

July 8, 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:

The Los Osos Sustainability Group (LOSG) submits the following comments on the 2020 draft of 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 a Resource Summary Report supporting the revised GMO and designation of a Level of Severity III for the Los Osos Basin. We incorporate by reference our earlier comments including 2015 LOCP comments, 2019 Los Osos Habitat Conservation Plan (LOHCP) comments, and June 2020 comments on the present GMO revisions. Our 2015 comments are included in Volume II the FEIR, (pdf pp, 38 to 43), the 2018 comments are in Volume I of the FEIR (pdf pp. 687 to 691), and GMO comments should be included in your packet.

**Summary of how the LOCP fails to comply with Coastal Policies and related requirements**

The LOCP fails to comply with Coastal Policy 1, Coastal Land Use Policy 23.04.430, and the Special Condition 6 of the 2010 Los Osos Wastewater Project (LOWWP) Coastal Development Permit (CDP), in addition to other Coastal Zone land use policies, by failing to condition approval of development within the Coastal Zone on verifiable and adequate water supplies to support that development without impacts to existing water users and environmental resources. The LOWWP CDP further specifies that the LOCP must identify "... a sustainable buildout limit and appropriate mechanisms to stay within those limits, based on conclusive evidence of an adequate water supply..." (emphasis added)

The LOCP fails to meet these standards and requirements because the buildout limits and the proposed mechanisms for staying within the limits are inadequate since they based on uncertain predictive modeling (future yield estimates), insufficient and unreliable data, and unreasonable reliance on short-term localized trends in Basin conditions reflected in Basin metrics. Because added development in Los Osos will have permanent impacts on the Los Osos Basin by increasing demand, determination of an adequate water supply must be based on sufficient reliable well test data to conclusively show that Basin Plan programs have reversed seawater intrusion and raised water levels over the long-term to levels that ensure an adequate water supply for the current population and additional population before further development is approved.

## **Summary of how the LOCP FEIR fails to comply with CEQA**

The LOCP FEIR violates CEQA because it includes several omissions, errors, faulty analyses, and unsupported conclusions. The FEIR also fails to provide adequate relevant information that is needed for the elected officials and members of the public and other stakeholders to participate in the process and make informed decisions. For instance, the FEIR fails to disclose and incorporate significant changes in the “7.3 Communitywide Standards” section of Chapter 7 of the LOCP, which alters criteria for approval of development in a way that significantly affects how much housing can be approved and when. The FEIR must be revised in order to specifically assess the potential impacts on these revisions to the Communitywide Standards.

Furthermore, review and approval of the FEIR is scheduled to precede completion of the Los Osos Habitat Conservation Plan (LOHCP), which provides and evaluates many of the mitigation programs and procedures that address LOCP impacts. CEQA prohibits deferral of the formulation of mitigation measures and instead, requires that mitigation programs be described, analyzed and approved at the time, so that stakeholders can assess the potential effectiveness of the measures. Moreover, many of the key proposed mitigations intended to address the LOCP’s significant biological impacts are inadequate.

The FEIR also repeatedly claims a “20% buffer” has been added to modeled “sustainable yield” estimates to provide a reasonable margin of safety and avoid impacts from buildout limits based on the estimated yields. The FEIR does not analyze the sources of uncertainty in the model or discuss known facts that show the model is calibrated to predict a future best-case scenario that is not likely to occur, especially with the increasing impacts of climate change on water supplies.

Due to the serious inadequacies and flaws in both the LOCP and FEIR, we urge to not approve the LOCP or certify the FEIR until and unless the inadequacies and flaws are fully addressed.

## **Summary of how the GMO and related documents fail to comply with Coastal Policies and related requirements**

The Growth Management Ordinance (GMO) and the Resource Summary Report and supporting information are crafted to enact the LOCP and allow development based on the same criteria and limited information used in the LOCP. Thus, the documents violate Coastal Policy, the CZLUO, and the LOWWP CDP. Significant revisions to the documents are required for them to comply with applicable Coastal Policy and related land-use requirements. The revisions to the GMO must also be analyzed in a separate CEQA document because the proposed discretionary changes to the GMO are capable of causing significant environmental impacts. We urge you not to approve GMO and related documents until the inadequacies and flaws in the above documents, including the LOCP and FEIR are addressed.

