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Sent: Wednesday, December 11, 2019 1:32 PM

To: 'kbrown@co.slo.us' <kbrown@co.slo.us>

Subject: Comments of Sierra Club Santa Lucia Chapter and Los Osos Sustainability Group on Draft Los Osos Community Plan EIR

Dec. 11, 2019

TO: Department of Planning & Building

ATTN: Los Osos Community Plan Update/Kerry Brown

976 Osos Street, Room 300

San Luis Obispo, CA 93408

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

RE: Draft Los Osos Community Plan EIR

The Sierra Club and the Los Osos Sustainability Group (LOSG) support the “No Project, No Development” alternative presented in the Draft EIR for the Los Osos Community Plan (LOCP) update of the Estero Area Plan (EAP).

The No Project alternative is preferable for two reasons. First, the EIR does not mitigate the considerable adverse impacts on the area that would result from the “Superior Alternative,” a Community Plan that targets a 30% increase in population and a similar increase in “dwellings” of about 1,900 or 30%. Second, the level of analysis of the EIR is not adequate to inform decision makers and the public of the significant potential adverse impacts of the Plan and the options for minimizing or avoiding the impacts. CEQA requires a sufficiently rigorous review of impacts and feasible mitigation options in order for the public to provide informed input and decision makers to make informed decisions regarding a project’s impacts and the best way to minimize or avoid impacts on existing resources. An adequate analysis allows the public and decision makers to make informed decision about whether to choose a No Project alternative or support a project with unavoidable significant impacts.

The failure to mitigate major impacts to a level of insignificance and provide an adequate analysis is apparent in several sections of the EIR, including the section on Greenhouse Gasses (4.6). We focus on potential impacts of critical importance to the community and area, and impacts on the water supply.

The EIR should require empirical data over modeling

As proposed, the Community Plan may lead to further overdraft and significant additional harm of the Los Osos Water Basin (Basin), the sole source of water for the Los Osos Community, local agriculture, and the considerable high-value habitat in the area due to increased water demand from unsustainable development. The Basin has lost a major part of its groundwater capacity to severe seawater intrusion (SWI) as a result of 40 years of overdraft, beginning with a large increase in development in the 1970's. The overdraft happened despite, and at least partly because of, "safe yields" that were too optimistic. The currently proposed criteria for making decisions on development, i.e. the mitigations proposed to avoid significant impacts, are still too reliant on modeling. At this point, a precautionary approach to Basin management and development decisions that does not rely on modeled yield estimates is necessary to preserve an irreplaceable natural resource.

As we stated in our 2015 comments on the Community Plan and in our 2019 comments on the Los Osos Habitat Conservation Plan (LOCHP) EIR – both herewith incorporated by reference -- the only prudent course of action, given the history of the Basin and its vital importance to the community and natural resources, is to base decisions regarding future development on reliable empirical data over time. This requires more monitoring wells than used presently spaced throughout the Basin, especially along the bay and inland to provide conclusive evidence that water levels are high enough to hold back and reverse SWI in the main aquifer (Zones C, D, and E) with seawater in Zones D and E reversed to a point off-shore, and that water storage above sea level is adequate to support existing resources with a margin of safety. Establishing with adequate reliable empirical data that there is sufficient additional water in storage, above a level that safely supports current resources, would enable further development.

The California Coastal Commission in 2009 agreed that the Community Plan (EAP update) should base buildout limits and mechanisms to stay within those limits, on conclusive evidence of an adequate water supply. Special Condition 6 of the Coastal Development Permit (CDP) for the Los Osos Waste Water Project (LOWWP) states:

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.

The failure of the EIR to include this language is one reason why we find the analysis inadequate. LOWWP CDP Special Conditions 5 and 6 were required to mitigate for impacts on the Basin and sensitive habitat from the LOWWP, including ongoing impacts for the life of the project. The LOWWP CDP Special Conditions should be referenced and incorporated in the Community Plan and the EIR.

