim there is no water availability directly on the heels of recommending approval of a 33-unit residential development that has many times the water demand of the proposed projects.

to the CCSD water system with an existing meter since 2001. They have been paying all required fees and charges since 2001. They each hold a “will-serve” letter from the CCSD reiterating the CCSD’s 2001 commitment that it has sufficient water to serve their properties. From the time they became customers of the CCSD in 2000, they have had the very same rights to water as other customers of the CCSD. In 2001, the CCSD adopted the Moratorium, but recognized the Bookout and Hadian properties as existing customers with one EDU commitment each. Based on the Kennedy Jenks water report, it was determined that, because of the vested rights held by existing customers, certain properties with a cumulative water demand of approximately 202 EDUs could safely be developed. Without this accommodation to the rights of existing customers, the Moratorium would have been legally invalid and a violation of the state and federal Constitutional rights of the existing customers.⁵ Moreover, in the 2007 LCP Amendment, this Commission again recognized the rights of the existing customers by excluding them from having to prove no adverse impact on the CCSD’s sole water sources. Finally, based on the Moratorium and following this Commission’s certification of the 2007 LCP Amendment, ten of the eighteen lots in Tract 1804 have been permitted and developed. This Commission was notified of each of those ten developments and, recognizing the rights held by those properties, no Commissioner appealed.

Now, suddenly, despite the vested rights of the Applicants as evidenced by the 1969 Agreement, the 1985 Agreement, the 1999 Settlement Agreement, the Moratorium, and the 2007 LCP Amendment, Commission Staff urges that Mr. Bookout and Mr. Hadian be denied all beneficial and economically feasible use of their properties. This is a taking.

Moreover, if this Commission is now imposing its own *de facto* interpretation of the Moratorium by halting all new development in Cambria, regardless of vested rights, this Commission is putting the legality of the CCSD Moratorium, in its entirety, at risk. If Mr. Bookout and Mr. Hadian are required to challenge a denial of their applications, one basis for that challenge will certainly be this Commission’s *de facto* application of the Moratorium, and it will be accompanied by a request that the Moratorium be stricken.

III. LEGAL POSITION

a) The subject properties are exempt from proving water availability under the CCSD Moratorium.

⁵ The CCSD even went a bit beyond what may have been necessary by including properties that were not yet connected to the CCSD water system but that had valid “will-serve” letters and a project application “in the pipeline” with the County. As noted above, these “pipeline projects” have lesser vested rights than those CCSD existing customers such as Bookout and Hadian.

It is very clear that the subject properties were exempt from the CCSD Moratorium. The Moratorium expressly called out certain properties for which the CCSD had existing water commitments, and which were exempt from the Moratorium. Both subject properties are listed as Existing Commitments in Exhibit B of the Moratorium and are assigned one EDU each. Based on a water study conducted by the respected firm of Kennedy Jenks, the CCSD concluded that there were approximately 202.31 EDUs available for development. Tract 1804, in which the subject properties are located, was included in the 202.31 EDU allocation and is therefore exempt from the Moratorium.

b) The subject properties are exempt from proving water availability under the 2007 LCP Amendment.

The 2007 LCP Amendment includes the following language which was inserted at the insistence of this Commission:

1. ***Water Service in Cambria.** Until such time as may be otherwise authorized through a coastal development permit approving a major public works water supply project for Cambria, new development not using CCSD connection **or water service commitments existing as of November 15, 2001** (including those recognized as “pipeline projects” by the Coastal Commission on December 12, 2002 in coastal development permits A-3-SLO-02-050 and A-3-02-073), shall assure no adverse impacts to Santa Rosa and San Simeon Creeks. (**Bold added**).*

The 2007 LCP Amendment is very clear. “Water service commitments existing as of November 15, 2001” are exempt from providing assurances of no adverse impacts on Santa Rosa and San Simeon Creeks. There is no other way to read this provision in good faith and any attempt to do otherwise is simply an *ad hoc* attempt to rewrite the LCP. Given that all eighteen lots were specifically listed as Existing Commitments in the CCSD Moratorium when it was enacted in 2001, any argument that “water service commitments” does not include all of Tract 1804 is irrational.

In fact, this Commission acknowledged that the CCSD anticipated approximately 202 EDU commitments for the exempt properties at the time the Moratorium was enacted, including Tract 1804 (**Exhibit T**). This knowledge shaped this Commission’s recommended amendment to Water Service in Cambria, which was adopted in the 2007 LCP Amendment.

c) The position taken by Commission Staff is inconsistent with the 2007 LCP Amendment.

Commission Staff's position is that, regardless of the express language of the 2007 LCP Amendment, every project in Cambria (with the single inexplicable exception of the recently approved affordable housing project) must prove that it has sufficient water before a coastal development permit will be recommended for approval.⁶ The fallacy of this approach is obvious when you consider that the **only** source of water in Cambria is from Santa Rosa and San Simeon Creeks. What Commission Staff is stating is that the Commission should arbitrarily ignore the express language of the legislative and Commission-approved 2007 LCP Amendment, which clearly exempts "water service commitments existing as of November 15, 2001," including all eighteen lots of the Leimert Tract, from considering impacts to Santa Rosa and San Simeon Creeks, and those exempt projects with vested water rights will not be approved unless they do exactly that; demonstrate no adverse impacts on Santa Rosa and San Simeon Creeks.