**Further explanation the LOCP's inconsistencies with Coastal Plan Policies CLUZO, and LOWWP CDP.**

**The LOCP is inconsistent with, and violates, the following policies and provisions**

***Policy 1: Preservation of Groundwater Basins (Policies for Coastal Watersheds)***

*The long-term integrity of groundwater basins within the coastal zone shall be protected. The safe yield of the groundwater basin, including return and retained water, shall not be exceeded except as part of a conjunctive use or resource management program which assures that the biological productivity of aquatic habitats are not significantly adversely impacted. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

The LOCP violates this Policy because it undermines the integrity of the Los Osos groundwater basin by approving future growth that could potentially overdraft and harm the Basin.

***23.04.430 - Availability Of Water Supply And Sewage Disposal Services***

*A land use permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as provided by this section. Subsections a. and b. of this section give priority to infilling development within the urban service line over development proposed between the USL and URL. In communities with limited water and sewage disposal service capacities as defined by Resource Management System alert levels II or III:*

- a. A land use permit for development to be located between an urban services line and urban reserve line shall not be approved unless the approval body first finds that the capacities of available water supply and sewage disposal services are sufficient to accommodate both existing development, and allowed development on presently-vacant parcels within the urban services line.*

The LOCP violates these provisions because the adequacy of water supplies to support future development has not been established. The County is not in a position to make a finding that existing Basin water supplies are sufficient to support future growth under the LOCP.

***Condition #6 of the Coastal Development Permit (CDP) for the Los Osos Wastewater Project (LOWWP)***

***Wastewater service to undeveloped properties.*** *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 LOCP fails to meet the CDP requirement because it does not identify sustainable buildout limits and mechanisms to stay within those limits based on “conclusive evidence” of adequate water to support that development without harm to the Basin and other resources.

In January of 2010, during the Coastal Commission review of the LOWWP, the LOSG and other groups and citizens raised several issues before the Commission that resulted in a finding of “substantial issue” with the LOWWP, and a subsequent hearing date to resolve the issues. The issues we and others raised included the potential for the LOWWP to adversely impact the severe seawater intrusion problem in the Basin, and the project’s potential adverse impacts on environmentally sensitive habitat (ESHA), including wetlands and marshes, along the Morro Bay National Estuary, Willow Creek, and Los Osos Creek, that depend on groundwater flows from the Basin. Another issue raised was the potential for the very large wastewater project to induce unsustainable development in the area that would result in further overdraft the Basin making seawater intrusion worse and reducing groundwater available to habitat. For these, and other reasons, the Coastal Commission added ten Special Conditions to the project, including Special Conditions 5 and 6—and the County agreed to them.

Special Condition 5 requires a Los Osos Basin Recycled Water Management Plan, implemented with the LOWWP that “maximize(s) (the) long-term ground and surface water and related resource (including wetlands, streams, creeks, lakes, riparian corridors, marshes, etc.) health and sustainability, including with respect to offsetting seawater intrusion as much as possible.”

Special Condition 6, quoted above, requires that special criteria is applied to amendments to the Estero Area Plan (LOCP) to ensure development does not harm the Basin.

The LOCP does not identify sustainable buildout limits and mechanisms to stay within those limits based on “conclusive evidence” of adequate water to support the buildout. We understand from answers to questions we sent to Kylie Hensley of County Planning that the revised LOCP and related GMO set no upper limits on the number of units of “exempt” housing that can be approved (see Attachment). We

submitted the questions to clarify language in the proposed GMO after noticing that “affordable housing, accessory dwelling units (ADUs), and farm worker housing” had been exempted from the growth rate limits in the revised GMO. The LOCP also exempts these housing types from approval criteria and growth rate limits tied to successful completion of Basin Plan programs (see FEIR Chapter 7, pp. 7-2 to 7-3). Successful program completion and determination of program effectiveness were required for all housing in the original LOCP (LOCP Chapter 7, p. 7-2 to 7-3, pdf pp. 2-3, redline version). As we explain in the next section, this represents a significant undisclosed change in the LOCP, which does not appear in the FEIR (see June 26, 2020 comments on the GMO and further comment below).