The EIR fails to address the cumulative impacts of the LOWWP and Community Plan as required by CEQA

C Coastal Commission staff has reinforced the need to analyze and incorporate the LOWWP related mitigations, pointing out that the Recycled Water Management Plan (RWMP) required by Special Condition 5 of the LOWWP CDP is not mentioned or addressed (see Daniel Robinson letter 2015, Community Plan EIR Vol. 2, p. 5). Mr. Robinson's recommendations do not appear to have been incorporated into the Community Plan or current EIR.

Moreover, the potential cumulative impacts of the Basin Plan must be addressed in combination with LOWWP impacts and the potential adverse impacts of the Community plan. Mr. Babak Naficy submitted a letter to the County, Los Osos CSD, and other parties to the Los Osos Basin adjudication process on behalf of the Sierra Club in August 2015 pointing out that CEQA required addressing the potential adverse impacts of Basin Plan programs on sensitive habitat and other resources (incorporated by reference). The potential impacts still exist and should be addressed as cumulative impacts in the present EIR.

Mitigations in the Water Supply Section of the EIR do not mitigate impacts

The impact analysis of the Water Supply section (4.15.2) acknowledges potential adverse impacts on the Basin from the Community Plan, and says that the impacts will be reduced to insignificance through the Growth Management Ordinance and "standards tied to the Basin Plan" (Impact W-1). The analysis provides the Basin Plan definition of "sustainable yield" and the "current" (2015) estimate of the yield [2,450 acre-feet per year], and the analysis indicates that the yield could go up to "3,500 AFY or greater" with implemented programs. The analysis then provides "Water-Related Standards" proposed in the Community Plan, Section 7.3. Standard D. Los Osos Groundwater Basin states:

Development of land uses that use water from the Los Osos Groundwater Basin shall be prohibited until the Board of Supervisors determines that successful completion and

implementation of specific programs identified in the Los Osos Basin Plan ...have occurred (Standard D.1, p. 4.15-10).

Standard D then lists programs that would have to be completed prior to added development approval, and several review steps County supervisors and other County personnel would take to evaluate program effectiveness.

To determine program effectiveness, Standard D states that “the County shall consider data” from the Basin Plan monitoring program, and

If the data indicate that complete programs have not been effective in reducing groundwater demand, increasing the perennial safe yield or facilitating seawater retreat as predicted in the Basin Plan, then the development of new residential units shall be limited accordingly. (Standard D.2.a, p. 4.15-11)

As we pointed out in 2015, this language is vague and allows too much discretion in how data is used and interpreted, as well as which improvements will be considered and how they will be evaluated. For example, if data at one well shows lower chloride levels, the County could interpret the program(s) to be “facilitating the retreat of seawater intrusion.” Further, it is unlikely that data will show in the short term that programs have “not been effective in... increasing the perennial safe yield...” of the Basin. Adverse impacts from overestimating yield will likely to be long term. Thus, the language allows approval of development that could result in significant delayed adverse impacts. Also, the term “perennial safe yield” has not been defined.

Daniel Robinson in his 2015 letter points out that the criteria for program effectiveness should be clearly defined (Robinson letter 2015, EIR Vol, 2, p. 6). The current language allows decisions regarding development to be based on considerations other than data and Basin sustainability, including the need for “affordable housing” in the county, as mentioned by Supervisor Gibson in a recent New Times article.

As we point out in our 2015 Community Plan comments, implementation of Basin Plan programs does not assure an adequate water supply for new development. The predicted benefits of the programs (e.g., increased Basin yields) are estimates based on modeling, with significant uncertainties due to unknowns inherent in modeling relating to basin structure and groundwater movement, climate change (rainfall variability and sea level rise), unmetered water use in the Basin (1/2 of the water pumped), and potential adverse impacts on habitat. These uncertainties are increased due to significant

potential impacts (major changes groundwater recharge and pumping) resulting from the LOWWP and Basin Plan programs.

