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Appeal Filed: 4/3/2024
Action Deadline: 6/12/2024
Staff: Devon Jackson - SC
Staff Report: 5/24/2024
Hearing Date: 6/12/2024

STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal Number: A-3-SLO-24-0011

Applicant: Steven Brawer and Leanne Watt

Appellant: Los Osos Sustainability Group

Local Government: San Luis Obispo County

Local Decision: County coastal development permit application number C-DRC2022-00009 approved by the San Luis Obispo County Board of Supervisors (on local appeal) on March 12, 2024.

Location: 208 Madera Street within the unincorporated community of Los Osos, San Luis Obispo County (APN 074-483-011).

Project Description: Construction of a two story, approximately 2,000 square-foot single-family residence with an attached roughly 550 square-foot garage, 900 square-foot deck, 1,000 square-foot patio, and associated site improvements on a vacant lot.

Staff Recommendation: Substantial Issue Exists

IMPORTANT HEARING PROCEDURAL NOTE

Please note that this is a substantial issue only hearing, and testimony will be taken *only* on the question of whether the appeal raises a substantial issue. Such testimony is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify these time limits), so please plan your testimony accordingly. Only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify during this substantial issue phase of the hearing. Other interested parties may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP)

application and will then review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does *not* raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

SUMMARY OF STAFF RECOMMENDATION

San Luis Obispo County approved the construction of an two story, approximately 2,000 square-foot single-family residence with an attached roughly 550 square-foot garage, 900 square-foot deck, 1,000 square-foot patio, and associated site improvements on a vacant lot located at 208 Madera Street within the unincorporated community of Los Osos.

The Appellant contends that the County's approval of the project is inconsistent with San Luis Obispo County LCP policies that require demonstration of adequate water supply and wastewater services for new development, and that approval also violates prior Coastal Commission CDP conditions requiring an LCP amendment to identify appropriate development standards before growth in the community is allowed. After reviewing the local record, Commission staff recommends that the Commission find that the County's CDP approval raises a substantial issue with respect to the project's conformance with the LCP.

With respect to wastewater services, the project is located outside of the wastewater service boundary and would make use of a standard septic system. Since a septic system is allowed here (the site is located outside of the RWQCB's septic prohibition zone), the wastewater allegations do not raise a substantial issue on their own.

With respect to water supply, the LCP requires that new development be served by adequate and sustainable water supply, and it requires denial of any such development if that is not the case. Los Osos has historically suffered from an inadequate water source (including in terms of water supply from an over-drafted groundwater basin, and impacted water quality due to nitrate contamination). Although current data suggests that the groundwater basin is tending towards health and sustainability, the decision to determine the basin is sustainable has not been made by the Commission to date through the LCP, where it is required to be made. Specifically, when the Commission approved the CDP for the County's Los Osos Wastewater Project in 2010, the Commission required that the LCP be amended to identify sustainable development standards related to water supply, wastewater services and ESHA before new growth would be allowed under the LCP. County and Commission staff have collaborated on just such an LCP amendment, which scheduled to be heard by the Commission on June 13, 2024 at the Commission's June meeting in Morro Bay. However, and while staff and the County are in agreement on the identified Los Osos development standards, that issue has not been deliberated on nor decided by the Commission, and the LCP thus has not been amended as required to allow for new growth, such as this project. Put another way, this project is simply premature, and that issue alone raises a substantial issue.

Although staff explained such issues to these Applicants, and suggested that they waive the hearing deadline to allow the Commission to make its LCP amendment decision

first, and to allow for the amended LCP to be certified, they declined. Thus, the Commission is required to act on this appeal by its hearing deadline (June 12, 2024), and staff recommends that the Commission find a substantial issue. These Applicants will then have the benefit of the Commission's decision when the project comes back for de novo review of the CDP application at a future date.

Staff therefore recommends that the Commission find that the appeal raises substantial LCP conformance issues and that the Commission take jurisdiction over the CDP application for the proposed project. If the Commission does so, then the de novo hearing on the merits of the CDP application would be scheduled for a future Commission meeting. The motion and resolution to affect this recommendation are found on page 5.