The buildout limits for “non-exempt housing” are based on modeled “sustainable yield” increases that will theoretically occur with the implementation of various Basin Plan Programs. Some of the programs have been completed, some are in process, and others will be completed in the future (assuming funding is available and programs are not modified by the Basin Management Committee). The Basin model, however, is a predictive planning tool with significant levels of uncertainty, so “sustainable yield” estimates based on the model do not meet the standard of “conclusive evidence” or even convincing evidence of a sustainable water supply.

As mentioned above, the LOCP in several places cites the Basin Plan’s subtraction of a “20% buffer” from modeled “sustainable yield” estimates, which the Basin Plan and LOCP suggest accounts for all uncertainties in the model (see Basin Plan in provided documents, e.g., p. 111, and FEIR Chapter 4-15, pp. 4.15-8 & 4.15-12, pdf pp. 8 & 12). Uncertainties include such factors as reductions in rainfall, rises in sea level, and other climate change factors, as well as assumptions about Basin structure and groundwater movement between aquifers. There is no substantial evidence supporting the conclusion that the 20% reduction accounts for all potential sources of modeling uncertainty.

As we point out in our 2019 comments on the DEIR, Best Management Practice (BMC) guidelines for implementation of Groundwater Sustainability Plans under the Sustainable Groundwater Management Act (SGMA) do not recognize modeling and yield estimates as bases for determining a basin’s sustainability.

Furthermore, there are at least three reasons Basin modeling, even with the buffer, are likely overstating actual sustainable yields in the Basin. One relates to the definition. SGMA BMCs define “sustainable yield” as a yield that results in no undesirable effects. The Basin Plan recognizes that “sustainable yields” as defined result in undesirable effects (i.e., the advance of seawater intrusion much further into the Basin) (see Basin Plan in provided documents, pp. 108 & 109). To avoid this advance—and to stop and reverse seawater intrusion in the lower aquifers per Basin Plan goals--yields must have the 20% subtracted. Thus, “80% of current modeled sustainable yields” is a more accurate definition of sustainable yields. To account for uncertainties requires subtracting an additional buffer.

Another reason the model likely overstates actual sustainable yields relates to the fact that more data is now available to determine the accuracy of modeling assumptions. One assumption of the model is that average rainfall will remain at the historic level of 17.5". Appendix H of the 2019 Annual Monitoring Report prepared for the Basin Management Committee (BMC) shows that the average rainfall in Los Osos over the past 15 years is 15.14, or about 13% less. This reduction would reasonably translate into a similar reduction in sustainable yields (see the 2019 Annual Monitoring Report in the "Agenda-Packet\_BMC-Meeting\_6-17-20\_20" on the BMC website, pdf p. 292).

Further, the timing of the effects of Broderson leach fields on seawater intrusion is now better understood based on the rate of groundwater mounding below the site. A 2019 tech memo prepared for the BMC estimates the beneficial effects on seawater intrusion (assumed in the model) will not begin for at least five years, and the tech memo further acknowledges that the timing of leach field effects are uncertain until the ground water mound pushes through clay aquitard and begins raising water levels in the lower aquifers. (See our 2020 GMO comments and related comments below for further detail and citations.) The CSU Monterey Bay Watershed Institute estimates the time it takes for water to move through the aquitard is 171 years. (see "Can Los Osos Valley Groundwater Basin Provide a Sustainable Water Supply," p. 33 at [http://ccows.csUMB.edu/pubs/reports/CSUMB\\_660\\_LosOsos\\_100113\\_final.pdf](http://ccows.csUMB.edu/pubs/reports/CSUMB_660_LosOsos_100113_final.pdf))

The 2017 to 2019 Annual Monitoring Reports for the Basin indicate that water use in the Basin (which includes measured and estimated water use) is below modeled "sustainable yields" for those years with 20% subtracted, which is represented as a Basin Plan "Yield Metric" value of below 80 (or 80%). In 2017 and 2018 the other basin metrics (Chloride Metric and Water Level Metric) which are based on well-test data, indicated improvements in seawater intrusion near the bay front in one of the lower aquifers, Zone D. However, the same metrics showed worsening conditions in 2019.