With all due respect to Commission Staff, this argument is self-contradictory and renders the 2007 LCP Amendment virtually meaningless. If Staff's position is accepted, it would render the LCP and, in fact, any local coastal plan in the state irrelevant. If this Commission can simply decide it is going to ignore the plain language of the approved land use planning documents, what use are they? In fact, though, this Commission has been inconsistent in its reading and enforcement of applicable provisions. In recent staff reports, including those for the Settimi (A-3-SLO-20-0047), Peoples' Self-Help Housing (A-3-SLO-19-0033), and 2019 Hadian (**Exhibit S**) appeals, Commission Staff stated that "NCAP Planning Area Standard 4(A)... is based on allowing water service to continue for existing pre-moratorium customers..." Copies of the Settimi and Peoples' Self-Help Staff Reports are attached as **Exhibit V** and **Exhibit W** respectively. The relevant portion of NCAP Planning Area Standard 4(A) is attached at **Exhibit X**. As discussed herein, the Hadian property is listed as an Existing Commitment in the 2001 Moratorium and is an existing pre-Moratorium CCSD customer. However, in 2019, this Commission denied Mr. Hadian's application claiming the CCSD did not have enough water to serve existing customers and it refused to recognize the Hadian property as an Existing Commitment. This decision is illogical. On the other hand, Commission Staff seems to change its interpretation of such policies to recommend project approval when it suits its interest. For example, Commission Staff recommended approval of the 33-unit People's Self-Help project. This Commission had no difficulty in both recognizing the property as an Existing Commitment and approving the project which would dramatically increase water use over that previously available on the site. These are just two examples of this Commission's arbitrary application of the Moratorium and the 2007 LCP Amendment.

⁶ The People's Self-Help Housing project is located on property that was an existing customer at the time of the Moratorium. However, it was allocated a single EDU—the same as the Bookout and Hadian properties.

Since both Applicants are existing pre-Moratorium customers, as expressly recognized by the CCSD in adopting the Moratorium and by this Commission in its recognition of the Existing Water Service Commitments in the 2007 LCP Amendment, both are entitled to water service. The Commission is legally required to follow the LCP which, by its express terms, requires a denial of the appeals.

d) “Pipeline projects” have no relevance to the consideration of the subject properties.

In the recent past, Commission Staff has engaged in a bit of sleight of hand by attempting to label Tract 1804 properties as “pipeline projects.” Based on that mischaracterization, this Commission goes on to make the unsupported claim that any “pipeline project” should have been developed long ago and, if they were not, they simply missed out.

Whether or not that odd position is valid, it has no bearing on this matter. “Pipeline projects” have a specific definition under the Moratorium and as recognized by this Commission. In short, “pipeline projects” were those *without an existing connection to the CCSD*, but which had both a “will-serve” letter and a project application pending before the County. The concept was that even though these projects *were not existing pre-Moratorium CCSD customers*, “fairness” required that they be allowed to complete their application process.

In legal terms, the CCSD was concerned that stopping these “pipeline projects” mid-track would invalidate the Moratorium and potentially subject the CCSD to liability. However, all Tract 1804 lots were expressly not considered “pipeline projects” because they were actually connected to the CCSD water system, paid substantial water connection and surcharge fees, were metered, and were billed monthly for water services. Thus, Tract 1804 properties were considered **existing pre-Moratorium customers** of the CCSD. Their rights **as existing pre-Moratorium customers** give the subject properties rights superior to any of those held by so-called “pipeline projects.”

e) This Commission lacks jurisdiction to allocate water rights and usage among existing customers of the CCSD.

One of the baseless arguments made by the appellants is that the CCSD lacks sufficient water to serve “existing customers,” so no new development should be approved.

There is no evidence that the CCSD lacks water to serve its existing customers. In fact, the evidence is to the contrary. In 2001, the CCSD determined that it had water capacity to serve its “existing customers,” which included all active and inactive metered water users, including undeveloped properties. The CCSD determined that it had enough water capacity to serve the

subject properties. In short, whether or not a meter was active, those properties that were connected to the CCSD system, had existing water meters, and were paying all applicable CCSD fees were included as “existing customers.” All “existing customers” have the same right to access the CCSD water supply system on an equal basis. This was expressly recognized in the Moratorium and the 2007 LCP Amendment when it was acknowledged that these properties were exempt from proving sufficient water availability.

There is no basis for picking and choosing which CCSD existing customers are entitled to water service. It is not within this Commission’s jurisdiction or authority to determine winners and loser in the water allocation process. If, in fact, there is ever a shortage of water such that the demands of all customers cannot be met, the CCSD, not this Commission, is the agency responsible for rationing or implementing conservation measures to stay within its allowed operating water extraction license. This Commission does not have the authority or the right to step in and determine that some customers have the right to unfettered use of the CCSD water while others do not.

By illegally attempting to insert itself as the “water master” of the CCSD and allocate uses between existing customers, this Commission oversteps its bounds in a manner that suggests its real concern is not water availability but, rather, establishing this Commission has almost complete land use control within Cambria to decide which projects can go forward (if favored by this Commission) and which projects cannot (seemingly any single-family residence). This Commission has no legislative authority or jurisdiction to do so. Its job is not to conjure up a basis to simply stop any residential growth within the Coastal Zone, yet that is exactly what it is doing here.

f) The CCSD, the agency responsible for the management of water resources, has determined that there is adequate water to meet the needs of existing customers.

At the County hearing for the subject properties, CCSD staff testified that the CCSD has sufficient water resources to satisfy the requirements of all existing customers, including the Bookout and Hadian properties. The CCSD is the governmental agency that controls, manages, and allocates water resources for Cambria. The CCSD is the agency that made the determination in 2001 that its Existing Commitments would require approximately 202.31 EDUs based on the Kennedy Jenks water report. That determination was recognized by, and in fact adopted by, this Commission.

Moreover, while the appellants contend, without any support, that water conditions have worsened over the years, the fact is that due to water conservation programs throughout the CCSD, the water situation is now superior to the conditions at the time of the Moratorium’s enactment. In

fact, the CCSD's 2020 Urban Water Management Plan ("UWMP"),⁷ attached hereto as **Exhibit Y**, concluded that the CCSD will be able to meet all current service water demands and serve the "Existing Water Commitments" recognized in the Moratorium. To be entirely clear, the UWMP finds that, as matters stand today, the CCSD has sufficient water to service its customers, including the Existing Commitments such as the Leimert Tract.