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EXHIBITS

Exhibit 1 – Location Maps

Exhibit 2 – County’s Final Local CDP Action Notice and County-Approved Project Plans

Exhibit 3 – Appeal of County’s CDP Decision

1. MOTION AND RESOLUTION

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for future de novo hearing and action. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in the future de novo review on the CDP application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of no substantial issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-SLO-24-0011 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a no vote.*

***Resolution to Find Substantial Issue.** The Commission finds that Appeal Number A-3-SLO-24-0011 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

2. FINDINGS AND DECLARATIONS

A. Project Description and Location

The project site is a roughly half-acre vacant parcel located on the west side of Madera Street in the unincorporated community of Los Osos. The County's CDP authorizes the construction of a new two-story, three-bedroom single-family residence that would include a 765- square-foot first floor, a 1,254 square-foot second floor, an 870 square-foot deck, a 1,095 square-foot patio, and an attached 541 square-foot garage. The project also includes the construction of related site improvements, including construction of a new driveway off Madera Street, installation of an on-site septic system, and landscaping. The driveway would be approximately 25 feet wide and would extend from Madera Street to the garage, which would provide two parking spaces on site. The on-site septic system would include a 1,200-gallon concrete septic tank and a leach field. The project also includes landscaping adjacent to the residence, including the planting of five coast-live oak (*Quercus agrifolia*) trees, including three trees to the north of the residence and two trees to the south within a 40-foot open space easement along the Southern portion of the property. In addition, the project includes the construction of retaining walls around the northern, southern, and western sides of the proposed residence and the installation of solar photovoltaic panels. The project would require the extension of existing utility infrastructure, including gas, electrical, and water lines from Madera Street to the project site. The project is anticipated to result in a new potable water demand of 150 gallons per day (gpd), which would be provided by Golden State Water Company (GSWC). GSWC has provided a can-and-will-serve letter for the project (dated October 21, 2021).

See **Exhibit 1** for a location map and **Exhibit 2** for the County-Approved Project Plans.

B. San Luis Obispo County CDP Approval

On October 6, 2023, the San Luis Obispo County Planning Department Hearing Officer approved a CDP to construct a single-family residence and associated site improvements. The Planning Department approval was appealed by the current Appellant to the Board of Supervisors which, after deliberation, upheld the approval and denied the appeal on March 12, 2024, thus finalizing the County's CDP decision. The County's Final Local CDP Action Notice (see **Exhibit 2**) was received in the Coastal Commission's Central Coast District Office on April 2, 2024, and the Coastal Commission's ten-working-day appeal period for this action began on April 3, 2024 and concluded at 5 p.m. on April 16, 2024. One valid appeal (discussed below) was received during the appeal period.

C. Appeal Procedures

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This County CDP decision is appealable to the Commission because the project site is located between the first public road and the sea, and because the approved use is not the principally permitted use for the site.

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP and/or to Coastal Act public access provisions. For appeals of a CDP denial, where allowed (i.e., such appeals are only allowed in extremely limited circumstances – see description of appealable actions, above), the grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions.

The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. This step is often referred to as the "substantial issue" phase of an appeal. The Commission is required to begin its hearing on an appeal, addressing at least the substantial issue question, within 49-working days of the filing of the appeal unless the applicant has waived that requirement, in which case there is no deadline. Here, although the Applicants were asked to consider waiving that hearing deadline, they declined, and thus the Commission's hearing deadline for

this matter is June 12, 2024 (i.e., the Wednesday of the Commission's June 2024 meeting in Morro Bay).

The Coastal Act and the Commission's implementing regulations are structured such that there is a presumption of a substantial issue when the Commission acts on this question, and the Commission generally considers a number of factors in making that determination.¹ At this stage, the Commission may only consider issues brought up by the appeal. At the substantial issue hearing, staff will make a recommendation for the Commission to find either substantial issue or no substantial issue. If staff makes the former recommendation, the Commission will not take testimony at the hearing on the substantial issue recommendation unless at least three Commissioners request it, and, if no such hearing is requested, a substantial issue is automatically found. In both cases, when the Commission does take testimony, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

If, following testimony and a public hearing, the Commission determines that the appeal does not raise a substantial issue, then the first step is the only step, and the local government's CDP decision stands. However, if the Commission finds a substantial issue, the Commission takes jurisdiction over the underlying CDP application for the proposed project, and the appeal heads to the second phase of the hearing on the appeal.

In the second phase of the appeal, the Commission must determine whether the proposed development is consistent with the applicable LCP (and in certain circumstances the Coastal Act's public access and recreation provisions). This step is often referred to as the "de novo" review phase of an appeal, and it entails reviewing the proposed project in total. There is no legal deadline for the Commission to act on the de novo phase of an appeal. Staff will make a CDP decision recommendation to the Commission, and the Commission will conduct a public hearing to decide whether to approve, approve with conditions, or deny the subject CDP. Any person may testify during the de novo phase of an appeal hearing (if applicable).

