

Appendix K Public Comments on the LOHCP and Environmental Review Documents

This appendix contains the letters and emails that were received by the United States Fish and Wildlife Service (USFWS) and/or the County of San Luis Obispo (County) during the 45-day public comment period for the Los Osos Habitat Conservation Plan, which began October 2, 2019, and concluded on November 18, 2019. The LOHCP review period overlapped with that of the LOHCP Environmental Impact Report and the LOHCP Environmental Assessment, which are the environmental review documents prepared by the County, which is the lead agency under the California Environmental Quality Act (CEQA), and the USFWS which is the lead agency for the National Environmental Policy Act (NEPA), respectively. As a consequence, some letters address multiple documents. For completeness, they are all included here.

Each letter was assigned a unique letter identifier (1-33); within each letter, separate comments were delineated using a line down the right margin (i.e., bracketed) and assigned a sequential number based on the letter number (e.g., comment 3.7 is the seventh comment in Letter 3). These designations added to the letter were used to track responses to the public comments, which are provided in Appendix L.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

November 14, 2019

Leilani Takano
Ventura Fish and Wildlife Office
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, California 93003

Subject: Draft Environmental Assessment for Los Osos Community-Wide Habitat Conservation Plan,
San Luis Obispo County, California

Dear Ms. Takano:

The U.S. Environmental Protection Agency has reviewed the above-referenced document pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. The Draft Environmental Assessment analyzes the potential environmental impacts that would result from issuing an Incidental Take Permit to the county of San Luis Obispo to implement activities covered by the Los Oso Community-wide Habitat Conservation Plan. The EPA appreciates the opportunity to review the Draft Environmental Assessment and has identified areas for additional analysis and disclosure as the Fish and Wildlife Service is preparing the Final EA and considering preparation of a Finding of No Significant Impact.

1.1

Air Quality

The EPA recommends that the FWS quantify air emissions estimates from the LOHCP's covered activities. Although ITP issuance does not produce direct impacts, it does authorize potential future development which could lead to increases in regional emissions from criteria pollutants and air toxics that can affect human health.

1.2

The EPA also suggests that the Final EA include the following mitigation measures in Appendix D to further reduce emissions of air pollutants:

- For use of dust suppressants, consider both inactive and active sites, during workdays, weekends, holidays, and windy conditions.
- Install wind fencing and phase grading operations where appropriate and operate water trucks for stabilization of surfaces under windy conditions.
- For fugitive dust source controls, the EPA recommends limiting the speed of earth-moving equipment to 10 miles per hour.
- Specify how impacts to sensitive receptors, such as children, the elderly, and the ill would be avoided. For example, locate construction equipment and staging zones away from sensitive receptors and fresh air intakes to buildings and air conditioners.
- Develop a construction traffic and parking management plan that minimizes traffic interference and maintains traffic flow.

1.3

Potential Impacts to Water Quality and Quantity

The completion of Los Osos' wastewater treatment facility and the approval of LOHCP would allow for the development of 639 single-family residential and commercial/multifamily previously undeveloped parcels. Due to an anticipated increase in population growth from development of these parcels, the EPA recommends adding to the Final EA an analysis of the potential for aquifer drawdown or overdraft due to cumulative effects of past, present and future activities. The EPA also recommends that the Final EA disclose and discuss the cumulative impacts of water quality degradation of the Upper Aquifer and seawater intrusion of the Lower Aquifer.

1.4

The Draft EA states that the city will implement a mitigation measure to "eliminate pollutants from storm runoff prior to its drainage off-site, with smaller developments potentially exempted at the discretion of the County Public Works Department" (p. 45). This mitigation measure was approved in the Estero Area Plan in 2003 when development was limited and it could exempt any of the 579 undeveloped parcels for single-family residential development from stormwater requirements, including home additions and remodels, within the Urban Services Line. The EPA recommends that the Final EA stormwater mitigation measures include all sizes of development to further reduce construction-related runoff and non-point source pollution.

1.5

Consultation with Tribal Governments

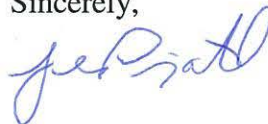
The EPA recommends that the Final EA describes the outcome of tribal consultation between the FWS and each of the tribal governments within the project area, issues that were raised (if any), and how those issues were addressed.

1.6

The EPA appreciates the opportunity to review this Draft EA. When the Final EA/FONSI and/or other environmental analysis is released for public review, please send one copy to the address above (mail code: TIP-2). If you have any questions, please contact me at (415) 947-4167, or Sarah Samples at 415-972-3961/samples.sarah@epa.gov.

1.7

Sincerely,



Jean Prijatel, Manager
Environmental Review Branch



Air Pollution Control District San Luis Obispo County

Via Email

November 18, 2019

Kerry Brown
San Luis Obispo County Department of Planning & Building
976 Osos Street, Room 300
San Luis Obispo, CA 93408
kbrown@co.slo.ca.us

SUBJECT: APCD Comments Regarding the Los Osos Habitat Conservation Plan – Draft
EIR

Dear Ms. Brown:

Thank you for including the San Luis Obispo County Air Pollution Control District (APCD) in the environmental review process. We have completed our review of the Draft Environmental Impact Report (DEIR) for the Los Osos Habitat Conservation Plan (LOHCP). Implementation of the LOHCP would include the issuance of an incidental take permit (ITP) by the U.S. Fish & Wildlife Service to the county, which would cover the “take” (including harassment, injury, or mortality resulting from covered activities) of two animal species: the Morro Bay Kangaroo Rat and the Morro Shoulder Band Snail. In addition, the LOHCP covers two plant species: the Indian Knob Mountain Balm and the Morro Manzanita. The LOHCP includes measures to mitigate take of covered animal species and impacts to covered plant species.