Additionally, the UWMP finds that the CCSD will be able to provide water services for a population growth of one percent (1%) per year for the next twenty-five (25) years, excluding Existing Commitments such as the subject properties, if it increases the operational hours of the Water Reclamation Facility ("WRF").⁸ This projection was based on (i) the CCSD's strict adherence to limiting groundwater diversion from the San Simeon and Santa Rosa aquifers; (ii) supplementing water demand with the WRF which is currently only permitted to operate under emergency conditions; and (iii) the CCSD continuing to promote water conservation strategies. The UWMP also concluded that water shortages would be avoidable over the next twenty-five (25) years under the three categories it assesses (normal, single-dry, and five consecutive dry years) if the CCSD uses the supplemental supplies provided by the WRF.

Commission Staff argues that the CCSD overdrafts water from the Santa Rosa and San Simeon Creeks. However, the UWMP references California's Ground Water Bulletin 118 which indicates that these creeks are currently not over drafted. A copy of Bulletin 118 is attached as **Exhibit Z**.

Based on the UWMP and CCSD's testimony, there is sufficient water to service the Hadian and Bookout properties, both of which are Existing Commitments. In addition to the sufficient water and their required participation in the CCSD's water conservation program, both Applicants will repurpose roof rainwater to use for irrigation purposes, rather than use water provided by the CCSD, further decreasing their potential usage.

g) This Commission's blanket prohibition on new development by existing CCSD customers would be a *de facto* moratorium in violation of State law.

⁷ The UWMP was prepared by Water Systems Consulting, Inc. and was prepared in compliance with the California Water Code, as well as guidance provided by the California Department of Water Resources.

⁸ The WRF was built in 2014 to supplement the CCSD's water supply during drought conditions and to meet the State recycled potable water reuse requirements. The WRF is able to provide over 250 acre feet per year of water when it operates continuously over a six-month dry season. Currently, it can only operate during proclaimed emergency conditions.

Enacting a water moratorium under State law requires adoption by a legislative body. No adoption has occurred here, and this Commission, which is not a legislative body, is overextending its authority by placing a blanket prohibition on CCSD existing customers. At a minimum, this Commission has not even followed the process for enacting a temporary development moratorium, which requires a four-fifths vote of a legislative body following a notice and public hearing. (Gov't Code §65858(a).) No hearing has occurred, nor has notice been provided. This Commission has simply taken the position that all development in Cambria must be halted, regardless of the applicant's vested rights, unless this Commission deems the project is politically and socially acceptable.

Additionally, this Commission has not made any findings that a *de facto* moratorium is necessary to protect the public health, safety, or welfare. In fact, this Commission would not be able to make these findings. As concluded in the UWMP, there is sufficient water to serve all Existing Commitments, including the Bookout and Hadian properties.

Finally, the Commission does not even have the authority to enact a moratorium, regardless of whether it follows the statutory procedure. The *de facto* moratorium is improper, violates California law, and will result in a taking of all currently undeveloped properties on the Existing Commitments List.

h) The subject properties have vested rights dating back to 1969.

In 1969, the Cambria County Water District ("District"), predecessor of the CCSD, and Leimert, entered into an agreement whereby the District was to provide water services to certain real property, which included the future Tract 1804 (**Exhibit A**). The agreement recognized that the property would be developed. The District was to provide a notice of intention to serve and install water pipelines to the property with adequate capacity to serve the entire property once it was developed. This agreement was to be "binding upon and inure to the benefit of the successors in interest or assigns of the parties hereto." As a result, as part of Tract 1804, the subject properties have had vested rights in water services since 1969, predating the Coastal Act.

These vested rights were reaffirmed in 1985, when Leimert and the CCSD entered into a second agreement pertaining to water rights (**Exhibit B**). This agreement once again provided that the CCSD would provide water services to Leimert's property, including the future Tract 1804. This Commission was involved throughout Tract 1804's application process, from the time the application was filed in 1989 until Tract 1804 was approved. Specifically, this Commission commented on the location of the development being located outside of the USL and whether Tract 1804 had to be brought within its boundaries. However, in 1995, this Commission determined that the CCSD's water lines servicing Tract 1804 predated the LCP and, thus, the development did not need to be brought within the USL to be serviced by the CCSD (**Exhibit D**). Consequently, this

Commission acknowledged Tract 1804's vested rights and, as an extension, the subject properties' vested rights.

Following the approval of Tract 1804, a dispute between Cambria West, Leimert's successor-in-interest, and the CCSD arose pertaining to the parties' obligations relating to water service. A lawsuit was filed and, in 1999, the parties came to a settlement agreement (**Exhibit L**). Once again, the CCSD agreed to provide water services to the lots within Tract 1804. The CCSD agreed to issue "will-serve" letters to all eighteen lots and connect each lot to the CCSD water system, provided that the lot owners instituted water conservation measures. The CCSD continues to be contractually obligated to provide water services to all eighteen lots within Tract 1804 and to treat each lot the same as any other CCSD customer. A copy of an email from Melissa Bland of the CCSD confirming this obligation is attached as **Exhibit AA**. In 2001, the CCSD provided confirmation that water systems had been installed and all eighteen lots within Tract 1804 were being supplied with potable water by the CCSD (**Exhibit P**).

Commission Staff now claims that the settlement agreement is irrelevant because this Commission is not a party. However, this Commission is blatantly violating the vested rights of the subject properties by ignoring this binding agreement, as well as the other two binding agreements concerning Tract 1804 dating back to 1969. Further, over the years, this Commission has endorsed such rights consistently, while commenting on Tract 1804 and certifying the 2007 LCP Amendment. Ten out of eighteen lots located within Tract 1804 have been developed to date, with no interference from this Commission. It is astonishing that this Commission now claims the remaining eight properties, including the subject properties, have no water rights, despite the multiple binding agreements dating back to 1969, the express Moratorium exemption, and its recognition of the water rights of the ten Leimert properties that have been developed.

i) The proposed projects will have a beneficial impact on the Monterey Pine Forest.