¹ The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no substantial issue..." (California Code of Regulations, Title 14, Section 13115(b)). Section 13115(c) of the Commission regulations provides, along with past Commission practice, that the Commission may consider the following five factors when determining if a local action raises a significant issue: (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and the Coastal Act's public access provisions; (2) the extent and scope of the development; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

D. Summary of Appeal Contentions

The Appellant contends that the County's CDP approval is inconsistent with LCP water supply and wastewater provisions, including those that require denial of projects where adequate water supply and wastewater services are not available, asserting that such is the case at this time in Los Osos. The Appellant further contends that the County's approval violates Special Condition 6 of the CDP A-3-SLO-09-055/069 because new development in Los Osos is prohibited until the EAP is amended to identify sustainable buildout limits to support new development without adverse impacts to ground and surface waters. Please see **Exhibit 3** for the full appeal contentions.

E. Substantial Issue Determination – Public Services

Applicable LCP Provisions

The LCP's Land Use Plan (LUP) is comprised of three components: the Framework for Planning document, which serves as a type of "roadmap" describing the County's coastal zone and how the rest of the LCP functionally works to regulate development; the Coastal Plan Policies document, which identifies the overarching coastal resource protection policies governing development throughout the coastal zone; and four area plans that identify additional policies specific to each of the LCP's four geographic areas (i.e., North Coast, Estero, San Luis Bay, and South County Area Plans). Los Osos is subject to the LUP's Estero Area Plan (EAP).

The LCP's Implementation Plan (IP) consists of the Coastal Zone Land Use Ordinance (or CZLUO, Title 23 of the County Code). Per the LCP, LUP provisions generally prevail over IP provisions in cases of internal inconsistency or conflict, with some exceptions. Specifically, the LUP's Framework for Planning document states that if a policy listed in the LUP's Coastal Plan Policies document is implemented by an IP ordinance, the ordinance prevails in case of any conflict, and if a policy listed in an LUP area plan conflicts with a policy in the LUP Coastal Plan Policies document or an IP ordinance, the area plan policy prevails in both cases. Thus, for this site, any internal questions are to be resolved in favor of the Estero Area Plan. In addition, the LCP is also required to be read and interpreted consistent with the Coastal Act from which it derives its statutory authority.²

LUP Coastal Plan Public Works Policy 1 requires that development be served by adequate services, including as it relates to water and wastewater, and Public Works

² See *McAllister v. California Coastal Commission* (2009, 169 Cal. App. 4th 912, 929), wherein the Sixth District Court of Appeal overturned a project approval by the Commission in the early 2000s interpreting an LCP ESHA policy to allow non-resource-dependent use (in that case residential use) and development in ESHA. The Court found that such an interpretation was improper, and that the LCP must be understood in relation to the requirements of Coastal Act Section 30240, from which LCP ESHA policies derive their authority, even if the LCP policies were drafted in a manner that provide an argument to allow a non-resource-dependent use in ESHA. In other words, the Court determined that an LCP cannot be read to allow non-resource-dependent development or use in ESHA, but rather that it must be understood first in terms of Section 30240 requirements, and more broadly that an LCP derives its statutory authority from the Coastal Act, and it must be understood in ways that are Coastal Act consistent, and not in ways that are not consistent with the Act. As a published appellate court decision, that decision requires the Commission to interpret LCPs, including the San Luis Obispo County LCP here, in that way.

Policy 6 requires the County to use the LCP's Resource Management System³ to help identify when such services are available, and to prioritize when there is a scarcity of any such services. And IP Section 23.04.430 requires denial of CDP applications unless there is adequate water supply and wastewater services for the project. These provisions state:

Public Works Policy 1: Availability of Service Capacity. *New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable.*

Public Works Policy 6: Resource Management System. *The county will implement the Resource Management System to consider where the necessary resources exist or can be readily developed to support new land uses. Permitted public service expansions shall ensure the protection of coastal natural resources including the bio- logical productivity of coastal waters. In the interim, where they are identified public service limitations, uses having priority under the Coastal Act shall not be precluded by the provision of those limited services to non-priority uses.*