2.1

The County would select an Implementing Entity (IE) (a non-profit conservation organization) that would contract with the County to implement most LOHCP components, including processing take/impact coverage applications, issuing Certificates of Inclusion (COIs) to landowners for covered activities, and implementing the LOHCP, including the conservation program, on behalf of the County. Covered activities would include private development and redevelopment, as well as capital improvement projects, conservation program activities, etc.

The following APCD comments are pertinent to this project.

Section 4.1.1. – Air Quality – Setting

Subsection *b. Air Pollutants of Primary Concern* states that the South Central Coast Air Basin is under the jurisdiction of the APCD. This is not accurate in that the South Central Coast Air Basin includes San Luis Obispo, Santa Barbara and Ventura Counties, while the jurisdiction of the APCD is only San Luis Obispo County.

2.2

Table 10, *Current Federal and State Ambient Air Quality Standards*, indicates the reporting years for the emissions data are 2016, 2017, and 2018. However, accompanying text on page 57 indicates the reporting years are 2015, 2016 and 2017.

2.3

Subsection *c. Regulatory Setting – Clean Air Plan* states that the APCD is required to prepare an air quality improvement plan for the South Coast Air Basin. This is inaccurate in that the APCD plan is only required to cover San Luis Obispo County.

2.4

Section 4.5.1. – Greenhouse Gas Emissions – Setting

Subsection *b. Regulatory Setting – State – Senate Bill 32* states that the SB 32 scoping plan is expected to be adopted in 2017. The updated scoping plan was, in fact, adopted by the California Air Resources Board on December 14, 2017.

2.5

Section 4.5.2. – Greenhouse Gas Emissions – Impact Analysis

Subsection *a. Methodology and Significance Thresholds – SLOAPCD GHG Thresholds and Impact GHG-1* in subsection *b. Project Impacts* cite the commercial/residential bright-line threshold and the efficiency threshold from the APCD [CEQA Air Quality Handbook](#) (April 2012). While the DEIR is not relying on compliance with these thresholds to determine the significance of GHG impacts from the project, it should be noted that these thresholds of significance were based on a gap analysis and demonstrated consistency with the Global Warming Solutions Act (AB 32) and the California Air Resources Board's Climate Change Scoping Plan in order to meet the state's 2020 GHG emissions goals. In 2015, the California Supreme Court issued an opinion in the *Center for Biological Diversity vs California Department of Fish and Wildlife* ("Newhall Ranch") which determined that AB 32 based thresholds derived from a gap analysis are invalid for projects with a planning horizon beyond 2020. **The APCD, therefore, does not recommend relying on the GHG thresholds in the CEQA Air Quality Handbook.**

2.6

The discussion in the DEIR of Impact GHG-1 states that the LOHCP would be consistent with the growth projections for population and VMT used in the county's EnergyWise Plan. It is important to note that the EnergyWise Plan was created with a planning threshold of 2020, and therefore may not meet the state's reduction goals for 2030 as required by SB 32 and the 2017 Scoping Plan.

2.7

Again, thank you for the opportunity to comment on this proposal. If you have any questions or comments, feel free to contact me at (805) 781-5912.

Sincerely,



VINCE KIRKHUFF
Air Quality Specialist

VJK/jjh

cc: Jennifer Haddow, Rincon Consultants

**[EXTERNAL] comments on Los Osos Habitat Conservation Plan by a resident**

1 message

Bill Amend <pof_b17@yahoo.com>

Sun, Nov 17, 2019 at 4:46 PM

To: "julie_vanderwier@fws.gov" <julie_vanderwier@fws.gov>

Cc: "kbrown@co.slo.ca.us" <kbrown@co.slo.ca.us>, "Leilani_takano@fws.gov" <Leilani_takano@fws.gov>

I have owned and occupied a home on Rodman Drive in Los Osos for nine years and have been a frequent visitor to the area since 1975. I support adoption of the draft Los Osos Habitat Conservation Plan (LOHCP) as a preferred alternative the currently wholly unacceptable and burdensome system of having to submit separate mitigation and management plans for every individual project within the Plan area.

3.1

It is clear that the LOHCP has tried with some success to address the disparate priorities of habitat conservation with the diverse needs and preferences of the Los Osos residents. *However*, I feel that the issue of wildfire management has not been adequately addressed or ensured in the Plan. The LOHCP includes discussion of the *benefits* of some subsets of wildfires (based on frequency, acreage, time of year, etc.) for continued propagation of various species without an equivalent consideration of the hugely detrimental effect on the human population. The environmental impact report (EIR) describes mitigation applicable to fire threats. For example, see "MM HAZ-2 Fire Management Plan" on page 13 and 191 of the EIR. However, the EIR and the Plan itself it is devoid of enough details and assurances that mitigation effectiveness will be at all improved over the inadequate historical measures. Instead, the LOHCP and related EIR rely upon a Community Wildfire Protection Plan (CWPP) that has not yet been developed or at least not publicly vetted.