The Commission Staff Reports allege that Mr. Hadian's and Mr. Bookout's proposed projects should be denied because they are located within native Monterey Pine Forest which is mapped and designated as Environmentally Sensitive Habitat Area ("ESHA"). The Staff Reports argue that the LCP prohibits non-resource-dependent development in ESHA, and even if resource-dependent development is allowed, it may not lead to significant disruptions in the habitat. Commission Staff claims that the subject projects would result in the removal of approximately 50 to 70 pine trees each, constituting a significant disturbance.

What this Commission fails to acknowledge is its comments on Tract 1804's draft EIR, the fact that the Final EIR took the Monterey Pine Forest into account when choosing the building locations (with this Commission's concurrence), and the County's conditions of approvals for the projects which require certain mitigation measures (**Exhibit H**).

The County acknowledged the proposed projects would result in disturbances to the Monterey Pine Forest when it approved the projects. However, the County found that the projects were consistent with ESHA and LCP policies because the impact to the Monterey Pine Forest would be mitigated through the Monterey Pine Forest Mitigation Program (“Mitigation Program”). A copy of the County Staff Report is attached as **Exhibit BB**. The Mitigation Program, which was included in Tract 1804’s Final EIR, includes steps to **mitigate any impact on the forest to less than significant**. These steps include identifying Monterey pine saplings with diameters of two inches or smaller and relocating the saplings, replacing all removed pine trees with diameters of six inches or greater with in-kind specimens at a four to one (4:1) ratio, and monitoring the health and maintenance of the relocated and newly planted trees annually for a minimum of three years. The County’s Conditions of Approval are consistent with the Mitigation Program, aside from the County’s minimum maintenance period being five years instead of three. A copy of the County’s Conditions of Approval is attached as **Exhibit CC**. In fact, the Conditions of Approval are consistent with this Commission’s comments on the draft EIR, which requested that this Mitigation Program be implemented in connection with Tract 1804.

Mr. Hadian and Mr. Bookout will be building on the locations that were established in the Final EIR and selected with the concurrence of this Commission. They will largely be removing trees that are damaged. Each Applicant will plant new pine trees at a 4:1 ratio, significantly increasing the number of Monterey Pine trees in the area. In fact, there will be testimony at the March 11, 2022 hearing discussing the beneficial impact the projects will ultimately have on the Monterey Pine Forest which have been significantly damaged by pitch canker pine tree disease. The projects, with the required mitigation measures in line with the approved Mitigation Program, will both result in a dramatic reforestation of the area and repair damage to the forest caused by pitch canker disease. Building on the subject properties will have a minimal impact on the forest, as the building sites were specifically chosen to reduce any impact and any minimal impacts will be mitigated, as was recommended by this Commission and approved in the Final EIR. The end result will be beneficial to the Monterey Pine population through a combination of removing diseased trees and replanting new trees to replace any tree removed, whether dead or alive. The projects are consistent with the local coastal plan policies and should be approved.

j) The Tract 1804 is a legal subdivision, and this Commission knew of its existence, despite its claim that it is illegal because they did not approve it.

Commission Staff attempts to argue that Tract 1804 is not a legal subdivision because it was not approved by this Commission and never received Coastal Development Permit (“CDP”) authorization. The Staff Reports assert that the subdivision was merely approved by the County without the knowledge of this Commission.

The tentative Tract 1804 Map was approved by the County in 1997 and the final Tract Map was approved and recorded in 2000. Such recording determined the legal validity of the map and, thus, the subdivision. (Gov't Code § 66468.) Moreover, based on the recording of the final Tract Map, all of the Leimert lots have been individually sold and most have been developed. This Commission was clearly aware that this subdivision was in the works as is evidenced by its letters commenting on the subdivision application, including Mr. Loomis' 1992 letter (**Exhibit C**), Mr. Loomis' 1995 letter (**Exhibit D**), and the Commission's 1997 comments regarding the Tract 1804 Draft EIR (**Exhibit H**). The County properly processed the application with the assistance of this Commission. To now imply that this Commission had no knowledge or involvement with Tract 1804's application is utterly disingenuous. Tract 1804 consists of eighteen lots, each of which have meters installed and whose owners are being billed, and have been since 2001, for potable water and fire protection services (see **Exhibit P**). Ten out of those eighteen lots have been developed with no issues. In fact, most of those lots were permitted directly following the 2007 LCP Amendment, with the most recent lot being permitted in 2018. To now allege that the recorded subdivision is illegal, along with all the lots that have been developed, is simply inaccurate.

Commission Staff's position brings to mind the scene from the classic movie Casablanca when, during a raid on Rick's, Inspector Renault says that he is "shocked, shocked to find gambling is going on in here." Seconds later the croupier hands him money, saying, "Your winnings, sir." Renault's disingenuous utterance is akin to this Commission suddenly claiming that it was unaware that Tract 1804 exists. Neither has any basis for surprise.

k) Upholding the Appeals will result in a taking.

Commission Staff presents its usual takings analysis finding that upholding the appeals will not result in a taking. Commission Staff is wrong.

As existing customers, both properties have vested rights to water services from the CCSD on par with all other CCSD customers. It is irrelevant whether the properties are developed or not. Since at least 1999 (and we would argue 1969), Tract 1804 has had the right to water service from the County and later its successor, the CCSD. Without any legitimate justification or rationalization, this Commission would be denying the Applicants' the ability to exercise their rights as CCSD existing pre-Moratorium customers and develop their properties just as the ten other lot owners within Tract 1804 have developed their properties and received the benefit of those owners' investment backed expectations.

