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Th14a

Prepared June 12, 2024 for June 13, 2024 Hearing

To: Commissioners and Interested Persons

From: Kevin Kahn, Central Coast District Manager
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**Subject: STAFF REPORT ADDENDUM for Th14a
LCP Amendment No. LCP-3-SLO-21-0028-1-Part G (Los Osos Community Plan)**

The purpose of this addendum is to both respond to the comments received by members of the public after release of the staff report on May 24, 2024, as well as to make a minor modification at the request of San Luis Obispo County regarding certain habitat protection requirements. All public comments received are located in the correspondence package for this item. To be clear, and as explained subsequently, most of the concerns raised by those who oppose the staff recommendation are already well known to Commission staff and thus have already been addressed in the staff report. As such, this addendum responds to particular claims and assertions that staff believed would benefit from some additional information. Importantly, none of the responses herein, including the minor changes to the staff report, alter the basic staff recommendation, which remains a recommendation that the Commission approve the proposed LCP amendment with suggested modifications; modifications on which County staff are in agreement.

Postponement

As an initial point, staff notes that some have requested that this item be postponed to allow more time for interested parties to delve further into the issues. Respectfully, staff does not believe that that is necessary or appropriate. As described in the staff report, these issues have been debated at some length over the course of several decades, including through literally hundreds of local meetings and opportunities for interested parties to weigh in. While staff acknowledges that there have been some refinements in that respect in recent time (e.g., the U.S. Fish and Wildlife Service's Los Osos Habitat Conservation Plan was adopted in final form earlier this year), the core issues being debated have largely not changed for many, many years. And interested parties have had ample and numerous opportunities to participate and make their views known. In addition, this matter has been agendaized for a Morro Bay Coastal Commission meeting on purpose, to allow Los Osos area residents easy access to the Commission proceedings, given that Los Osos is about a mile and a half from the Commission

meeting venue. In short, staff believes that public participation has not been stifled in any way, and that it is appropriate for the Commission to take public testimony, to deliberate, and to take action on this LCP amendment at the June meeting.

Water Supply

The primary issue that many commenters take issue with is with respect to water supply, including whether there actually is an adequate water supply to serve new development in the community. While County staff and the three Los Osos water providers (Los Osos Community Services District, S&T Mutual Water Company, and Golden State Water Company) agree there is (and have written a letter stating as much—see page 2 of the correspondence package), some, including the Los Osos Sustainability Group (LOSG), do not believe the requisite findings can be made that the groundwater basin is healthy enough to do so. They opine that there is too much uncertainty regarding groundwater basin management to affirmatively make the conclusion that the basin is healthy enough to support new development, arguing that the basin's failure to meet applicable nitrate and chloride metrics is evidence of basin *unsustainability*, and that Commission staff appears to be making a determination of water adequacy based on one year of wet weather rather than looking at a comprehensive record, including in light of climate change and rainfall fluctuations that may significantly modify basin conditions in the future.¹ They argue the Commission should postpone such an action on this amendment unless and until there is conclusive evidence of the groundwater basin's health.

As noted previously, these are not new positions from LOSG, and staff has heard these same viewpoints over many years. As such, they are all well described in the staff report, including beginning on page 25. At a broad level, and as noted in the staff report, the Commission's reviewing lens in this LCP amendment is whether the data and evidence shows the groundwater basin to be healthy enough to support new development. That is, can the basin meet applicable Coastal Act tests regarding whether there is an adequate water supply, which the Commission has generally understood over the years to mean when water is used in a manner that will not lead to adverse coastal resource problems. Staff has worked with the water providers, the County, the Basin Management Committee (BMC), and LOSG to understand the various data and interpretations of such data, and feels comfortable with the conclusion that there is adequate water to support a measured approach to new growth in this community.

As discussed beginning on staff report page 22, the most recent data shows the basin to not be in overdraft and to not cause any harm to coastal resources, including on area

¹ LOSG's attorney also argues the staff recommendation runs afoul of CEQA. Staff disagrees, including as described on page 30 of the staff report in that the Commission's review, approval, and certification of LCP amendments has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required of CEQA. In other words, the Commission is relieved of the obligation to prepare and certify a separate EIR as part of its LCP amendment actions, as the Coastal Act's process independently satisfies it. In this case, the staff report walked through the environmental impacts of the proposed LCP amendment, analyzed the science and data underlying it, and developed alternative policy language in the form of suggested modifications to address/mitigate any remaining issues and coastal resource impacts.

creeks, wetlands, or Morro Bay.² More specifically, the community's water use is below the identified sustainable (or 'safe') yield, which the BMC defines as part of its Court-ordered Basin Management Plan as the amount of water that can be extracted without causing any advance of seawater intrusion and when such extracted water meets applicable water quality standards, including the State Water Board-recommended secondary drinking water standard for chlorides of 250 milligrams per liter. The community's water usage is under such sustainable yield, with a substantial buffer,³ and has been trending that way for several years now, which is a testament to the BMC's management actions from the past near decade. As described in the staff report (see pages 13 and 22), the BMC has undertaken a comprehensive groundwater basin management program, as required by the Court's basin adjudication, to monitor and manage water inputs and outputs with the requirement to bring the basin to its sustainable state and stop seawater intrusion. These efforts, as well as other County actions requiring water conservation and water recycling/groundwater replenishment, have both bolstered relatively drought-proof supplies and reduced water demand to a point where water usage is now no longer leading to any overuse problems.