My property on Rodman Dr. adjoins wildlands on two sides (south and west). The adjacent wildlands include a large stand of nonnative trees (eucalyptus) that represent a significant fire hazard and, in the event of a tree falling, would result in blockage of the most direct egress path from the area and potential structural damage to nearby homes. I have seen at least two cycles of "fire mitigation" by Cal Fire adjacent to my property and note that they have been minimally effective at removing enough fuel to significantly impact wildfire threats. Most of the cut combustible fuel was simply abandoned in place and all large eucalyptus trees were left uncut.

3.2

So-called fire threat "mitigation" in other locations of Los Osos was severely hampered by US Fish and Wildlife Service (USFWS) via their restrictions placed on the mitigation activities. Those limitations included the unacceptable and minimally effective practice of addressing fuel loads only within *50 feet* of residences, prohibition of using power tools, and removal only of dead and downed materials (per letter by US FWS dated April 12, 2018, reference number O8EVENOO-2018-CPA-0088). That 50-foot distance is significantly smaller than the 300-foot defensible distance recommended by Cal Fire. In addition, limiting the activity to removal of dead and downed materials by hand is unreasonably restrictive and inefficient, thus severely limiting the effectiveness of the "mitigation". Similar restrictions imposed on a future CWPP could render it largely ineffective. A CWPP rendered ineffective by unreasonable restrictions placed on it by USFWS, combined with the Plan's proposed *increase* in fire-prone open space acreage (with commensurate decrease in acreage allocated for residential and commercial development) could translate to an *increase* in threat of destructive wildfire for the community. This is particularly true when the increased probability of ignition as a result of unmonitored and uncontrolled activities of homeless who frequent the high fire hazard areas.

In summary, I support the adoption of the Plan because the alternative of having no plan continues to be unacceptable. However, the absence of a related CWPP and the lack of assurances of improved flexibility by USFWS that more appropriately balances public safety with habitat conservation when developing fire mitigation programs severely limit the attractiveness of the Plan overall.

3.3

Sincerely,

Bill Amend,

cell: 714 350-1838

e-mail: POF_B17@yahoo.com

Kerry Brown

From: Marcie Begleiter <mdbegleiter@gmail.com>
Sent: Monday, November 18, 2019 1:48 PM
To: Kerry Brown
Subject: [EXT]Comment on Draft LOHCP and EIR

ATTENTION: This email originated from outside the County's network. Use caution when opening attachments or links.

Dear Ms. Brown,

I attended the informational meeting regarding the EIR and LOHCP at Sea Pines on October 28th. Thank you for the presentation. I want to note that the **venue was not large enough** for the number of citizens eager to get the information - dozens came and left as there were not seats for them.

Also, given that the **comment period is 45 days, holding the informational meeting almost 30 days into that period was also is not the best plan** to get community response to these important documents.

Finally, did you know that your **email was incorrectly listed** on the contact slide? Again, not optimal for getting the response that this comment period was supposed to elicit.

Given these issues, **I strongly suggest that you expand the comment period, at least until mid-December** to give more time for interested community members to respond to the large amount of information in the draft reports.

All that aside, I have some serious concerns about the plan that encompasses the EIR and LOHCP. Protecting the greenspace is welcome and necessary to preserve the character of the town, but **the extent of development that is described in the report, at approximately 30% infill units by 2035 (15 years) is more than double the development rate of the state** in the past 10 years (9% from 2006 to 2016). Given that we need more housing, and affordable units at that, the upper end of this development plan is not within reasonable growth rates for a community of the size of Los Osos.

And that is **before we begin to take account of the environmental strain that such development will bring to the fragile landscape of Los Osos**. We are a town built on sand dunes, facing rising sea levels and salt water intrusion. The LOHCP-EIR_Public-Review-Draft report does take this into account on page 214:

" LOHCP-EIR_Public-Review-Draft_2019-0925

As noted in the Los Osos Community Plan, the community wishes to maintain its "small-town" atmosphere; rather than expanding the URL and USL, the community is focusing on infill development. A development constraint within Los Osos is the availability of resources. New growth must only occur when the community has sufficient capacity in its water supply and sewage disposal systems. In addition, new development should not be allowed to create significant impacts to the community's road system, local schools, parks, or libraries.

Per the Draft EIR for the Los Osos Community Plan states that development under the Los Osos Community Plan could result in an additional 1,861 residential units and up to 364,000 square feet of commercial space, for a total of 8,182 residential units and 1,034,300 square feet of non- residential space (floor area) within the community within the 20-year plan horizon (by 2035)." **(NOTE - it is now 16 years, not twenty until 2035, and will be 15 by the time this plan instituted)**

The **data in this report is at least 5 years old**, taken from the 2014 origin of the draft, and therefore is not reliably applicable to today's situation in terms of climate change and water availability. For the sake of creating

a viable plan that takes into account realistic development for all the residents, current and future, I ask that you do the following:	4.4
1. Keep the comment period open until December 15	
2. Revise the data in these plans to reflect our current situation regarding sea level rise and salt water intrusion.	4.5
3. Revise the cap on developing residential units to be in line with state population growth, which would be 14% over the 15 years of the plan. This would allow for approximately 900 additional units by 2035.	4.6
4 Revise the plan to be more specific about necessary mitigation for water and other support systems and make these hard and fast rules rather than soft recommendations.	4.7
Thank you for your time and attention to this input. Your service to the community is much appreciated.	4.8

Best,

Marcie Begleiter

Los Osos

--
 Marcie Begleiter
 2005 9th St. Suite E
 Los Osos, CA 93402

**[EXTERNAL] Los Osos Draft HCP**

1 message

Marcie Begleiter <[REDACTED]>
To: Leilani_takano@fws.gov

Mon, Nov 18, 2019 at 9:01 PM

Dear Ms. Takano and Committee Members,

I attended the informational meeting regarding the EIR and LOHCP at Sea Pines on October 28th. Thank you for the presentation that night which was very informative and well organized.