Such a denial will leave the Applicants with no economically viable use of their properties. Having purchased those properties legitimately relying on the Moratorium and the 2007 LCP Amendment which guaranteed the properties were exempt from the Moratorium's restrictions, Mr.

Bookout and Mr. Hadian will be unable to do anything with their properties other than pay water fees, pay property taxes and assessments, and watch as pitch canker pine tree disease continues to destroy the Monterey Pine Forest on their respective properties.

It is also clear that, if it follows Staff recommendation, this Commission's action would be motivated not by the merits of the matter, but out of their displeasure with the CCSD over matters unrelated to the Applicants' properties. At one point, we asked a Commission Staff member why this Commission was now taking such an irresponsible position with respect to the Leimert Tract after ten lots had already been developed. The answer we received was that this Commission's position change was concurrent with the commencement of the ongoing dispute with the CCSD over the WRF. Whatever grievance the Commission may have with the CCSD, there is no justification for it to penalize the property owners within the CCSD boundaries.

Upholding the appeals based on Commission Staff's recommendation would deny Mr. Bookout and Mr. Hadian of their Constitutional rights to protection of their properties for the sole purpose of proving an unrelated point with the CCSD.

IV. CONCLUSION

Upholding the appeal is illegal, would deprive the Applicants of their vested rights, and subject the Commission to a meritorious takings claim. The appeal should be denied.

Very truly yours,

ADAMSKI MOROSKI MADDEN
CUMBERLAND & GREEN LLP



THOMAS D. GREEN

Cc: Al Hadian (via email only)
Ralph Bookout (via email only)
Maggie Boneso, Esq. (via email only)

EXHIBITS

<https://ammcglaw.sharefile.com/d-s93b0dc61e969446bbc766973e1256b51>

- A. 1969 Agreement
- B. 1985 Agreement
- C. June 17, 1992 comment letter
- D. July 10, 1995 comment letter
- E. Leimert Application re USL Boundary
- F. Resolution- Tract 1804 in CCSD Boundaries
- G. Final Tract 1804 EIR
- H. 1997 Commission Draft EIR Comments
- I. Development Plan D910279D Conditions of Approval
- J. Tract 1804 Conditions of Approval
- K. Petition for Peremptory Writ of Mandate
- L. 1999 Settlement Agreement
- M. CCSD June 1, 2000 Will Serve Letter
- N. Final Tract 1804 Map
- O. Tract 1804 Sheet C-6
- P. April 16, 2001 CCSD Installation Confirmation
- Q. Kennedy Jenks Water Report
- R. Moratorium Ordinance No. 2-2000
- S. 2019 Hadian Staff Report
- T. Commission Comments re 2007 LCP Amendment
- U. Monaco Staff Report
- V. Settimi Staff Report
- W. People's Self-Help Housing Staff Report
- X. NCAP Planning Area Standard 4(A)
- Y. UWMP 2020 Report
- Z. Bulletin 118
- AA. Confirmation of CCSD Obligation Email
- BB. County Staff Report
- CC. County Conditions of Approval

CAMBRIA COMMUNITY SERVICES DISTRICT

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Dear Coastal Commissioners:

In view of the recent collaboration between Coastal staff and the Cambria Community Services District (CCSD), CCSD staff requests clarification on the claims embedded in the California Coastal Commission's ("Commission") staff reports for appeal numbers A-3-SLO-21-0065 and A-3-SLO-21-0066. The District has aggressively pursued a comprehensive understanding of its local environmental ecosystem, and, within the last couple of years, the District has demonstrated actions to show increased responsibility in its local environmental stewardship.

Diversion rights

The CCSD objects to claims that it is in violation of its Commission CDPs and/or the licenses issued by the Division of Water Rights ("DWR"). CCSD has taken stewardship of the watershed very seriously and has completed dozens of special status species studies over the last few decades to monitor the health and abundance of creek wildlife and habitat. After communication and coordination with Coastal staff since early 2020, the CCSD is presently progressing through an Instream Flow Study of the Lower San Simeon Creek basin to address the North Coast Area Plan's requirement for an instream flow management study. This study is intended to identify a sustainable amount of withdrawals for new development without causing adverse impacts to riparian and wetland habitat or agricultural activities. As the Commission is aware, the CCSD was issued licenses for its San Simeon and Santa Rosa Creek underflow diversions in 2019. Prior to the issuance of those licenses, CCSD staff spent approximately six months responding to requests from the DWR to document compliance with each and every term and condition stated within both diversion permits, including the requirement to maintain fish and wildlife habitat and riparian vegetation. The DWR was wholly satisfied with the evidence of CCSD's past compliance and ability to continue to achieve compliance under the new licenses. Nevertheless, Commission staff continues to assert, without supporting evidence, that CCSD withdrawals are negatively impacting creek environs.

Water Reclamation Facility permitting

CCSD continues to make diligent progress towards a robust water resources portfolio that will provide adequate water supplies to meet current and future demands. Due to the unique and protected environment in which we are situated, this process has been long and arduous. Furthermore, the regulatory landscape under which we operate, water consumption habits of those we serve, and uncontrollable climate-induced impacts continue to throw curve balls that necessitate amendments to planning efforts, budgets, and workload. Through it all, the CCSD remains committed to securing a sustainable water supply that is both environmentally- and financially sound.

Existing Commitments

CCSD has contractual obligations to serve the Tract 1804 commitments and has been able to support the development of ten out of eighteen Tract 1804 services while also maintaining a steady downward trend in per capita consumption. Indeed, since 1990, the average water use in Cambria has declined from 0.21 acre-feet per connection to 0.13 acre-feet per connection in 2020.