The Best Management Practices for the Groundwater Sustainability Plans required by the Sustainable Groundwater Management Act (SGMA) support the need to verify basin sustainability with empirical data, not estimated yields, stating “Basin wide pumping within the sustainable yield estimate is neither a measure of, nor proof, of sustainability” (Sustainable Management Criteria BMP, p.32.)

The EIR acknowledges our concerns about uncertainty in modeling, but does not address the issue:

“...the Basin Plan contains a level of uncertainty. Planned development will need to work continuously with the Basin Management Committee as additional information becomes available to help ensure sustainable water supplies are available for existing populations and potential new development.” (Impact W-1) (p. 4.15-6)...

Established CEQA case law precludes mitigating potential impacts with unspecified future mitigation measures. Furthermore, adaptive management-- which the Basin Plan and BMC propose to address future adverse impacts (e.g. reduced flows to habitat) and outcomes inconsistent with modeling (e.g. lower yields)--must be time specific and presented in an EIR with enough detail to evaluate feasibility and potential effectiveness. To our knowledge, the Basin Plan and BMC have not modeled or otherwise planned specific contingency plans for adverse impacts. The options presented in the Basin Plan and to the public in BMC meetings include conservation, shifts in pumping, and implementation of additional Basin Plan infrastructure programs. We believe these are not be feasible within a time frame that could prevent significant impacts due to the current high use of conservation and recycled water use, the long lead time required, and high cost of infrastructure programs. The latter is shown, in part, by the fact that several of the Infrastructure Program C measures are yet to be implemented after four years. Cutbacks in pumping have been suggested, but the legality of this option is questionable, especially since Basin Plan “sustainable yields” are set 20% above targeted yields, and the ISJ agreement between the Parties of the adjudicated Basin grants water service providers additional allocations that would apparently allow pumping in excess of sustainable yields. (See our 2015 letter in Vol. 2 of the EIR for further detail explaining why the criteria for added development do not mitigate for the potential adverse impacts.)

The Basin Plan and related management actions and programs do not mitigate for Community Plan impacts

In 2015, the Los Osos Basin Management Plan was implemented as the result of a long basin adjudication process. The Interlocutory Stipulated Judgment (ISJ), an agreement between the three water service providers in the area and the County, was approved by the Superior Court in 2015, and the Basin Management Committee (BMC) made up of the parties to the ISJ began holding regular meetings. Annual Monitoring Reports since then have shown a significant drop in water use in the urban area and signs that SWI in the Basin (lower aquifer Zone D) may be improving with implementation of the Water Use Efficiency Program (conservation), the Recycled Water Reuse Program, Infrastructure Program A (primarily nitrate treatment), and initiation of Program C, a shift in pumping inland in the lower aquifer (primarily Zone D) to wells further inland.

However, based on the 2018 Annual Reports, the chloride and water level metrics and other methods used to track the SWI front in Zone D, and program benefits, may be unreliable. The data is reported to have considerable variability, and a key data point (the Rosina Well) must be estimated due to contamination (which dilutes chloride concentrations). The limited number of wells used (4-6) also make the metrics and methods prone to error.

Based on the most recent 2018 Annual Report, water levels in the lower aquifer (Zones D and E) along the bay front are still near mean sea level and remain vulnerable to SWI. The Basin Plan Water Level Metric targets 8 feet above mean sea level to reverse and hold back SWI in Zone D. To reverse SWI in the deeper aquifer, Zone E, water levels must be 12 feet above mean sea level, according to Eugene Yates, an expert on the Basin. Water storage estimates in 2018 still show levels in the main drinking water aquifer, Zone D, and the largest aquifer, Zone E, average more than 10 feet below sea level, 18 to 22 feet below the level needed to repel SWI.

The EIR cannot adequately assess impacts without additional monitoring wells.