I want to note that the **venue was not large enough** for the number of citizens eager to get the information - dozens came and left as there were not seats for them.

There is much interest in the community about the issues raised at the meeting and given that the **comment period is 45 days, holding the informational meeting almost 30 days into that period was also is not the best plan** to get community response to these important documents.

Given these issues, **I strongly suggest that you expand the comment period, at least until mid-December** to give more time for interested community members to respond to the large amount of information in the draft reports.

All that aside, I have some serious concerns about the plan that encompasses the EIR and LOHCP. Protecting the greenspace is welcome and necessary to preserve the character of the town, but **the extent of development that is described in the report, at approximately 30% infill units by 2035 (15 years) is more than double the development rate of the state** in the past 10 years (9% from 2006 to 2016). Given that we need more housing, and affordable units at that, the upper end of this development plan is not within reasonable growth rates for a community of the size of Los Osos.

And that is **before we begin to take account of the environmental strain that such development will bring to the fragile landscape of Los Osos**. We are a town built on sand dunes, facing rising sea levels and salt water intrusion. The LOHCP-EIR_Public-Review-Draft report does take this into account on page 214:

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The **data in this report is at least 5 years old**, taken from the 2014 origin of the draft, and therefore is not reliably applicable to today's situation in terms of climate change and water availability. For the sake of creating a viable plan that takes into account realistic development for all the residents, current and future, I ask that you do the following:

1. **Keep the comment period open** until December 15
2. **Revise the data in these plans to reflect our current situation regarding sea level rise and salt water intrusion.**
3. **Revise the cap on developing residential units to be in line with state population growth, which would be 14% over the 15 years of the plan. This would allow for approximately 900 additional units by 2035.**

4 Revise the plan to be more specific about necessary mitigation for water and other support systems and make these hard and fast rules rather than soft recommendations.

5.7

Thank you for your time and attention to this input. Your service to the community is much appreciated.

5.8

Best,

Marcie Begleiter

Los Osos

Letter 6

Dear Kerry,

Comments on the LOHCP EIR public review draft

Where the LOp. 218 Lower-cost option for recreation: prescriptive rights for informal visitor parking and informal access to beach and informal small boat access to bay at 1st Street, 1300 block are endangered and need careful protection.

6.1

p. 243 Roadway segment, Rosina from Pine to Doris needs to be paved and county maintained. That route would provide a connection between Cuesta by the Sea and Monarch Grove School that bypasses the school-opening-time highly congested intersection at Pine and LOVR. Connecting Doris between Rosina and South Court would also help automobile traffic, but the route is a bicycle and pedestrian heavy route now, which would be less useful if cars were using that part of Doris at school opening and closing times.

6.2

Page 243 Ramona, 4th, and 9th: All these streets are no longer efficient for the traffic volume. We need to encourage pedestrian and bicycle use everywhere in town, but especially on these highly impacted streets, the main connectors between the Baywood commercial district and surrounding area and the Los Osos commercial area. I suggest making 7th street south of Ramona one way south to Nipomo and making 9th Street north of Nipomo one way north. One way traffic would provide enough already-paved surface on 7th and 9th to create ped and bicycle lanes.

6.3

P. 245. Proposed link 4 to 11 will create a major connector between Los Osos and Baywood, with traffic volume that might even surpass that currently found via 9th Street and Ramona since traffic will also move to this connector from Pine Street. The 1600 block of 4th Street already serves as a connector for traffic between the Baywood (Peninsula, residential, and commercial area) and the Los Osos commercial area. The chicane at Pismo and 4th Street would have to be reconfigured to move through traffic smoothly from 4th to 3rd, a designated connector street. (4th Street is a residential street north of the intersection of Pismo and 4th)

6.4

Sincerely, R. David Bowlus

Letter 7

Dear Kerry,

Comments on the LOHCP EIR public review draft

Where the LOp. 218 Lower-cost option for recreation: prescriptive rights for informal visitor parking and informal access to beach and informal small boat access to bay at 1st Street, 1300 block are endangered and need careful protection.

7.1

p. 243 Roadway segment, Rosina from Pine to Doris needs to be paved and county maintained. That route would provide a connection between Cuesta by the Sea and Monarch Grove School that bypasses the school-opening-time highly congested intersection at Pine and LOVR. Connecting Doris between Rosina and South Court would also help automobile traffic, but the route is a bicycle and pedestrian heavy route now, which would be less useful if cars were using that part of Doris at school opening and closing times.

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7.4

Sincerely, Beverly Boyd



CALIFORNIA
NATIVE PLANT SOCIETY

November 15, 2019

To: San Luis Obispo County Dept. of Planning & Building Dept.

RE: Comments on Los Osos HCP- DEIR

To Whom it May Concern:

The following represents the comments of the San Luis Obispo Chapter of CNPS. Our concerns are limited to the portions of the DEIR concerning mitigation of Morro manzanita, one of the four species covered by the HCP.