Water Conservation Program Improvements

Like most of California, the CCSD is sometimes compelled to ask its customers to conserve more water to weather extreme droughts. Cambria has shown time and time again that it is able to conserve despite already being one of the most water-efficient communities in San Luis Obispo County. Demand management remains one of the core mechanisms the CCSD relies upon to respond to water shortages. Future permitting of the Water Reclamation Facility should alleviate the strain placed on consumers in times of drought, but the CCSD intends to continue its demand management practices to ensure the most efficient use of its finite water supply possible.

As the Commission's staff reports state, CCSD is currently exploring opportunities to improve its demand offset program to continue to support the remaining existing commitments which the CCSD is obligated to serve. This program is intended to ensure that new development achieves a verifiable net-zero impact on groundwater through the implementation of water-saving retrofits in the community that are permanent, well-documented, and traceable. The revised offset program will continue to require a 2:1 water savings ratio; this provides a buffer for any uncertainty in water demand and savings assumptions. The program will include provisions to monitor and enforce the offset requirement. CCSD staff believes participation in this proposed program would be a reasonable constraint upon the project applicants who are subject to the aforementioned appeals; however, the program is under review and will require CCSD Board consideration and approval.


Fulfilling Obligations to Existing Customers

The CCSD is well aware of the vulnerabilities of its system and operates its utilities with careful consideration and in full compliance with its permits and licenses. Although the moratorium on new connections remains in place, the CCSD continues to be ready and able to fulfill its obligations to its existing customers and remains committed to completing the permitting of the Water Reclamation Facility to better protect its water supply in times of shortage. The CCSD believes that allowing the development of the very limited number of existing commitments that remain does not pose a threat to the long-term security of its water supply.

Conclusion

In view of the current collaboration between the Commission and CCSD staff, the CCSD requests denial of the appeal for the proposed single-family residences of existing customers Hadian and Bookout. These residences do not constitute "growth," but are existing customers with existing meters. The CCSD is ready and able to provide water service to its existing service area and these two residential homes will not impact its current demand. The CCSD values this continued partnership with the Coastal Commission and appreciates your consideration of this request.

Sincerely,

DocuSigned by:

E86B086C46AD495...

John F. Weigold, IV, CCSD General Manager

CC:

Donn Howell, President CCSD Board

Karen Dean, Vice President CCSD Board

Ray Dienzo, CCSD Utilities Manager/District Engineer

Tim Carmel, CCSD Legal Counsel

I visited Mr. Bookout and Mr. Hadian's properties on Cambria Pines Road in Cambria to see how things were going. I first stopped by Mr. Bookout's property. He showed me his and his neighbor's water meters that were both installed long before the moratorium. Mr. Bookout's neighbor has already built his house and is enjoying living in it, but at the age of 82, Mr. Bookout is still waiting and wondering if his dream will ever come true.

I next stopped by Mr. Hadian's properties where he showed me his two water meters. He had a copy of the CCSD water meter completion notice dated April 16, 2001, which indicates that he has been billed for water services ever since that date. It is further an indication that he is the CCSD pre-moratorium customer.

I then saw Mr. Hadian use his running water to help with his forest revitalization plan. This area of forest has been so devastated by the Pitch Canker Pine tree disease. It is in desperate and immediate needs for care and attention before it is turning into a complete grass field.

At Hadian-2019 Coastal hearing, the Commission Deputy Director **Mr. Dan Carl** testified that Mr. Hadian never had a connected water meter despite all the proven facts and the CCSD confirmation that Mr. Hadian has an existing active water meter that is more than two decades old.

The following is Mr. Dan Carl's exact testimony:

"Trying to hone in on a couple of things that I think are the key things. Mr. Hadian is alleging that he has a water connection, an existing active water service -- What he's referring to is there was a coastal permit in the late '90s that authorized this subdivision, a county coastal permit, and the CCSD installed infrastructure related to that, including for emergency purposes, fire safety, that sort of thing."

The commission also indicated that only "pipeline projects"; those that had a will-serve letter from the CCSD and a pending permit application at the county before moratorium are considered the only CCSD pre moratorium commitments that are exempt from moratorium. (Not a true statement). The Commission then alleged that there are no more pipeline project (pre-moratorium commitment) which exist today (there may not be any more pipeline projects but there are a few more pre-moratorium customers left in Cambria). The Commission concluded that since Mr. Hadian's development does not fall under the definition of the "Pipeline Project," therefore his CDP for development shall be denied for not conforming to the certified 2007 LCP amendment. (Clearly, Mr. Carl is prohibiting a water service ratepayer and customer the benefit of using his water that he pays for every month and for the past two decades, in violation of the LCP).

On the contrary to Mr. Carl's testimony, the LCP actually says: new development not using CCSD connection or water service commitments existing as of November 15, 2001 -- pay attention here -- **INCLUDING** those recognized as pipeline projects, shall assure no adverse impacts to Santa Rosa and San Simeon Creeks.

Clearly the LCP is not structured to limit the exemptions to just pipeline projects, but to include pipeline projects as **PART** of the overall exemptions. Here's how the Coastal staff misread the

LCP:

Mr. Brian O'Neill at (Hadian-2019 hearing presented): "The 2001 moratorium, and the subsequent LCP policies based on that moratorium that were certified in 2007, only allow new water service to a handful of proposed development projects that were pending before the county at the time of the 2001 moratorium, known as "pipeline projects." He clearly misses the point that Hadian already has a pre-moratorium water connection and exempt from moratorium. The 2007 LCP amendment is not about the county permit, it is about water connection and the CCSD pre-moratorium commitments (those projects that the CCSD had a commitment to before moratorium like Mr. Hadian's).

Commissioner Rice then asked a question: "So, the only projects or new development that was allowed to go through, and this was post-2007, were those projects that were deemed pending before the county at the time the moratorium was put in place which was 2001?"

Mr. Dan Carl replied: "That's correct and that was the 2007 LCP amendment that structured it that way."

