

November 18, 2019

TO: Environmental Coordinator, Department of Planning and Building,
976 Osos Street, Room 300, San Luis Obispo, CA 93408-2040

FROM: Sierra Club, Santa Lucia Chapter
Los Osos Sustainability Group

RE: SC and LOSG Comments on the Los Osos Habitat Conservation Plan Draft
Environmental Impact Report LRP2011-00016

The Sierra Club and Los Osos Sustainability Group (LOSG) support the No Project Alternative for the Los Osos Habitat Conservation Plan.

The first reason for this and one of the most obvious shortcomings of the HCP DEIR is its reliance on the draft EIR of the Los Osos Community Plan as a set of mitigation measures for the impacts contemplated in the HCP. Per CEQA guidelines, a draft EIR does not constitute mitigation of environmental impacts. For the HCP DEIR to assert such mitigation based on the uncertified DEIR of another project is to engage in crystal ball gazing of a type not permitted by CEQA. This alone is reason enough to select the No Project Alternative.

The HCP relies on vague and unenforceable mitigation measures that make it impossible to analyze the extent to which target species would be protected. Moreover, the structure of the HCP, which puts the burden on the individual applicant to provide information to decide in the first place whether species occur on the site, creates perverse incentive for the landowner to destroy the habitat first, then claim that the site is not likely to include any species.

A second reason to opt for the No Project Alternative is the HCP DEIR's treatment of potential cumulative environmental impacts. The DEIR asserts that the fact that individual site studies will be done for all future projects will satisfy CEQA's requirement for an analysis of cumulative impacts. This appears to be a fundamental misunderstanding of the concept and category of cumulative impacts under CEQA. The absence of any analysis or mitigations for cumulative impacts in the HCP DEIR is a fatal flaw.

A third reason to support the No Project Alternative for the Los Osos Habitat Conservation Plan is the need to leave the Estero Area Plan (EAP) in place until it can be shown that the Los Osos Ground Water Basin can provide a sustainable water source for planned development. The HCP DEIR lacks the hard data necessary to make this case. This leaves the No Project Alternative as the only prudent course.

Although Annual Monitoring Reports from 2016 - 2018 issued by the Los Osos Basin Management Committee (BMC) have indicated some retreat of seawater intrusion at one location near the coast, the most recent monitoring data indicate that the seawater intrusion is moving back in at that location and is now threatening a part of the Basin not previously impacted. Further, the position of the seawater front as depicted in the 2017 and 2018 reports has uncertainties because a key data point (chloride levels in the lower aquifer portion of the Rosina Well) had to be estimated due to contamination by the upper aquifer portion of the well.

Moreover, potential adverse impacts on sensitive habitat due to reduced groundwater flows resulting from removing septic system flows are still uncertain. The 2018 Basin Plan and minutes of the June 2019 Basin Management Committee meeting indicate that a ground water mound is forming under the Broderson site but may not benefit the lower aquifer where seawater intrusion is occurring for 10 years or more. The mound apparently has not reached sensitive habitat along the estuary, and we are not aware of any records showing that LOWWP impacts on habitat, including along the estuary and in the vicinity of Willow, Eto, and Los Osos Creeks are being monitored or adaptively mitigated per Special Condition 5 (c, d) of the LOWWP Coastal Development Permit (CDP) as issued by the Coastal Commission. The HCP DEIR does not even mention the LOWWP CDP, even though several of the required CDP mitigation programs are ongoing.

The proposal in the HCP DEIR to move wells away from the ocean includes no analysis of the impacts of unspecified new well locations on a shallow aquifer and nearby creeks and riparian vegetation. The DEIR's lack of analysis or mitigation of the potential environmental impacts that may result from the relocation of these wells is impermissible under CEQA.