The DEIR states that the impacts to the manzanita are Less Than Significant with Mitigation (Impact Bio 1). However the DEIR makes no independent assessment of impacts to the manzanita, relying on the descriptions and conclusions of the HCP itself. CNPS has sent extensive comments on the Draft HCP to the Ventura office of USFWS in which we question the lack of specificity concerning the ability to mitigate losses, identify quantitatively areas of species 'take' and areas considered suitable for restoration or enhancement, and the failure to incorporate discussion on the development potential of large areas of core manzanita habitat under existing and proposed zoning and land use standards.

Rather than repeat these comments in response to this document, CNPS will simply append our comments to USFWS, which, we believe, questions the assertion that impacts to Morro manzanita can be mitigated.

8.1

However, this does not imply that CNPS would not agree with the conclusions of the DEIR regarding mitigation if such mitigation could be quantitatively demonstrated, and protection of core habitat in the vicinity of Cabrillo Estates were fully ensured.

We understand that the County may overlay this land with an SRA/ESHA designation, but such designation earlier by the Coastal Commission did not stop the County Board of Supervisors from approving a 40-lot subdivision on that land which was stopped only by appeal to the Coastal Commission. If the overlay still permits current RS (Residential suburban), the final EIR should define buildout potential under any proposed planning standards and implemented Coastal Plans.

CNPS would therefore request that our specific questions concerning Morro manzanita impacts be addressed in the final EIR, with particular attention paid to guarantees of protection for undeveloped land south and west of Cabrillo Estates and adjacent to Montana de Oro State Park.

As noted in our comments on the DHCP, we do not understand why acreages were listed with only the broadest indications of location. The simple use of the lot assessor's parcel numbers could have been listed in spreadsheet form, in which probable occupancy by any of the covered species was identified, enabling the reviewer to broadly validate acreage of species 'take'. This same method should have been used on proposed parcels on which recovery might take place.

8.2

Thank you for your consideration:

David H. Chipping

Conservation Chair, San Luis Obispo Chapter CNPS

(805) 528-0914 (dchippin@calpoly.edu)

A handwritten signature in black ink that reads "David H Chipping". The signature is written in a cursive, slightly slanted style.

Here follows our comments on the DHCP, as submitted to USFWS

8.3



CALIFORNIA
NATIVE PLANT SOCIETY

To:

Stephen P. Henry
Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003

INTRODUCTION

The San Luis Obispo Chapter of the California Native Plant Society appreciates the opportunity to offer comments on the County of San Luis Obispo **Draft Los Osos Habitat Conservation Plan** (DHCP), dated April, 2019, and released October, 2019. We understand that the DHCP has been prepared in accordance with Sections 9 and 10 of the federal Endangered Species Act (ESA) of 1973, as amended, which prohibits “take” of fish or wildlife species listed as endangered, and allows for the issuance of permits to authorize incidental take. The proposed action, issuance of an incidental take permit, is subject to compliance with the National Environmental Policy Act (NEPA) of 1969. Accordingly, the U.S. Fish and Wildlife Service (Ventura Office) has prepared a **draft environmental assessment** dated August 2019. Concurrent with the EA prepared by the USFWS, the County of San Luis Obispo has prepared a **draft Environmental Impact Report (EIR)** pursuant to the California Environmental Quality Act (CEQA). The comments below pertain to each of the above-listed documents, as specified below.

8.3
(cont'd)

The Mission of the California Native Plant Society is to increase understanding and appreciation of California’s native plants and to conserve them and their natural habitats through education, science, advocacy, horticulture and land stewardship.

We have the following primary concerns:

(1) The DHCP presents confusing information relative to parcel numbers and locations that are actually developable today, compared to those that were considered developable under the 1988 Estero Plan.

8.4

(2) Section 4.3.1.3 assesses Net Impacts on Morro manzanita. The DHCP is unclear regarding the location of the 51.7 acres of Protected Habitat for Morro manzanita.

(3) Section 4.3.1.3 assesses Net Impacts on Morro manzanita. The DHCP is unclear regarding location of the 22.3 acres of Restorable Habitat for Morro manzanita.

8.5

(4) Section 4.3.1.3 assesses net impacts. The claim that Morro manzanita will have a 8:1 gain in habitat in a program that justifies ‘take’ is questionable.

- | | |
|--|------|
| (5) CNPS questions the assertion that part of the of the 22.3 acres planned for restoration of Morro manzanita can be restored “ <i>by conducting fire management to promote regeneration of the populations, as needed</i> ” due to the proximity of housing and the lack of any control-burn planning in this area by fire agencies. | 8.6 |
| (6) A significant portion of the core habitat for Morro Manzanita lies within the southern bounds of the DHCP and the limitations of current Rural Residential zoning. | 8.7 |
| (7) The DHCP does not address or balance conflicting land management requirements concerning the four covered species. | 8.8 |
| (8) The DHCP fails to recognize the Morro Manzanita-Coast Live Oak plant community series. | 8.9 |
| (9) The DHCP should resolve a potential issue concerning use of former Palisades Property (Now CDFW Reserve, Bayview Unit) and possibly other properties that have received encumbered state or federal funding | 8.10 |

SPECIFIC ISSUES AS NOTED IN THE ABOVE NUMBERED LIST

(1) Section 2, Land Use and Covered Activities. The DHCP presents confusing information relative to parcel numbers and locations that are actually developable today, compared to those that were considered developable under the 1988 Estero Plan.

For example, Section 2.1.1, page 2-1, asserts that 705 acres, comprising 701 parcel are undeveloped or have limited improvements. It appears that Figure 2-1 shows the current inventory of parcels which have the potential for requiring take permit in yellow, and those in which development potential has been retired in green.