Commissioner Rice continued: "Therefore, in strict interpretation of both the LCP and the moratorium would say that the CSD should not have actually given it a new water hookup."

Mr. Dan Carl confirmed: "That is our assessment."

There are several problems with **Mr. Dan Carl's** testimony and responses here. First, he alleged (incorrectly) that the 2007 LCP amendment only exempts pipeline projects. The 2007 LCP amendment as shown above exempts all the CCSD pre-moratorium customers (Commitments) from moratorium, as did the CCSD. The CCSD has, in a number of occasions in writing and in official testimonies, certified that Mr. Hadian is a CCSD ratepayer/customer and has been since April 16, 2001, and therefore the CCSD is legally required to treat its customer the same way as any other customer in Cambria. Second, **Mr. Carl** agrees with Commissioner Rice's assumption that the CCSD has just recently installed Mr. Hadian's water hook-up. This response again alludes to another disturbing fact that **Mr. Dan Carl** contradicted his earlier statement in his own testimony: that Mr. Hadian did not have any kind of water meter connection.

The CCSD water service to Tract-1804, where both these properties are located, dates back to 1969, pre-dating the Coastal Act of 1976. The actual water meter connections for both Mr. Bookout and Mr. Hadian projects were completed in April 16, 2001, pre-dating the November 15, 2001 moratorium. Both Mr. Bookout and Mr. Hadian started paying their CCSD water service monthly fee on April 16, 2001 and continue to pay to date just like any other CCSD customer in Cambria. Mr. Bookout and Mr. Hadian are both the CCSD's pre-moratorium customers and are exempt from moratorium by both the CCSD Ordinance 2-2000 and the certified 2007 LCP amendment.

Clearly, the Hadian-2019 CDP denial was unjust. The Hadian-2019 project should have never been appealed to begin with, should the commission have taken the time to understand and

analyze these grandfathered meter projects more carefully and not just assume that every project in Cambia is the same and should all be denied. Exceptions, however rare, do exist and any citizen's constitutional rights shall not be violated so carelessly by making wrong and careless assumptions.

To rub salt in the wound, the commission makes it clear that the Hadian-2019 CDP denial has made a precedent to treat all similar future projects the same, rendering them the same outcome. This is absolutely nonsensical and has no chance to pass the test of equal justice for all.

I sincerely hope the commissioners approve the CDP of these two projects (Bookout and Hadian) and send a strong message that integrity is always the strong part of the Coastal Commission Mission.

This is the Certified 2007 LCP Amendment, also called the Planning Area Standard 4-A. It clearly states that the CCSD water service commitments existing as of November 15, 2001 are exempt from moratorium and are allowed to proceed with new development.

Certified 2007 LCP Amendment (Planning Area Standard 4-A)
<p>Until such time as may be otherwise authorized through a coastal development permit approving a major public works water supply project in Cambria, new developments not using CCSD connection or water service commitments existing as of November 15, 2001 (including those recognized as “pipeline projects” by the coastal Commission on December 12, 2002 in Coastal development permits A-3-SLO-05-050 and A-3-02073) shall assure no adverse impacts to Santa Rosa and San Simeon Creeks.</p>

Please pay particular attention to the word (**Including**), meaning pipeline projects are included as part of the greater CCSD exemptions but they are by no means the only exemptions.

Furthermore, the Coastal Commission has published the complete list of the 124 CCSD commitment projects that are exempt from moratorium in their staff report (Monaco-2002) as follows:

Coastal Commission A-3-SLO-02-050 (Monaco SFD) stfrpt 7-18-02 doc (Page-9)
<p>As mentioned, the CCSD declared a water emergency on November 15, 2001. At the time the moratorium was declared, there were 124 outstanding commitment letters remaining, including 14 with active service meters, 20 with connection permits, 25 grandfathered meters², and 65 previously issued intend-to-serve letters. These outstanding commitments include both residential and commercial development totaling 202.31 “Equivalent Dwelling Units” (EDU’s”).</p> <p>-----</p> <p>---</p> <p>² Grandfathered meters are defined as those commitments established prior to development of the 1991 CCSD waiting list, those meters with an existing service commitment, or those projects with water meters already in place at the time of the moratorium.</p>

Please note; Hadian and Bookout are **2 of the 25** Grandfathered meters project that are mentioned above by the Commission. They both have water meters in place since long before the moratorium was enacted and they are both the CCSD pre-moratorium customers.

The Commission has always very strongly supported the intent of the LCP since its inception that:

Commission staff reports, interpretation of Planning Area Standard 4-A (2007 LCP amendment) (Hadian-2019 page-13), (Settimi-2020 page-15), (33 units affordable housing complex-2020 page-16)
The Planning Area Standard 4-A is based on allowing water service to continue for existing Pre-

Moratorium customers, but not to create new customers through a type of “meter market exchange.”

The Commission if decides to continue with its long standing position since 2007 will clearly support both Hadian and Bookout projects that are in compliance with the LCP (as the CCSD pre-moratorium customers or ratepayers) and allowed, per the LCP, to develop their properties. In fact, the Coastal Commission has published this interpretation intent of the LCP time and again including on page-13 of the Hadian-2019 staff report. The Commission staff repeats the same LCP intent on page-16 of the staff report prepared for the 33 units housing complex project in May 2020. The same is repeated on page-15 of the staff report prepared for Settimi project in September 18, 2020.

Both Hadian and Bookout are CCSD pre-moratorium ratepayer customers. They have been billed and they continue to pay their water bill that began long before the November 2001 moratorium. Their water rights dated back to 1969. They both have pre-Coastal Act water right in Cambria and technically not bonded by the LCP. They are both holder of pre-coastal act water rights in Cambria.

The pre-Coastal Act water rights of these two applicants is the reason that the Commission, in a number of occasions in 1999 and again in 2007, (by certifying the 2007 LCP amendment) is making sure to continue to honor the exemption status of these properties from the LCP and the moratorium.