A 2019 report prepared for the BMC further showed seawater intrusion in Zone E continuing to advance (also see our 2020 GMO comments for further details.) Achieving the Basin Yield Metric of below 80 is supposed to result in seawater intrusion reversing, but the Chloride Metric in 2019 showed in moving in. Thus, modeling predictions are yet to be confirmed, as are the many assumptions embedded in the model (e.g., that yields will go up when wells are moved inland). The uncertainty associated with moving wells inland is highlighted by the fact that the Los Osos Community Service District (LOCSO)--one of the parties represented on the BMC and responsible for implementing Basin Programs—recently drilled an exploratory well before drilling a Program C expansion well and found no water in a part of the Basin where the lower aquifer is shown to exist in Basin Plan and Annual Monitoring Report maps, i.e., near Los Osos Middle School east of South Bay Boulevard (see 2019 Annual Monitoring Report in the "Agenda-Packet\_BMC-Meeting\_6-17-20\_20" on the BMC website, e.g., pdf pp. 124 & 127).

Because basin modeling remains uncertain, it must not be used as a basis for determining buildout limits, in order to avoid permanent harm to the Basin from overstated yield estimates. Instead, actual well data confirming conclusively the effectiveness of Basin Plan programs over time must be used as basis for determining whether the Basin has enough water to sustain the current population, in addition to any increase in population. As inconsistent monitoring and metric results show, more time is needed to be sure the Basin can provide a sustainable water supply for the current population. (Also see our 2019 and 2020 comments for further clarification on how metrics may be unreliable, etc.)

The revised criteria for approval of new housing that is subject to growth rate limitations (i.e., non-exempt housing), provides for annual reviews of the Annual Monitoring Reports and updates of the GMO and growth rate. The provisions state

*“if data from annual monitoring reports...indicate that completed Basin Plan programs have been less or more 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 or increase accordingly” (see FEIR Chapter 7, p. 7.3).*

This language is vague, allowing development decisions that can cause irreversible harm to the Basin to be based on subjective and changing criteria. Even if decisions were based on metric results the adverse consequences could be severe since metrics have not shown consistent results and Annual Monitoring Reports acknowledged variability (unreliability) in the metrics. Furthermore, “perennial safe yield,” is an undefined term; and verifying that programs increase or decrease sustainable yields could take years, making rate adjustments too late to avoid significant harm. Deciding whether programs are “facilitating seawater retreat” is open to interpretation; almost any evidence could be cited to increase or decrease growth rates. Clearly none of the LOCP’s proposed criteria for adjusting the growth rate rises to the level of “conclusive evidence.” (see our 2019 DEIR comments and 2020 GMO comments for further detail and citations.)

### **Further explanation of how the LOCP FEIR fails to comply with CEQA**

CEQA requires adequate relevant information to be included and considered in impact analyses for stakeholders to make informed decisions. As we point out above, the FEIR fails to show the significant change in the LOCP that exempts “affordable housing, accessory dwelling units (ADUs), and farm worker housing” from growth rate restrictions and upper limits on the number of units that can be approved. This is confirmed in the response we received to related questions from Kylie Hensley of County Planning (see Attachment). The FEIR and County’s failure to analyze these significant changes is a serious omission--a fatal flaw in the document and process. The considerable added impacts require a supplemental or subsequent EIR (see LOCP

Chapter 7, p. 7-2, pdf page 2 of 82, redline version and FEIR Chapter 4-10 “Population and Housing,” pp. 4.10-12 to 4.10-14; also FEIR Chapter 4-5 “Water Supply,” pp. 4.15-9 to 4.15-12).

Other omitted information essential for informed decision-making includes the November 2019 tech memo, which found seawater intrusion to be advancing in Zone E across a wider front than previously measured. The memo also reveals that the timing of Broderson leachfield effectiveness on seawater intrusion is uncertain; even though leachfield benefits on seawater intrusion is assumed with the “steady state” modeling used to estimate “sustainable yield.” It is important for decision makers to know that improvements in water levels in the lower aquifer, predicted to help push back seawater intrusion, won’t even be measureable until sometime after the groundwater mound below the site fully forms and begins pushing through the aquitard, which the 2019 memo says will be more than five years away--beyond the five-year span of the proposed GMO. It is also important for stakeholders to know, that benefits may not happen within the 20 year horizon of the LOCP, or ever. (See the “December-2019-BMC-Agenda-Package” on line at the BMC website, pdf pp. 52-54, and related comments above.)