However, the DHCP does not provide any basis for a reviewer to evaluate impact claims and assumptions as listed in Tables 2-7 and 2-9. For example, Table 2-9 purports to show that 573 acres of Single Family Residential would be covered which would include 150.7 acres of actual impact. The DHCP, EA and EIR each should include a detailed map illustrating exactly where these parcels are located. How much is infill within the Urban Services Line, and how much is in the larger parcels outside of the USL? Also, the cited 131.4 acres of redevelopment within existing developed parcels provides no information on the parcel location and parcel subdivision potential.

A very simple solution that would improve the ability of reviewers to see where development is possible would be to use the current zoning map (Los_Osos_URL_LUC (<https://www.slocounty.ca.gov/Departments/Planning-Building/Forms-Documents/Maps/Land-Use-Maps/Coastal-Zone-Maps/Estero-Planning-Area-Maps/Los-Osos-URL-Maps.aspx>) in which all existing parcels are shown, together with the current zoning. Using this map as a basis, specific as-yet-undeveloped parcels could be identified, together with developed parcels that mig

be eligible for a second dwelling unit. Combine the map with a simple spreadsheet that identifies potential 'sender' sites by Assessors Parcel Number, and the maximum development potential under current zoning for each parcel. The spreadsheet could then be combined with a list of which the four covered species would potentially need mitigation on each of the sites. CNPS assumes this has already been done in order to generate the acreage figures given in the DHCP.

The zoning map (Los_Osos_URL_LUC) does have some errors, such as the inclusion of the 'Butte Property' at the west end of Butte Drive as having development potential as residential suburban (now State Park), the eucalyptus groves west of Inyo St. as single family residential (conserved as mitigation of tract development), the Palisades area and leachfield areas south of Highland Drive as single family residential (incorporated into CDFW reserve, and conserved and restored as mitigation), the 'Powell 3' lands east of the Junior High School (incorporated into Morro Bay State Park), the now-protected site west of the library zoned as commercial but now protected as a mitigation area, the eastern addition to Sweet Springs Preserve zones as single family residential, the properties south of the "Palisades" land acquisition, including the "Silva" purchase zones as rural residential and now within the CDFW reserve, and probably others. However it is this map that governs development, and should be the main basis for allocating resource take and mitigation.

As it is very difficult to resolve impacts to specific areas within the DHCP from the contained maps and tables, a simple overlay of the current zoning map, irrespective of any errors (as listed above), would show the 'sending' potential of each lot, and also the potential 'receiving' potential of other lots.

Another issue is the build-out potential of larger lots incorporated within the Coastal Commission's ESHA designation. For example, larger lots east of 18th St and west of South Bay Blvd. are zoned single family residential, but have not been subdivided. If further subdivision of ESHA is not permitted, then the potential number of lots might be different from those recognized in the DHCP.

(2) Section 4.3.1.3, Net Impacts on Morro manzanita. The DHCP is unclear regarding the location of the 51.7 acres of habitat that would be protected through the conservation strategy.

The DHCP reflects that Morro manzanita is a federally Threatened species, and has a CNPS status of 1B.2. Section 4.3.1.1, page 4-17 of the DHCP, indicates that Central Maritime Chaparral, a rare natural community, occupies 798 acres within the DHC Plan area. It is estimated that 62 percent of this is within existing protected lands.

The habitat that would be protected through the conservation strategy, referred to on pages 4-18 and 19 of the DHCP, appears to include lands already managed for species conservation, including those protected in the Greenbelt by actions of MEGA and others in the 1990s, and protected against planned development in those areas. This must be considered as part of the EXISTING total acreage for Morro manzanita,

8.11
(cont'd)

8.12

and any losses would be mitigated by the protection of additional lands. It should not be considered as a gain in net protection. The DHCP should reflect mitigation against future species take, it should NOT consider land that currently protects species as mitigation against further species take, as there is no gain in the amount of protected land.

However, "Section 5.3.1.2 Priority Conservation Area" states: "*A key consideration in developing the habitat protection, restoration, and management measures is where they should take place; specifically, what land should be included in the LOHCP Preserve System to maximize the benefits for the covered species. Therefore, the LOHCP planning process evaluated habitat within the Plan Area for protection, restoration, and management. Properties that will ultimately be included in the LOHCP Preserve System will be determined during implementation of the plan by the Implementing Entity, which will work with willing landowners to acquire additional lands (Section 6.2.2) and enroll existing protected lands in the Preserve System based on approval from the USFWS (Section 6.2.3).*"

CNPS notes that Morro manzanita habitat within existing conservation areas is generally stable and not under serious threat requiring active management, except for a few areas with invasive plants. CNPS also notes that where the DHCP identifies potential but unoccupied manzanita habitat, it is likely to be in low shrubland plant associations more suitable for recovery actions for snail and K-rat. The DHCP does not provide a map or any other method for locating land with restoration potential and the capacity to increase manzanita population. An inference that such lands exist in sufficient quantities to mitigate losses is unsubstantiated.

In addition, in Section 6.2.3.1, the DHCP states that habitat that can be enrolled in the DHCP should "*have management or restoration needs that are not the current responsibility of the landowner/manager and met by available resources.*" However the large manzanita habitat area east of the Broderon Drive extension and west of Bayview Heights Drive is under the management of the California Department of Fish and Wildlife, and was purchased with the express intent of protecting native species. It is incorporated into the Morro Dunes Ecological Reserve. Thus it seems it would not meet the enrollment criteria. The legal ability of this land to accept mitigation may also be limited by constraints imposed by the Wildlife Conservation Board in providing substantial funding to the purchase of this land.

