

CALIFORNIA COASTAL COMMISSION

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**April 19, 2022**

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

Subject: **New Development in Los Osos**

Dear Mr. Keith:

The purpose of this letter is to highlight issues of mutual concern as they relate to proposed development in the community of Los Osos. As the County is well aware, including from the County's designation of an LCP Resource Management System Alert Level III for water supply (i.e., where demand exceeds existing supply, and still does) and from the 2015 designation by the California Department of Water Resources of the Los Osos Valley Groundwater Basin as a high priority basin due to its "condition of critical overdraft", there is insufficient water supply to serve even existing development in Los Osos without coastal resource harm (including where an over-drafted groundwater basin can adversely impact sensitive natural resources such as wetlands and marshes, coastal streams and adjacent riparian areas, and marine habitats, as well as adversely impact coastal priority uses such as agriculture and lower-cost visitor-serving development), let alone adding to it new water using development. In addition, much of Los Osos is considered environmentally sensitive habitat area (ESHA) by the LCP within which most development, including residential development, is prohibited. This alone trips up most all residential development in Los Osos at varying levels. And finally, the County's wastewater treatment plant is prohibited from providing wastewater service to anything but existing development (and not to new development on existing lots)¹ 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" as required by the Commission in Special

¹ As we have previously noted, the County is prohibited by CDP A-3-SLO-09-055/069 from providing wastewater services to new development on vacant lots, and that prohibition extends to intensifications of use. Specifically, the Commission has found that the CDP's prohibition on new wastewater service does not only apply to new development on completely vacant parcels, but also to projects that include significant intensifications of use and significant expansions on already-developed properties. The Commission has verified this understanding in multiple Los Osos appeal cases (see adopted findings for A-3-SLO-19-0180 (Shear Development LLC SFDs), A-3-SLO-21-0005 (Kimbell Second Unit), A-3-SLO-21-0004 (Wise Second Unit), A-3-SLO-21-0007 (Bodine Second Unit), and A-3-SLO-21-0008 (Robertson Second Unit)). In short, the County is prohibited by the CDP from providing wastewater services to such development, including intensifications of use, and if the County were to provide such services, the County would be in violation of that CDP and subject to potential Commission enforcement action.

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Condition 6 of CDP A-3-SLO-09-055/069. We are currently reviewing the Los Osos Community Plan that the County has submitted for this purpose and hope to bring that to hearing and Commission action by this summer. In the meantime, and with the goal of avoiding any additional appeals of County CDP actions in Los Osos and ultimately better protecting the Los Osos Groundwater Basin and related resources, we have the following observations and suggestions for the County.

First, please do not accept any CDP applications for filing that cannot demonstrate that they have legal access to both a sustainable water source and wastewater treatment services. To be clear, such applications should not be accepted for review unless and until such water and wastewater is available for use, as availability of these public services reflects a fundamental prerequisite for considering proposed development and must be considered at the filing stage. On this point, we do not believe that a will serve from a local water purveyor satisfies LCP and CDP requirements, including as the LCP finding that is required on this point is not for water purveyors to make, rather it is the County's independent responsibility. To this point, recent Commission's adopted findings on this issue state:²

The County, as the initial CDP decision-making body for CDP applications that include new water use in Cambria [same as Los Osos], needs to consider these perhaps inconvenient facts, and stop approving or even considering such projects unless and until measurable steps are taken that improve water supply issues in Cambria [same as Los Osos]. The County should not be even accepting applications for development in Cambria [same as Los Osos] that cannot show evidence of an adequate water supply. A will-serve letter does not provide such evidence, and the County under the LCP is required to make its own finding that an adequate water supply is available to serve a proposed development, and cannot abrogate that responsibility to the CCSD [or here in Los Osos to any of the water purveyors]. The County is giving applicants a sense of 'false hope' when it does, and is doing a disservice to these applicants and the broader community. It is also leading to a significant number of appeals to, and subsequent CDP denials by, the Commission, each of which require an expenditure of scarce public resources to process.

Unless development can meet the water and wastewater tests above, please do not make any CDP decisions where water supply, wastewater access, and ESHA are issues unless and until the LCP's Estero Area Plan is updated (via the pending Los Osos Community Plan) and those changes are certified by the Coastal Commission. Importantly, those LCP changes are at their core required to provide direction on sustainable growth and buildout in Los Osos as it is affected by these constraints, and it is not appropriate to be making CDP decisions that aren't based in that sort of assessment. As is, Los Osos-area water purveyors are raising their own questions about the sustainability of the Los Osos Groundwater Basin to serve development, and sustainable buildout has not been determined and certified into the LCP, including as it relates to ESHA (and the USFWS Habitat Conservation Plan that is currently in draft

² See adopted Commission findings at <https://documents.coastal.ca.gov/reports/2022/3/F15b/F15b-3-2022-report.pdf>.

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form and still under development). In fact, the Commission has repeatedly determined that LCP consistency cannot be found for any new water using development in Los Osos at the current time, irrespective of any will-serve letter, finding most recently that:³

...the LCP includes a series of provisions which require adequate water and wastewater services for new development, yet the community still does not have an adequate water supply at this time, including as evidenced by the Los Osos Basin Plan 2020 report. Until and unless there is conclusive evidence that adequate water services exist, public services remain a constraint to new development in Los Osos under the LCP.

On this point we would note that in the last few years there have been ten appeals to the Coastal Commission of County CDP approvals for new residential projects in Los Osos. Of those appeals, the Commission took jurisdiction over the CDP applications for five of them (and denied one such application thus far) and five others withdrew their CDP applications after appeal, all for issues having to do with the water supply, wastewater service, and ESHA issues described above. We do not believe it is good planning or good public policy for the County to continue to take in and process CDP applications for projects that lead to an increase in water use on a site, and/or that require County wastewater services that cannot be provided, especially when the outcome is appeal to the Commission. This is exactly the sort of ‘false hope’ that the Commission alludes to in its findings quoted above. We believe that some certainty on these issues will be coming when the Commission considers the County’s proposed Los Osos Community Plan in the near term, and that it is appropriate to wait for that outcome.

In order to provide as much clarity as possible in the meantime, please note that we consider guesthouses, hotel/motel expansions, and large use/structural intensifications associated with existing development to constitute such “new water-using” development. Unless and until conclusive evidence is provided showing that these types of development do not lead to an increase in water use on a given site, we believe that the precautionary principle should be applied, and that CDP applications for such development should not be accepted (because they cannot demonstrate the availability of an adequate and sustainable water source). At the same time we believe that it is likely that small home additions and renovations are not likely to increase water use on a property. Toward this end, we would suggest that an important threshold concept to be applied to the latter such CDP applications is to require applicants to demonstrate, with actual evidence, that the development they propose will not lead to an increase in water use at the site in question.⁴ Such an evaluation demands water-use data and

³ See recent adopted Commission findings for an appeal of a County CDP decision in Los Osos from November 17, 2021 at <https://documents.coastal.ca.gov/reports/2021/11/W14a/w14a-11-2021-report.pdf>.

⁴ To be clear, this is different than trying to demonstrate that one can ‘back out’ or ‘offset’ new water use through some sort of offsite mechanisms, and rather is focused on ensuring that the development in question, by itself, will not lead to the need for additional water use at a si