Other relevant information necessary for informed decision-making includes the results of the Chloride and Water Level Metrics reported in the 2019 Annual Report, which show seawater conditions worsening (see the 2019 Annual Monitoring Report in the “Agenda-Packet\_BMC-Meeting\_6-17-20\_20” on the BMC website, e.g., pdf pp. 142-145).

CEQA further requires that mitigation options are not based on future programs, but presented with enough detail during the EIR process to assess the potential effectiveness of mitigation plans and programs. As mentioned in the related summary above, the LOHCP, which provides many of the mitigation programs and procedures for the LOCP, must be reviewed and approved prior to the LOCP to evaluate whether the proposed mitigation measures will be successful.

The LOCP and proposed GMO refer to Basin Plan adaptive management programs that could be implemented to mitigate LOCP impacts (e.g., LOCP Chapter 7, p. 7-2). CEQA requires that mitigation programs are described in enough detail for stakeholders to evaluate the potential effectiveness of the programs. One adaptive management proposal in the December 2019 tech memo provided to the BMC (referenced above) is to complete Infrastructure Program B to address the advancing Zone E seawater intrusion. The program includes building a nitrate treatment facility and installing several upper aquifer production wells to allow more pumping from the upper aquifer. However, Program B is assumed to provide increased yield to support greater future buildout; therefore buildout limits in the LOCP would have to be adjusted if Program B is used for mitigation. Furthermore, completing Program B is likely to require CEQA review to identify and mitigate impacts. Moving wells inland with Infrastructure Programs C and D will also require CEQA review. If these programs are



also used for adaptive mitigation, build out limits would have to be reduced from the limits stated in the LOCP. If the above programs are not used (not available) for mitigating adverse impacts, then harm to the Basin would not be mitigated. These alternative scenarios and potential impacts should be included in LOCP FEIR analyses. The timing of the programs must be considered if they are implemented as mitigation measures since CEQA review of the programs would have to occur before program completion, just as CEQA review would have to happen prior to the programs' being included in the LOCP.

CEQA also requires that the EIR provide a sufficient number and variety of mitigation options and plan alternatives to make informed decisions. One clear shortcoming of the LOCP is that it does not consider an LOCP alternative that delays future development until sufficient, reliable well data confirms the Basin can support it.

All in all, the FEIR presents seriously biased and one-sided analyses of impacts and mitigations to support the County's preferred "alternative," a forgone conclusion that much more building is needed in the County and Los Osos will be where most of it should happen—despite the fact that we have a Basin suffering from 35 years of severe overdraft and seawater intrusion, and despite the fact a considerable amount of protected coastal habitat and numerous critically endangered species would be adversely impacted.

Note: In the above partial list of CEQA violations, we focus on water-related issues. Other sections in the LOCP FEIR that suffer from a lack of relevant information, adequate analyses, and feasible options include the "4.6 Greenhouse Gas Emissions," "4.2 Air Quality," and "4.10 Population and Housing" sections. The plan to focus most of the County's unmet housing goals in a community that already has one of the worst jobs-to-population ratios is not "smart growth." It will generate many thousands more vehicle trips per year to San Luis Obispo and other communities significantly adversely impacting GHG emission and air quality.

### **Further explanation of how the GMO and related documents fail to comply with Coastal Policies and related requirements**

The GMO and related documents contain much of the language included in the LOCP. See "Further explanation of how the LOCP fails to comply with Coastal Plan Policies, CLUZO, and LOWWP CDP" above, and our 2020 GMO comments submitted earlier.

### **Conclusion**

Due to the critical role the Basin plays in the survival of the Los Osos Community and the very high value estuarine and riparian habitat, including numerous federally-listed species, and due to the difficulty of successfully raising water levels long-term to adequately supply groundwater flows to habitat and to reverse the severe seawater intrusion problem of the Basin long-term, especially with the Basin facing the triple threat of climate change (less rain, higher temperatures, and rising tides); the LOCP

and FEIR must provide options that avoid greater harm to the Basin to the highest degree possible.

With the Basin Plan in effect and with additional time and resources invested in Basin Planning, Los Osos has the opportunity to have a sustainable and dependable water source if further development is not rushed. If the LOCP and related documents are approved and implemented, they will threaten the future of community and the health and viability of considerable sensitive habitat.

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)

Attachment: Response from Kylie Hensley to questions regarding GMO "exempt" housing.