

August 11, 2020

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

Re: Agenda Item 4—Los Osos Community Plan and Growth
Management Ordinance

Dear Ms. Brown:

The Los Osos Sustainability Group (LOSG) submits the following comments on the most recent drafts of the Los Osos Community Plan (LOCP), the final EIR (FEIR) for the LOCP, the revised County 2020 Growth Management Ordinance (GMO) that enacts parts of the LOCP, and related documents. We incorporate by reference our comment letters dated August 25, 2015; December 11, 2019; June 26, 2020; and July 8, 2020. The August 25, 2015 and December 11, 2019 letters were submitted with the Sierra Club, and the July 8, 2020 included a follow up letter dated July 13, 2020.

In this letter we comment primarily on the new language added to Section 7.3 “Community Standards” of LOCP Chapter 7 and the additional information and analyses provided in documents prepared by Planning Commission staff and included in agenda materials, e.g., Attachment 8.

In general, the revised language, information, and analyses do not resolve the deficiencies and flaws in the LOCP, GMO and related documents that we identified in our earlier letters nor do the revisions, information and analyses resolve the inconsistencies and non-compliance with CEQA, Coastal Policies, and Special Condition 6 of the Los Osos Wastewater Project (LOWWP) 2010 Coastal Development Permit (CDP).

Our chief concern continues to center on the threat the LOCP, GMO, and related documents pose to the Los Osos Basin and dependent resources, including current development and Basin-dependent ESHA, that can result from unsustainable new development allowed by the plan, ordinance and related documents. Additional development in Los Osos will have permanent impacts on the Los Osos Basin by increasing demand. As a result, the determination of an adequate water supply for new development must be based on sufficient reliable well monitoring data conclusively showing that seawater intrusion is reversed and water levels will remain high enough over the long-term to prevent seawater intrusion and ensure an adequate water supply for the current population and any additional population before further development is approved. The LOCP, GMO, and related documents currently don't assure an adequate water supply for current or added development.

The new language in Section “7.3 Communitywide Standards” of the LOCP does not protect the Basin or address previously identified deficiencies.

The new language includes the following under Subsection D:

1. *Title 19 Water Offset Requirement. New development in Los Osos shall be subject to water demand offset requirements pursuant to Section 19.07.042 of the Building and Construction Ordinance (Title 19 of the County Code). These requirements shall remain in place for the community of Los Osos until the Board of Supervisor adopts a resolution certifying new development can be accommodated by the sustainable yield of the Los Osos Groundwater Basin without causing seawater intrusion, as identified in the Basin Plan for the Los Osos Groundwater Basin and annual monitoring reports. (Emphasis added.)*
2. *Discretionary Land Use Permits. New development requiring discretionary land use permits shall not be approved unless the Review Authority finds the development can be accommodated by the sustainable yield of the Los Osos Groundwater Basin without causing seawater intrusion, as identified in the Basin Plan for the Los Osos Groundwater Basin and annual monitoring reports. The development may offset the associated net increase in water demand at a 1:1 ratio if the groundwater basin may not accommodate increased groundwater extraction, unless a higher ratio is required by Title 19. (Emphasis added.)*

3. The above subsections can result in approval of unsustainable development and harm to the Basin and dependent resources for at least four reasons:

1. Harm from retrofit offsets

First, the Title 19 retrofit offset requirement does not assure that approved new development has an adequate water supply. Attachment 8, provided as part of the agenda materials, estimates that 160 to 350 AFY of conservation potential remains in Los Osos. This estimated potential would theoretically allow development that uses 80 to 175 AFY of water from the Basin. However, reducing water use in the Basin does not establish that the resulting water use will be sustainable, and a retrofit offset requirement can undermine the ability of existing development to have an adequate water supply.

The Title 19 conservation retrofit-to-build program uses conservation potential at a rate that is half as efficient as a program implemented by existing property owners, and it hardens water demand at a higher level of use, leaving less conservation for

water users to fall back on when needed (e.g., for droughts). For instance, the 2:1 offset that Title 19 requires uses 100 AFY of conservation potential to reduce water use 50 AFY because the new development adds half of reduction back as additional demand. A program implemented by existing property owners produces twice as much net water reduction. The 1:1 retrofit proposed in Item 2 of Subsection D above provides no net water-use reduction, while raising demand and leaving existing property owners with less conservation potential.