The BMC is apparently not tracking the SWI front in the deep aquifer, Zone E. The estimated rate of SWI in Zone E in 2014 was 125 feet per year, which raises the possibility that the front is nearing an area of very low water levels under the commercial area and could accelerate. Recent (2019) data also indicate that SWI in Zone E is threatening a part of the Basin not previously impacted. With very few monitoring

wells in the northern part of the Basin, SWI may be progressing inland undetected. Eugene Yates also warns that Zone E could contaminate Zone D via the process known as “upconing.”

Based on 2019 BMC meeting minutes, the only additional monitoring well that was planned for along the bay, filling a large gap in monitoring sites in the northern part of the Basin, is just now preparing to go on line. Eugene Yates and the Monterey Bay Watershed Institute have recommended substantially more monitoring sites along the bay and inland. Both have warned that SWI can intrude in all three main aquifers (Zones C, D, and E) at any point along the bay, especially with potential ongoing impacts from the LOWWP in combination with Basin Plan programs (e.g., no septic recharge in combination with more pumping from Zone C, the upper aquifer). More monitoring wells, as we point out, are also needed to provide adequate empirical data to reliably assess program benefits and the condition of the Basin.

Conclusion

For the reasons stated above, the proposed mitigations for the potential adverse impacts on the Basin that are acknowledged in the Community Plan EIR have not been appropriately analyzed or mitigated.

A brief summary of our earlier recommendations to the BMC and the County follows.

Summary of previous requested actions and recommendations

- Define sustainable yield more conservatively, in keeping with Sustainable Groundwater Management Act (SGMA) practices and policies SGMA Best Management Practices (BMPs) define “sustainable yield” as a yield that avoids undesirable effects. The Basin Plan “sustainable yield” would allow seawater intrusion to move up to production wells. The Basin Plan and BMC realize this is not desirable and add a 20% “buffer” as a margin of safety, but 20% is not nearly enough given the many potential impacts and uncertainties related to the major changes to Basin hydrology with LOWWP and Basin Plan implementation —and the fact that rainfall for the last 12 years has averaged at least 10% below the 17.5” yearly average assumed in Basin Plan modeling.

1. - Increase data points (monitoring wells) throughout the Basin, especially along the bay and a distance inland from the bay, to more reliably track SWI and water levels, and measure the benefits of programs on the Basin.

2. - Model and plan specific contingency plans for a range of possible unexpected outcomes and adverse impacts (e.g., SWI in Zones C or E, and reduced ground water flows to habitat in the Willow Creek area). We asked that the plans include minimum thresholds and protocols for implementing adaptive measures consistent with SGMA BMPs.
3. - Implement a Basin Management Ordinance that would enable the County to mandate Basin Plan programs as needed, including monitoring programs to measure the water pumped by private well users (about 1/2 of the water pumped from the Basin). We pointed out that this would reduce uncertainty in the timing of program implementation and uncertainty in modeling. The Annual Reports now estimate non-metered water use, which the Basin Plan indicates can could be as much as 100 AFY off, adds about 5% of uncertainty to modeling.
4. - Allow resource protection agencies, including the Department of Water Resources (DWR) to retain oversight authority over Basin Planning. We were disappointed that the DWR in 2019 designated the Los Osos Basin “very low-priority for SGMA,” and that the designation may mean that the Los Osos Basin will not be subject to the same standards and best management practices as other critically over drafted Basins.

The above requests were not implemented. The BMC implemented some of our recommendations for conservation at a reduced level (e.g., much less outreach) over a longer time frame. We applaud the BMC’s efforts on conservation and the large drop in water use. We may be seeing the early benefits of a relatively aggressive conservation program, although more data is needed. The BMC also began tracking Basin water storage. We encourage setting storage targets at safe levels above sea level for all parts of the Basin, and providing estimates of historical losses of capacity, as agreed in 2016. The historical estimates will highlight the need for precautionary Basin management to preserve and augment the Basin we have left.

We look forward to supporting a Community Plan that adequately protects existing development and the very high value habit in the area.

Thank you for your attention to these issues,

Andrew Christie,
Sierra Club Santa Lucia Chapter

Patrick McGibney,
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