The LOSG, conversely, points to other BMC groundwater metrics related to persistently high nitrate and chloride readings from certain testing wells as evidence against the argument that the basin is sustainable. This is discussed in the staff report beginning on page 25, where staff describes the purpose of these metrics is to look at longer-term trends at a handful of discrete locations that are known to have suffered from legacy pollution (i.e., nitrates in the upper aquifer from septic system pollution and chlorides in the lower aquifer nearest the shore from historic seawater intrusion). The BMC indicates that it will take decades to eradicate all of these signs of historic pollution and meet these (rather conservative) chloride and nitrate targets.⁴ In other words, these are longer-term goals and not expected to be met today, but, in the same vein, not meeting them does not mean the basin isn't healthy and is resulting in adverse impacts. In short, it isn't that these metrics aren't important to meet, but rather that they are looking at different issues with a different temporal scale in terms of compliance rather than the more holistic sustainable yield metric that looks at the basin's overall extraction levels relative to the available supply.

² On this point, it is noted that LOSG suggests that the basin modelling used by the County and the BMC is not sufficiently conservative, and that it should not be relied on by the Commission in making these sorts of determinations. However, while acknowledging the limitations of such modeling, and really all such modeling in general, Commission staff has spent quite a bit of time evaluating the information available, consulting with other hydrogeologic experts, and relying on its own internal technical staff to conclude that the modelling in question meets generally acceptable professional hydrogeologic standards, and that it is appropriate to rely on the modelling in place in this case, while also recognizing the inherent uncertainties in any such modelling.

³ With the latest numbers from 2023 showing the community using 69% of its sustainable yield, or 1,650 acre feet out of a sustainable yield of 2,380 acre feet.

⁴ The BMC's chloride target is 100 milligrams per liter, which is well below the State Water Board's upper secondary limit of 500 milligrams per liter. The reason for such a low metric is that this is what the BMC determined was the historic chloride level prior to seawater intrusion/overuse problems. In other words, the metric is specific to the groundwater basin and isn't tied to any legal standard. The BMC's nitrate target is 10 milligrams per liter, which is also the State Water Board's Maximum Contaminant Level.

But perhaps the most important point to be made is that the Commission is not tasked with ensuring consistency with such chloride and nitrate metrics, nor any specific water quality standard. The Commission is tasked with making a determination of water supply adequacy under the Coastal Act as described above. And the Commission can and does use the best available information in making this determination. Based on the collective record, including understanding the various metrics, science, and assumptions in terms of basin management, staff believes that the evidence supports the finding that water can be used in a manner that will not have any adverse effects on coastal resources, including since such extraction levels are not resulting in any adverse coastal resource impacts that this Commission is charged with protecting. And, also importantly, there are important tools to make sure it stays that way over time, including via the staff-recommended suggested modifications that tie the amount of development to the sustainable yield extraction level, and that meter out allowable development over time at a growth rate of no more than 1% of the community's residential units. These measures will work in conjunction with other County endeavors related to use water retrofits to ensure that new development does not increase water usage, and the Court's oversight in terms of groundwater adjudication that require remedial measures to keep the basin in a healthy state. Thus, to those who question the water supply analysis, it includes significant backstops to ensure that the conclusions derived don't inappropriately lead to resource problems, and to provide for remedial actions and measures as needed to keep it that way. Put another way this basin is actively managed to ensure that it remains in good health, and any problems are required to be identified and remedied. As summarized on staff report page 26:

Put another way, the community appears to have the physical, legal, and social infrastructure in place to tackle future uncertainties head on. And further, the Commission doesn't base its conclusions here on a one year anomaly from a particularly wet 2023 that shows that Basin extractions are below the sustainable/safe yield, as some have suggested. Rather, the Basin has been trending in the right direction since 2016, across both wet years and historically dry ones as well. Again, taking all of this into consideration, the Commission can be comfortable making the finding that there is an adequate and sustainable water supply to serve new development.

As such, staff continues to recommend the Commission take action to approve the amendment with the suggested modifications related to water supply.

HCP

One commentor suggests that one of the proposed LCP figures that identify the Priority Conservation Area (PCA) related to the Los Osos HCP maps his clients' properties in the PCA when they are not identified in the PCA in the HCP (see correspondence received from Stanley Lamport on behalf of Anastasi Development Company, LLC and Anastasi Construction Company in the correspondence package for this item). However, Mr. Lamport is incorrect, and the applicable HCP and LCP figures are the same in this regard, and both map his clients' properties in the PCA.

Finally, San Luis Obispo County staff have identified one change to the LCP's HCP provisions related to the PCA to make clear that development, including that which is

required to avoid an unconstitutional taking of private property, must also be consistent with the USFWS-approved Habitat Conservation Plan. Staff concurs with this change to make this point clearer for such potential takings allowances, and thus makes the following change to Policy 7.C on page 36 of Exhibit 3 as follows (with such changes shown in strikethrough and underline):

Development located within the LOHCP Priority Conservation Areas as shown on Figure 7-39 shall be consistent with the approved LOHCP or shall be limited to uses dependent on the habitat therein (e.g., habitat restoration, scientific research, low-intensity public interpretive access, etc.), and ~~that~~ shall be sited and designed to protect against significant disruption of habitat values. All other development shall be prohibited in the LOHCP Priority Conservation Areas, except for land divisions that are more protective of the habitats therein than the current lot configurations.