Hadian-2019 CDP was denied due to the Commission’s staff misreading of the LCP and based on a misrepresentation of the Hadian project’s existing water meter, which has cost Mr. Hadian 3 years delay in his development (costing him millions due to the delay) and several hundreds of thousands of dollars of other expenses to get back to this point again. The Coastal Commission however, is making a precedent of the unjust Hadian-2019 CDP denial and is recommending the same outcome for similar projects including Hadian-2021.

I hope the Commissioners will approve these projects’ CDPs. They are the CCSD pre-moratorium water customers and are in full conformance with not only the LCP but also with the CCSD 2001 moratorium.

Tract-1804 comprises of 18 lots. It is a subdivision that has 53 years of water service seniority, pre-dating the Coastal Act.

This 380-acre property and its CCSD water rights of 1969 were divided into 18 lots in the late 1990s. The Hadian and Bookout properties are 2 of these 18 lots.

An extensive Environmental Impact Report (EIR) was initiated and every affected agency was invited to review and make comments. The final EIR was recorded with every agencies approval including the followings agencies to name a few:

The California Coastal Commission
The SLO County, multiple departments
Cambria Forest Advisory
The California Native Plant Society
California Regional water quality control board
Greenspace, the Cambria Land Trust
Department of Fish and Games
State of California Governors' office of Planning and Research
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As a condition of the subdivision permit-approval, 342 acres of this property was dedicated and deeded as open-space easement with a guarantee **(as requested by the Coastal Commission)** that this open space will never be developed.

The CCSD 2001 moratorium and the 2007 LCP amendment exempt these 18 lots from moratorium as they are the CCSD's pre-moratorium customers.

10 of these 18 lots were permitted and built right after the 2007 LCP amendment went into effect, the last one was in 2018, without any objection from the Commission because the entire 18 lots in this subdivision is exempt from moratorium in accordance with the certified 2007 LCP amendment and the CCSD moratorium exemptions.

These two lots have pre-designated building sites located in cluster with other houses and near the public road. This pre designated building site was specifically chosen to limit any impact to the forest. In fact, the Coastal Commission in its review comments of the project stated that "the project proponent has done a good job of eliminating the visual impact of lots 1 through 5 (Hadian is lot-2, Bookout is lot-5) by reconfiguring them and relocating the building envelopes from what was originally proposed" (Coastal Planner Steve Guiney January 28, 1997). Mr. Guiney continues to state that "In general, we concur with the modified lot line/building envelop alternatives as:

the environmentally superior alternative."

More the 30 acres of approximately 32 acres property of both Mr. Hadian and Mr. Bookout is recorded as deeded open space with guarantee it will never be developed.

The recent satellite view of the Hadian's lot shows the pre-designated building site as being totally bald and devastated by the Pine Tree Pitch Canker disease.

To remedy this dire situation, both Mr. Hadian and Mr. Bookout started the "forest revival project" at their properties. They are growing native Monterey pine seedlings and planting the small trees in the areas of the forest where the Pitch Canker disease has caused the most damage. They are currently using their potable water for this good cause, but they hope to switch to their harvested roof rainwater entirely soon and once their project roofs are ready.

The development of these two projects is good for the neighborhood, good for the environment and good for protecting our coastal resources and we encourage commissioners to approve their CDP.

The infamous Pitch Canker disease of Native Monterey Pine Trees has devastated this forest. The fallen dead and diseased trees are dominating the entire landscape of this forest, ruining its natural beauty.

While it's true that Mr. Hadian and Mr. Bookout are using their potable water for irrigation purposes, it is for a very good cause, to help to revive the forest. Mr. Hadian and Mr. Bookout have a plan to harvest their building roof rainwater, and use that for irrigation in lieu of potable water. This ultimately leads to a win-win situation both protecting our water resources, and helping revive the Monterey Pine forest.

Both Mr. Hadian and Mr. Bookout are serious about reviving this forest full of dead and diseased trees. Mr. Hadian and Mr. Bookout are being denied the necessary permits to cut down and remove these dead and diseased trees, but that's not stopping them from being proactive in their mission to help revive the forest.

They have a process in place and have already begun to grow Monterey Pine trees themselves, caring for seedlings until they're mature enough to plant.

Mr. Hadian told me that each seedling is like a pet to him, requiring round-the-clock attention until they're happy and planted in the ground. He's committed to reviving the forest one tree at a time.

Attached is a recent satellite view of Mr. Hadian's property. His house will be located at the end corner of his 25-acre lot, where the surrounding area is completely bald, which means that there are no trees around. This area is approximately marked within a red rectangle here. Still, he is proposing to remove 50 pine trees, most of which are either dead or diseased and pose a threat to wildlife and the aggregate forest health.

I walked Mr. Hadian's pre designated building site. It doesn't quite look like a "forest" as you may have imagined one, thankfully, with individual passionate efforts like those of Mr. Hadian and Mr. Bookout, this forest will soon revive one tree at a time, rather than turn into a vacant desert.

More significantly than that, and worth drawing extra attention to, Mr. Hadian is also proposing to replace every single tree that he is removing with 4 new, healthy, disease-tolerant native Monterey pine trees to help revive the forest. That's 200 new healthy trees to replace the 50 mostly dead and diseased ones. He is also planning to hire a professional and registered arborist to look after the newly planted trees for a period of at least 5 years to assure trees will grow healthy with high rate of survival.

Mr. Hadian has already started the revitalization process by planting new pine trees, and he

strongly believes that any more delays to fully focus on this revitalization effort will pose additional serious risk to the health of the forest.

Please vote yes and support those individual concern citizens that are passionate to save our forest, wildlife and other Coastal resources.



COUNTY OF SAN LUIS OBISPO

Aerial
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