The HCP, in combination with the Los Community Plan update of the Estero Area Plan, provides strong incentives for unsustainable development adversely impacting the community and high-value area resources including the Basin and sensitive habitat that depends on the Basin. Growth inducements include financial incentives for developers, businesses, and the County (via development fees). Community members are incentivized by the opportunity to have attractive capital improvement projects (financed largely by development fees), reduced sewer costs, and the ability to build on existing lots and remodel and upgrade existing homes. Unsustainable growth is also encouraged by the large scope of the project.

Taken together, the strong incentives in the HCP and Community Plan update are likely to push Basin planning and decisions about further development toward a foregone conclusion that the Basin will support the development. This push is already evident, we believe, in Basin planning and could result in destruction of the sole water source for the community and coastal resources, with no other viable alternatives.

In comments submitted on the Basin plan over 2014-2016, herewith incorporated by reference, we've voiced our concerns to the Parties to the Basin Plan, the County, and the Coastal Commission regarding overly-optimistic assumptions in the Basin Plan based on the Plan's discussion of seawater intrusion and Basin conditions, as well as other expert input. The reliance of the HCP DEIR on assumptions and strategies that support further development rather than Basin sustainability is another critical flaw in the DEIR.

We will include a summary of our earlier Basin Plan comments with our comments on the Los Osos Community Plan, with recommendations we believe to be reasonable and necessary for sustainable Basin planning in light of the fact that the Los Osos Basin is relatively small, reduced in size by severe overdraft for over 30 years. We believe our recommendations are more consistent with Sustainable Groundwater Management Act planning than the current approach.

As noted, we cannot support approval of a Los Osos Habitat Conservation Plan and the Draft EIR because the Los Osos Community Plan update is the planning document that sets forth conditions for development, including water availability, on which the HCP relies. In addition to this reliance being premature, the current draft of the Los Osos Community Plan and Draft EIR are not sufficiently protective of the Basin due to the presence of the same flaw in the HCP DEIR: It does not require conclusive evidence showing that the Basin is a sustainable water source for current development and dependent resources before further development is allowed.

A request for extension of the deadline for submitting comments on the HCP DEIR was met by the extraordinary statement by the County, the lead agency, that such requests must be directed to the Department Fish and Wildlife. The deadline for public comments to be accepted on the HCP DEIR should be extended until after completion of the Los Osos Community Plan and certification of its EIR. Significant changes to the Los Osos Community Plan may make it possible to remedy the flaws in the HCP and its DEIR and may indicate a more limited set of HCP programs and/or implementation of a phased approach to the implementation of programs that protect and enhance area resources.

Until the Community Plan is amended to address these concerns and the HCP and its DEIR are amended consistent with those changes, we recommend the following regarding the HCP:

1. Delay completion and implementation of an HCP and EAP update until the Basin is shown with hard data over time to be a sustainable water source for both current development and natural resources. The data should show no sign of seawater intrusion on the western edge of the community and that water levels throughout the Basin are high enough to reverse seawater intrusion with a margin of safety. The data should also show adequate additional water in storage to support additional development with a margin of safety. A reasonable delay to be no less than ten years to allow time for the impacts of the LOWWP, Basin Plan

programs, and climate change effects on the Basin to be more fully understood. Hard data would include extensive direct water quality and water level sampling taken at production and test wells throughout Basin aquifers and areas, rather than data based on the current limited sampling sites, supplemented by modeling, extrapolations, projections, and various assumptions.

2. Encourage parties to the Basin Plan, responsible agencies, and other stakeholders in the Los Osos Basin to support Basin management strategies that take a more precautionary approach to preserving the resource.

We look forward to supporting both a robust HCP and an EAP update that support further development and will protect coastal resources if and when, through the coordinated efforts of stakeholders, the Los Osos Basin proves to be a sustainable resource for present and future development and capable of protecting some of the most environmentally sensitive habitat in San Luis Obispo County.

Thank you for the opportunity to comment on these issues,

Andrew Christie
Santa Lucia Chapter of the Sierra Club

Keith Wimer
Los Osos Sustainability Group