In our June 26 and July 8 letters we provided substantial evidence that the Basin is not sustainable under current conditions for the current population. We include with this letter a graph of Water Level Metric and Chloride Metric trends through spring of this year prepared for the Los Osos Basin Management Committee (BMC). Chloride Metric results from fall of 2018 to spring of 2020 show that seawater intrusion in Zone D continues to get worse. The metric rose from 145 mg/l in fall of 2018, to 163 mg/l in fall of 2019, to about 180 mg/l in spring of 2020, indicating worsening seawater intrusion. The 2020 monitoring data also show chloride levels in the deep aquifer, Zone E, substantially increasing at a new monitoring well (from 1460 mg/l of chlorides to 2190 mg/l) indicating severe and worsening seawater intrusion. The 2190 reading is about nine times the threshold for seawater intrusion used in the Basin Plan (250 mg/l).

Every Annual Monitoring Report since 2016 has recommended more conservation to mitigate for seawater intrusion (see e.g., Table 22, 2016 and Table 23, 2019). Based on current trends and conditions, existing development will likely need all the conservation potential remaining, as well as the most effective remaining Basin Plan programs, to establish a sustainable water supply. (The LOSG continues to support maximizing all of the most effective proposed Basin Plan programs to establish a sustainable water supply for the current population.)

2. Harm from a lack of objective data-based sustainability criteria

A second reason the revised LOCP language could result in unsustainable development is that the criteria for the Board of Supervisors to remove the Title 19 offset requirement and to approve discretionary development (per Items 1 and 2 of Subsection D above) are vague and discretionary. The criteria do not require that the decisions are based on objective criteria and hard evidence (sufficient reliable well monitoring data) that conclusively show the Basin will support the added demand without further harm to the Basin. The language states that the Board of Supervisors must certify that the "...new development can be accommodated by the sustainable yield of the Los Osos Groundwater Basin without causing seawater intrusion, as identified in the Basin Plan...and annual monitoring reports." This language allows the Board considerable leeway in how the language is interpreted.

Under the revised language, the Board of Supervisors could remove the Title 19 requirement and approve discretionary and other new development based on uncertain predictive modeling or other limited and unreliable information, such as one year of positive metrics.

In our June 26 and July 8 letters, we provide substantial evidence that current modeling significantly overstates actual sustainable yields because it does not account for less rainfall over 15 years and Broderson leach fields being non-operational in pushing back seawater intrusion. We also point out that positive metric trends in 2017 and 2018 have since reversed. Thus, relying on modeled “sustainable yield” estimates and short-term metric trends could easily result in further overdraft and harm to the Basin and dependent resources.

Further, as we have pointed out in the past, the “sustainable yield” definition provided in the Basin Plan and used by the Basin Management Committee (BMC) is not consistent with the accepted definition stated in the best management practices (BMPs) for Sustainable Groundwater Plans subject to the Sustainable Groundwater Management Act (SGMA). The sustainable yield definition of BMPs is a yield that results in no undesirable effects. The current Basin Plan definition is a yield that allows seawater intrusion to advance further in to the Basin. Recognizing that further seawater intrusion is an undesirable condition, the Basin Plan sets a target of 80 for the Basin Yield Metric (80% of “sustainable yield”). However, based on a November 2019 technical memorandum prepared for the BMC, and evidence we provide in our June 26 and July 8 letters, a yield that will stop and reverse seawater intrusion (i.e., achieve the first immediate goal of the Basin Plan) is significantly less than 80% of the current “sustainable yield.”

3. Harm from approving development knowing the water supply may not be adequate

A third reason the above language does not prevent unsustainable development is that it apparently allows development even when the Board of Supervisors believes the Basin may not support it. The language in item 2 of Subsection D states, “The development may offset the associated net increase in water demand at a 1:1 ratio if the groundwater basin may not accommodate increased groundwater extraction...” (Emphasis added). This indicates that discretionary development can be approved even when Supervisors know that harm to the Basin may occur. As explained above, approval with a 1:1 offset does not assure an adequate water supply for the development and it could prevent existing development (and the approved development) from having a sustainable supply.