CZLUO 23.04.430 - Availability of Water Supply and Sewage Disposal Services. *A land use permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as provided by this section.*

In addition to these provisions, the LCP's Coastal Plan and the Estero Area Plan include additional provisions that speak to protecting the Los Osos Valley Groundwater Basin, as well as protecting against adverse impacts to wetlands, streams, riparian areas, marine habitats, and water supply and quality that are affected by the Basin, and that generally limit development to ensure protection of coastal resources. These provisions state:

Coastal Watersheds Policy 1: Preservation of Groundwater Basins. *The long-term integrity of groundwater basins within the coastal zone shall be protected. The safe*

³ The LCP's RMS is a component of the LCP's LUP that provides one of the LCP's tools for identifying and addressing identified resource constraints and capacities (e.g., water supply and wastewater treatment capacities). The main purpose of the RMS is to provide the County and the general public with a systematic means of assessing resource constraints and capacities on a regular basis, including annual reassessments that allow the County to regularly update such assessments in relation to the best available information, and to identify measures to address such issues. The RMS currently categorizes each such resource evaluated in terms of supply and demand, and ultimately assigns a "Level of Severity" (LOS) designation to it ranging from none up through LOS levels I, II, and III, where each successive level represents a higher degree of resource constraint.

yield of the groundwater basin, including return and retained water, shall not be exceeded except as part of a conjunctive use or resource management program which assures that the biological productivity of aquatic habitats are not significantly adversely impacted.

Coastal Watersheds Policy 2: Water Extractions. *Extractions, impoundments and other water resource developments shall obtain all necessary county and/or state permits. All pertinent information on these uses (including water conservation opportunities and impacts on in-stream beneficial uses) will be incorporated into the data base for the Resource Management System and shall be supplemented by all available private and public water resources studies available. Groundwater levels and surface flows shall be maintained to ensure that the quality of coastal waters, wetlands and streams is sufficient to provide for optimum populations of marine organisms, and for the protection of human health.*

EAP Public Facilities, Services, and Resources: Areawide Water Supply. *Monitor water demand through the Resource Management System to assure that new development can be supported by available water supplies without depleting groundwater supplies and/or degrading water quality.*

EAP Environmental, Cultural Resources Policy A: Areawide Water Quality. *Maintain, and where feasible, restore the quality and biological productivity of coastal waters, streams, wetlands, estuaries, and lakes in order to protect human health and maintain optimum populations of marine and other wildlife.*

Los Osos Public Services Background

The LCP and its EAP recognizes that Los Osos has historically suffered from inadequate public services,⁴ particularly related to water supply and wastewater capacity. Because Los Osos wastewater was traditionally handled through septic disposal within the same groundwater basin that supplies the community's potable water, the EAP states the two issues are "closely interrelated" due to a combination of highly permeable soils, high groundwater tables, and extensive community development that led to inadequately treated septic discharges into ground and surface water. As a result, water supply and wastewater service questions have historically been inextricably linked in Los Osos.

The EAP acknowledges the community's need to resolve the interrelated issues of water and wastewater, particularly in relation to the important coastal resources impacted by these issues, including to the groundwater basin, Morro Bay Estuary, and other sensitive habitats found throughout Los Osos. The EAP identified the need to create community-wide programs to deal with water and wastewater service constraints, but also recognized the need for any public services projects to identify the appropriate "extent and density of development and its impact on groundwater quantity and quality."

⁴ The Commission in its past LCP and CDP actions associated with the San Luis Obispo County LCP has consistently understood "adequate" public services in relation to water and wastewater to mean that a sustainable water supply and adequate wastewater capacity exists to accommodate new development in a manner that will not lead to adverse coastal resource impacts.

Such service constraints in Los Osos are not new, but rather have been identified for decades as needing resolution. Beginning in the early 1970s, the Central Coast Regional Water Quality Control Board (RWQCB) and other health agencies began to raise environmental health and safety concerns regarding the use of septic systems in Los Osos. The RWQCB took a series of steps to address these concerns, beginning with adopting an interim Basin Plan in 1971 that included a provision prohibiting septic system discharges in much of Los Osos after 1974. In 1983, the RWQCB subsequently determined that the situation was worsening, and adopted a wastewater discharge prohibition for a portion of the Los Osos area known as the Prohibition Zone. In 1988, the RWQCB also established a discharge moratorium that effectively halted all new construction and all major expansions of existing development until a solution to the septic tank pollution problem could be developed and implemented.

