

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
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July 3, 2020

Kerry Brown
Department of Planning & Building
976 Osos Street, Room 300
San Luis Obispo, CA
93408

Re: Agenda Item 7 – Los Osos Community Plan Update

Dear Ms. Brown:

Thank you for the opportunity to provide comments on the proposed Los Osos Community Plan (LOCP) update. We commend the County and the public for all of the work that has been put into creating a plan that attempts to balance the need for sustainable growth with the protection of the community's valuable and fragile coastal resources. To that end, we offer the following comments to help ensure the plan meets those goals consistent with the Coastal Act.

ESHA

One of the primary impetuses for the preparation of the LOCP was to provide a coherent and consistent regulatory approach to the protection and preservation of the sensitive biological habitats that are located within and surrounding the community. Indeed, the entire community contains habitat for multiple species listed as protected under the state and federal Endangered Species Acts (CESA/ESA) and is considered to be environmentally sensitive habitat area (ESHA) pursuant to the Coastal Act. Because the Coastal Act only allows resource-dependent development in ESHA, those in the community are hard-pressed to meet ESHA requirements, even for infill development. Although we are and have been supportive of an LOCP that could allow for appropriate and sustainable in-fill development in Los Osos, we have some concerns with the proposed policies designed to address this issue.

First, the Los Osos Habitat Conservation Plan (HCP), which is meant to provide the requirements for authorizing take of listed species under the ESA, has not been finalized or approved. The LOCP references the HCP's requirements, but since those requirements aren't yet finalized, those cross-references lack regulatory certainty and we can't rely on the HCP as part of the LOCP in that respect. Also, both a completed HCP and a completed LOCP that is certified by the Coastal Commission are required before the County can allow for new development to rely on the County's wastewater infrastructure in Los Osos per the terms and conditions of the CDP for the wastewater treatment facility in CDPs A-3-SLO-09-055/069. In short, we believe it is premature to refine actual LOCP policies, and certainly premature to adopt an actual LOCP, until the HCP is completed.

Second, instead of a singular set of policies that address habitat management issues in one clear section, the LOCP includes various sections that describe habitat requirements in slightly different ways. For example, Chapter 7.4 and Chapter 4.7.6 include the policies for the Los Osos Ecosystem

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SRA-TH, which include maps showing the location of ESHA versus non-ESHA, while also saying that the entirety of the area constitutes ESHA. And Chapter 7.3 and Chapter 4.7.7 describe the requirements for the HCP area, which includes a different set of maps such as the Los Osos Greenbelt and the Priority Conservation Area (and these too are different from each other). And third, the Urban Services Line and Urban Reserve Line maps are also slightly different from the habitat maps, and don't reflect the recommendations we previously made for simplifying the maps to make clear where development is and is not encouraged and allowed.

In light of the above, we have several suggestions. First, the LOCP should not cross-reference the HCP, but rather include the appropriate and applicable provisions from it directly into the LOCP itself. This will be critical for being able to ultimately find LCP consistency for future development. And broadly, the HCP as currently proposed provides a regulatory approach of providing for infill development within existing lots of record in the center of town subject to mitigation, including monetary impacts fees meant to provide a revenue stream for the acquisition, protection, restoration, and management of habitat on the periphery of town—the Priority Conservation Area. As such, the LOCP needs to clearly identify this overall approach, and include a singular set of policies that implement it. To do so, it is critical that all of the LOCP's various maps be coalesced into one, and at the least be internally consistent. We recommend that the Priority Conservation Area map in Figure 7-3 serve as the map that identifies where development should and should not be accommodated, with all the other maps either deleted (like the Greenbelt map in Figure 4-1) or modified to be consistent with it (like the USL map, which should be coincident with the PCA map as they both serve the same function of identifying proper development vs. conservation areas). And lastly, all of Los Osos should be designated as ESHA, consistent with the existing certified LCP and past Coastal Commission findings in this regard. The intent of the LOCP update was not to undo such a designation in the LCP, but rather to identify where in-fill development might be able to be accommodated, subject to offsetting mitigation, and these provisions codified in the LCP so as to allow for coastal permits to be approved.

Water Supply

Another key reason for this update is to ensure that water use, both existing and that to accommodate potential future development, does not adversely impact the Los Osos Basin. Although the Basin Management Plan does provide a more robust basis for determining sustainable growth patterns, the LOCP only requires new land divisions to demonstrate that they can be supported by sustainable yield. All other residential development appears to rely solely on "will-serve" letters from water purveyors and annual growth rates set by the Board of Supervisors, without taking into account the most current basin conditions. The Coastal Zone Land Use Ordinance already requires a finding that any new development must be served by adequate public services, which the LOCP should make clear that development in Los Osos must include a finding based on the availability of adequate water in the basin and not solely on will-serve letters and annual growth rates.

Moreover, the LOCP and Basin Management Plan do not appear to take development of Accessory Dwelling Units (ADUs) into the sustainable yield, population growth, and future residential unit

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calculations. Although not yet certified by the Commission, the County has recently taken action to potentially allow an ADU on all lots in Los Osos, which has the potential to dramatically increase water use on existing lots and significantly increase population growth. The information provided does not appear to address these potential impacts to the Basin.

Archeology

With respect to archeological resources, the Commission has recently adopted a robust tribal consultation policy that emphasizes coordination with local tribal representatives. While the LOCP does provide more robust and specific standards for development that may impact archeological resources, the LOCP does not require tribal consultation for any projects, even those where significant resources or even human remains are found. While the information provided suggests that the County attempted to consult with tribal representatives several years ago before developing these policies, the documents provided do not show that any additional outreach was conducted to ensure that these updated policies appropriately address tribal concerns. We strongly suggest that the County reach out to tribal leaders again and provide the proposed policies for their review.

Sea Level Rise

The policies do help ensure that development takes into account potential future impacts from sea-level rise. However, the policies also provide additional exemptions that will prolong nonconforming development from coming into conformance with adequate blufftop setbacks. Despite the fact that the blufftop setback standards have not changed, the LOCP changes the date for which cumulative structural alterations are calculated for purposes of determining when a nonconforming structure must be brought into conformance, from 2008 to 2020. While it may sometimes be appropriate as a matter of procedural fairness to use a more current date when standards are significantly altered, here the bluff setback standards remain the same and as such the cumulative alteration date should also remain the same.

In closing, while this draft LOCP is a significant and important step, additional revisions are necessary to ensure that the plan adequately addresses the many issues facing this community. Our office remains dedicated to completing the plan in a timely manner and look forward to collaborating with County staff to ensure that this effort is successful. Thank you for considering our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian O'Neill".

Brian O'Neill
Coastal Planner