So, if enrollment of existing protected lands will not function as sufficient mitigation, then acquisition of unprotected and critical manzanita habitat such as that south of Cabrillo Estates is probably the only serious option open to gaining sufficient Manzanita mitigation under the DHCP. It is important to gauge the ability of the DHCP to produce sufficient funding to protect these critical lands. It is regrettable that the DHCP does not address these lands in any specific manner, immersing them in an overall estimation of affected acreage. As the owner began the process of lot line adjustment on the land south, east and west of Cabrillo Estates which would have constrained development and protected the majority of the manzanita habitat, the possibility of using this technique together with use of conservation easements

8.12
(cont'd)

should at least be mentioned as a possible option within the DHCP. Quantification of 'take' potential for development within the core manzanita habitat is clouded by the possible subdivision potential of existing lots under the current land zoning designations.

8.12
(cont'd)

(3) Section 4.3.1.3, Net Impacts on Morro manzanita. The DHCP is unclear regarding location of the 22.3 acres of Restorable Habitat that would be protected through the conservation strategy.

The proposed restoration of 22.3 acres of Morro manzanita habitat, referred to on page 4-19 of the DHCP, and included in Table 5-10 for the Morro Dunes Ecological Reserve, is quite vague in terms of location, and is questionable as to its need. Manzanita habitat has naturally been increasing into the lower slopes of the CDFW property, and there is no degradation in the mature stands besides what appears to be displacement of a later seral stage (oak) that overshades and kills manzanita due to light reduction.

While there has been erosion of trails on CDFW due to heavy horse traffic within manzanita habitat, the zones of disturbance are narrow but deeply incised. Horse riders have cut and trimmed manzanita along these trails to enable passage. Complete closure of these sections of trail might increase canopy cover, but offer little opportunity for restoration planting. Elsewhere, the loose sand along the horse trails in more open shrubland has resulted in invasion of veldt grass, which favors disturbed, sandy soils. Some restoration might be achieved by stopping horse traffic, but CDFW has not been inclined to take that step.

8.13

If the intention is to plant or establish manzanita into open sandy areas currently occupied by low shrubs, that would displace habitat for K-rat and snail, so this is unlikely to be done. The DHCP is therefore too vague, and should identify specifically what is considered to be a suitable receiver and recovery site, and exactly what mitigation is proposed.

Note that in a comment letter from UFWS to Mark Hutchinson, SLO County Planner in response to the preparation of a cancelled DHCP for the Los Osos Wastewater Plant, dated January 29, 2009, the Service noted: *Morro manzanita: This species of manzanita does not have a burl and, as such, is not a likely candidate for salvage and transplant as part of any mitigation strategy.*

(4) Section 4.3.1.3, Net Impacts on Morro manzanita. The claim that Morro manzanita will have a 8:1 gain in habitat in a program that justifies 'take' is questionable.

The 8:1 'advantage' to Morro manzanita from adoption of the HCP is highly questionable, as it can be demonstrated that existing habitat is stable and that land conversion to shrubland would be adverse to the requirements of covered animal species. Suitable lands for supposed restoration and gain in habitat have not been shown as being present. This false 8:1 figure is gained by including previously protected habitat and counting it as a net addition. This would not contribute to

8.14

species recovery. These numbers should be recalculated to reflect the comments above under item #2. This supposed gain in habitat forms the basis for one of the key conclusions of the impact assessments: namely, that implementation of the conservation program is anticipated to (1) mitigate the anticipated impacts to Morro manzanita, resulting in less than significant impacts under CEQA; and (2) offset impacts to Morro manzanita such that effects associated with the proposed action would not rise to a significant level under NEPA. Again, we question these conclusions based on the arguments presented in this comment letter.

8.14
(cont'd)

Part of the 8:1 seems to be derived from active management within mature Manzanita habitat, which is not needed, although it is possible that veldt grass removal from the northern and mid slope fringes of Morro Manzanita dominated shrubland would be of use. Such habitat would probably be more suitable for restoration of snail and K-rat habitat.

(5) Section 4.3.1.3, Net Impacts on Morro Manzanita. CNPS questions the assertion that part of the 22.3 acres planned for restoration of Morro manzanita can be restored “by conducting fire management to promote regeneration of the populations, as needed” due to the proximity of housing and the lack of any control-burn planning in this area by fire agencies.

The DHCP acknowledges on page 4-8 (fourth paragraph) that implementation of covered activities may exacerbate fire exclusion by further impeding the use of fire as a management tool; however, the DHCP on page 4-19 (second bullet) then states that it will be used in restoration of Morro manzanita habitat. This is an apparent contradiction that needs to be rectified.

In addition, Cal Fire plans to conduct fuel hazard abatement projects at the wildland-urban interface. In Section 2.2.7, page 2-19, fourth paragraph, The DHCP states “*CALFIRE estimates that approximately one-third of the total 89.4-acre treatment area would be retreated annually depending on site-specific conditions, the need for hazard abatement activities, and funding. A maximum distance of 50 feet from structures would be mowed in non-native grassland areas, with the shaded fuel breaks established to complete a total distance of 100 feet from structures. This 100-foot distance is considered the minimum strategically-effective distance necessary for hazard abatement. Mowing would likely be done every two to three years, with maintenance of established shaded fuel breaks occurring every three to four years after they are created.*”

8.15

Thus any structures built on manzanita-dominated slopes included within the southern edges of the DHCP area will be surrounded by extensive manzanita removal envelopes, together with services such as roads. Roads may be multiple due to policies against dead-ending roads without alternative wildfire escape routes. Such roads also have associated fire treatment areas. Regarding fire clearance, as noted in the DHCP on page 3-17, basal cutting manzanita kills the plant, which does not resprout from cut stump or stems, as it is an ‘obligate seeder’.