There were a series of attempts to address the identified ground and surface water pollution issues in Los Osos through construction and operation of a wastewater project. In 1990, the Coastal Commission approved an amendment to the Estero Area Plan that would have allowed a conventional wastewater collection and treatment plant on rural agricultural land off Turri Road, which was subsequently abandoned in favor of an alternative site at South Bay Boulevard and Pismo Avenue. A County-approved CDP for a wastewater treatment project at this site was appealed to the Coastal Commission, but ultimately no action was taken by the Commission to allow the community an opportunity to pursue potential alternative wastewater projects. In 1998 a local ballot measure formed the Los Osos Community Services District (LOCSD). The LOCSD pursued a new CDP for a conventional wastewater collection and treatment project for a plant in the middle of town at the Tri-W site along Los Osos Valley Road. The Commission approved an LCP amendment in 2002 to allow a wastewater treatment plant at that site. In 2004, the Commission, on appeal, approved the project with conditions. Project construction commenced at the Tri-W site in 2005, but a newly elected LOCSD board suspended construction and the project was abandoned.

In 2006, wastewater authority for the Los Osos area was returned from the LOCSD to the County. The County embarked on an extensive alternatives evaluation to evaluate potential solutions to deal with the disposal of the wastewater for existing development. The County ultimately approved the Los Osos Wastewater Project (LOWWP), which provided for the construction and operation of a community sewer system, including a treatment plant on 30 acres located about one-half mile inland of Morro Bay, collection/disposal/reuse facilities, and all associated development and infrastructure. The County's approval of a CDP and a CDP amendment for the LOWWP project were appealed to the Coastal Commission and, upon a finding of substantial issue, the Commission subsequently approved the project with a series of special conditions in 2010 (CDP A-3-SLO-09-055/069).⁵

Although the Commission recognized the immediate need for the LOWWP to resolve issues of groundwater contamination caused by the existing individual septic systems,

⁵ Due to the manner in which the County acted on the CDP for the LOWWP (an overall approval action followed by an amendment action to modify a portion of the project), there are two Coastal Commission permit numbers associated with the project.

the Commission also noted that the County had not done the planning necessary in order to determine the appropriate level of additional future development and growth within Los Osos that could be accommodated while avoiding coastal resource impacts, particularly regarding water supply and usage. As noted in the EAP, and in the Commission's approval of the LOWWP, the issues of water and wastewater are interrelated due to their impacts to the groundwater basin. Thus, a sustainable basin management program is critical to ensure that future development is limited to an environmentally sustainable level. The Commission was concerned with several potential growth inducement impacts of the LOWWP, including on a water supply for which sustainable pumping/use limits and the amount of development that could be supported within those limits had not been identified. The Commission was also concerned with potential growth inducement impacts to ESHA resources and found that there was a need to proactively and comprehensively plan for growth and mitigate impacts (including via a United States Fish and Wildlife Service-approved Habitat Conservation Plan (HCP)). With these concerns in mind, the Commission approved the LOWWP subject to Special Condition 6, which states:

Wastewater Service to Undeveloped Properties. *Wastewater service to undeveloped properties within the service area shall be prohibited unless and until the Estero Area Plan is amended to identify appropriate and sustainable buildout limits, and any appropriate mechanisms to stay within such limits, based on conclusive evidence indicating that adequate water is available to support development of such properties without adverse impacts to ground and surface waters, including wetlands and all related habitats.*

Per the Commission's findings:

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

Therefore, similar to the proposed project (i.e., via incorporated County condition 86), Special Condition 6 prohibits the provision of wastewater service to undeveloped properties within the service area unless and until the Estero Area Plan is amended to identify appropriate and sustainable buildout limits, and any appropriate mechanisms to stay within such limits, based on conclusive evidence indicating that adequate water is available to support development of such properties without adverse impacts to ground and surface waters, including wetlands and all related habitats.

Thus, until the EAP is amended to identify sustainable buildout limits, including in terms of water usage/supply and ESHA considerations, the County and its LOWWP is prohibited from serving undeveloped properties within Los Osos. More broadly, including as identified by the Commission in 2010, the required LCP amendment needs

to identify sustainable development standards related to water supply, wastewater services and ESHA before new growth can be allowed under the LCP.