4. Harm from exempt housing

A fourth reason the new language and supporting information and analyses do not protect the Basin is that it allows exempt housing to be approved with a 2:1 conservation offset and it does not limit the number of units that can be approved or the rate of approval. Attachment 8 estimates that about 11 accessory dwelling units (ADUs) per year will be built in Los Osos for a total of 220 units over 20 years, and it estimates that just two affordable housing developments will be constructed in 20 years having a total of 162 units. The total estimated water use is about for the development is 50 AFY and the total estimated offset is 100 AFY of conservation. These estimates are based on several assumptions and not codified in the LOCP or GMO. The revised language of Chapter 7 of the LOCP (quoted above) would allow exempt housing units to be approved under either provision in numbers and at rates far above the projections in Attachment 8. Applying the Title 19 Water Offset Requirement, Discretionary Land Use Permits provision, and the proposed GMO (which exempts ADUs and affordable housing from development restrictions) would allow exempt housing to be approved even when an adequate water supply may not exist at whatever limit and rate the Supervisors decide.

Why 100 AFY or more of conservation potential exists (but should not)

The Planning Commission staff estimates that 160 AFY to 350 AFY of conservation potential exists in Los Osos. If the estimate is accurate, it is far more than should exist for several reasons.

(1) The potential should have been used to stop and reverse seawater intrusion to provide a sustainable water source for current development and to preserve as much of the Basin as possible.

(2) Special Condition 5 of the LOWWP 2010 CDP [Paragraph 5(b)] requires the County to spend \$5 million to “help Basin residents to reduce their potable water use as much as possible...” The County did not spend all the \$5 million (despite LOSG members spending considerable time and energy encouraging the County over a period of several years to fully implement the program).

(3) The Basin Plan indicates that improving “urban water use efficiency (conservation) is the highest priority program of this Basin Plan for balancing the Basin and preventing further seawater intrusion” (p. 139), and it proposes a Basin-wide conservation program with “mandatory standards” that requires all property owners inside and outside the urban services line, including private well owners, to participate. To be enforceable and effective, the program would require a County ordinance or a BMC ordinance. This has not happened but it should have.

Why the delay in maximizing Basin Plan program

The delay in fully developing the conservation potential of the community and implementing Basin Plan programs has resulted in a delay in providing a sustainable water supply for the current and future populations, and it has resulted in further harm to the Basin. From our long involvement in the Basin planning process, the delay results to some extent from the Basin Plan and BMC's overreliance on the model and the reluctance on the part of the County and BMC to implement a Basin-wide ordinance or other mechanism(s) to secure funding and the participation of all users in Basin Plan programs. However, the delay has also resulted from the County prioritizing new development in its role as a Party to Basin Plan and member of the BMC. This priority has had a disproportionate effect on the Basin Plan and Basin management, slowing progress toward the immediate goals of the Basin Plan—e.g., to provide a sustainable water supply for the current population. All conservation potential and the most effective Basin Plan programs should have been maximized by now—and should still be maximized immediately--to establish a healthy and sustainable Basin that will support the present and future populations, as well as the high value natural resources that depend on the Basin.

Conclusion

Because the current LOCP, FEIR, GMO, and related documents continue to fail to adequately protect the Basin and dependent resources, including existing development and groundwater-dependent ESHA; we continue to support the No Project, No Development Alternative for the LOCP. We also support a GMO that limits growth to zero in Los Osos because any development relying on the Basin can further harm the Basin until the County and BMC establish, based on conclusive evidence (i.e., sufficient reliable well-monitoring data over a sufficient period of time) that the Basin will support the current population and provides enough additional water to sustainably support some level of additional development.

We incorporate by reference all earlier comments we've submitted to the County relating to the Los Osos Basin, the Los Osos HCP, and the Los Osos Community Plan, and we also incorporate by reference comments submitted by other stakeholders on these topics that support a cautious and protective approach to Los Osos Basin Management and the approval of further development in Los Osos.

Sincerely,

Patrick McGibney, Elaine Watson, Larry Raio, Keith Wimer, Chuck Cesena

Los Osos Sustainability Group (LOSG)

Graph of Water Level and Chloride Metric trends through spring of 2020 showing worsening seawater intrusion conditions.