Appeal Contentions

The Appellant contends that approval of the County project is in violation of two provisions of the LCP (Public Works Policy 1 and CZLUO 23.04.430) that require demonstration of an adequate water supply for new development, and further contends that the County's approval violates Special Condition 6 of the CDP A-3-SLO-09-055/069 because new development in Los Osos is prohibited until the EAP is amended to identify sustainable buildout limits to support new development without adverse impacts to ground and surface waters (see **Exhibit 3**).

Analysis

The County-approved residence would be served by water provided by Golden State Water Company that is withdrawn from the Los Osos groundwater basin, and would rely on on-site septic for its wastewater needs. As explained above, the LCP has not yet been amended to allow for extraction of ground water from the Los Osos Basin to serve new development. Thus, the appeal question here is whether the County approval of this project is compliant with the current EAP.

With respect to wastewater services, this property is located outside of the LOWWP wastewater service boundary, and will rely on an on-site septic system for its wastewater needs. Since a septic system is allowed here (the site is located outside of the RWQCB's septic prohibition zone), the wastewater allegations do not raise a substantial issue on their own.

With respect to water supply, the County found that the LCP requirement that new development be served by adequate and sustainable water supply was satisfied by Golden State Water Company's can-and-will-serve letter for the project. However, and as the Commission has opined repeatedly in Los Osos cases, a will serve letter is insufficient evidence to draw the necessary LCP conclusion, which is an independent conclusion necessarily weighed by the decision-making body in LCP terms. A will serve letter can be a part of such an LCP analysis, but it alone does not satisfy LCP tests that require an evaluation not just that water can be provided, but that the water that would be provided comes from an adequate and sustainable water supply.

In that LCP analysis, although current data suggests that the groundwater basin is tending towards health and sustainability, the decision to determine the basin is sustainable has not been made by the Commission to date through the LCP, where it is required to be made. Specifically, the required LCP amendment, discussed above, that is to identify the parameters for allowed new growth and development in Los Osos has not yet been certified.⁶ In other words, the Commission has not yet deliberated on nor decided on the required updated LCP policy framework for understanding new growth like this, including related to sustainable development standards related to water supply,

⁶ County and Commission staff have collaborated on just such an LCP amendment, which scheduled to be heard by the Commission on June 13, 2024 at the Commission's June meeting in Morro Bay.

wastewater services and ESHA,⁷ and has yet to conclude specifically on whether the groundwater supply is sustainable enough to accommodate new growth. As a result, the appeal contentions raise a substantial issue on this point.

Conclusion

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity and/or Coastal Act public access conformity, such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of Coastal Act public access and/or LCP conformance issue. Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

The County found the proposed development consistent with applicable LCP water supply and wastewater service provisions. While the wastewater determination was based on solid evidence, the water supply determination was not. As described above, a will serve letter is insufficient evidence on which to rely to meet the actual LCP tests. In addition, as described above, the Commission must certify the LCP EAP amendment to include sustainable development standards related to water supply, wastewater services and ESHA before new growth would be allowed under the LCP. As such, the County's approval raises questions regarding the factual and legal support to approve the project, suggesting substantial issue.

As to the extent and scope of this project, it is for single-family residential development, which can be considered relatively minor in scale, but the public service and LCP growth issues raised by the project affect an entire community, including others who are waiting for the required LCP amendment to pursue developments like this.⁸ Thus, in that sense, the extent and scope of the issues are significant, and thus this factor argues for a substantial issue.

In regards the significance of the coastal resources involved and the precedential nature of the County's decision, the underlying groundwater basin in Los Osos is a critical coastal resource not only for community water supply, but also for all of the related resources it affects, including in terms of streams and wetlands, and ultimately Morro Bay itself. And if a County decision here were to facilitate even more such

⁷ And the site was also determined by the County to be ESHA, within which residential development is not even currently allowed by the LCP.

⁸ According to the County, there are 238 individuals on the waitlist for new single-family dwelling units and an additional 19 for multi-family units.

decisions before the required LCP amendment to define allowable and appropriate growth is certified, that would be an unfortunate outcome. Thus, these factors also argue for substantial issue.

For the reasons stated herein, the Commission finds that Appeal Number A-3-SLO-24-0011 raises substantial LCP conformance issues and takes jurisdiction over the CDP application for the proposed project.

3. APPENDICES

A. Substantive File Documents⁹

- San Luis Obispo County CDP File APPL2023-00009/C-DRC2022-00009

B. Staff Contacts with Agencies and Groups

- San Luis Obispo County Planning and Building Department

⁹ These documents are available for review from the Commission's Central Coast District office.