(6) Section 4.3.1.1, Morro Manzanita, Impacts to Habitat. A significant portion of the core habitat for Morro Manzanita lies within the southern bounds of the DHCP and the limitations of current Residential Suburban zoning.

Developments of up to 40 lots were once proposed on the land above Cabrillo Estates (outside the Urban Services Line), and were approved by the Board of Supervisors until rejected by the Coastal Commission (1988 Vesting Tentative Tract Map 1873). The estimated impact acreage of 40 acres as indicated on page 4-17, first paragraph, and Table 4-5, page 4-44 of this DHCP for Morro manzanita habitat (Central Maritime Chaparral) could be seriously underestimated unless such subdivision is specifically prevented by the upcoming Los Osos Community Plan¹. Figure 2-4 in the DHCP appears to show 6 parcels in this area and labels the Land Use as Residential Single Family (RSF) according to the Estero Area Plan (but gives no date for the plan). Figure 2-2 in the DHCP entitled "Land Use" shows this area as Residential Suburban, a subtype of Single Family Residential.

8.16

Does the DHCP assume that each of these lots would yield one home site, or would the lots yield as many sites as the residential suburban zoning allows?

(7) General Comment. The DHCP does not address or balance conflicting land management requirements concerning the four covered species.

The habitat needs of Morro Bay kangaroo rat (MBKR) and Morro manzanita are very different. Original core habitat areas for MBKR were the low shrublands in the lands south of Highland Drive (see Figure 1 attached to this letter at end of text), and the Army Road area south of Shark Inlet. Both of these areas were subject to areas of vegetation clearance for crops and for military exercises around WWII. This provided the very open country which appears critical to MBKR, and regrowth of vegetation would also explain much of the present MBKR scarcity. Thus large-scale clearances of existing shrubland might be seen as a positive for MBKR habitat and a negative for manzanita habitat. Given the greater weight that has historically been applied to animal protection relative to plant protection, this potential conflict should be addressed.

8.17

It is noted that this potential lack of balance is tangentially addressed in the EIR mitigations (e.g., MM Bio 1a) in that biological resource screenings must evaluate the Preserve system for suitable habitat and ensure "this approach would not result in conflicts with the needs of the covered species..." We believe this should be more thoroughly covered in the DHCP document.

8. Section 3.1.5.2.2, Page 3-7, The DHCP fails to recognize the Morro Manzanita-Coast Live Oak plant community series

8.18

Previous work (2009 DHCP) recognized five community series with a Morro Manzanita dominant. These are Morro Manzanita, Morro Manzanita- Wedgeleaf

¹ The Estero Area Plan Update, page 7-49, limits Residential Suburban land divisions to "one per five acres of gross site area."

Ceanothus, Morro Manzanita- Coast Live Oak, Morro Manzanita-California Sagebrush, and Morro Manzanita-Chamise. The 2019 DHCP , in Figure 3-4, and in text on pages 3-7 and 3-8, recognizes all but the Coast Live Oak series, but both vegetation maps from these studies label the area east, west and south of Cabrillo Estates as 'Morro manzanita' when significant portions are Morro Manzanita- Coast Live Oak. Mapping by Tyler and Odion (1996) in a report to CDFW (then CDFG) reported 50-75% manzanita cover west and south of Cabrillo Estates, and the same plus a large area of 75-100% cover to the east In these areas nearly all of the minority component is Coast Live Oak. As compensatory mitigation is essentially quantitative, it is important to have a better idea of the real numbers of plant individuals or amount of cover involved (see Figure 2 attached to this letter at end of text).

8.18
(cont'd)

CNPS believes that updated surveys should be conducted in the Morro manzanita habitat area using CNPS or other quantitative protocols to document cover values in the various associations present within the manzanita habitat area. The SLO Chapter has actually conducted several protocol surveys in this area using trained volunteers and has plans to conduct additional surveys in the near future. Some of our experts question the mapping of the habitat types in the Los Osos area given the National Vegetation Classification Standard (NVCS) adopted by the State of California (Sawyer, Keeler-Wolf and Evens, 2009; <https://www.wildlife.ca.gov/Data/VegCAMP/Natural-Communities>).

(9) General Comment. The Final HCP should resolve a potential issue concerning use of former Palisades Property (Now CDFW Reserve, Bayview Unit) and possibly other properties that have received encumbered state or federal funding

The Morro Palisades Property, south of Highland, east of Broderson, and west of Bayview Hts Drive (a portion of the Bayview Unit, Morro Dunes Ecological Reserve, shown on Figure 2-3 of the DHCP), was purchased from The Morro Palisades Company in the year 2000 using funds that included a CalTrans EEMP grant, a State Budget line item, and a Wildlife Conservation Board (WCB) donation of \$1.4 million. It is not unusual for WCB to condition such grants with certain deed restrictions. For example, a recent WCB grant contained the following language:

8.19

"The Property may not be used to satisfy any requirement or condition imposed by any permit, agreement, authorization or entitlement for use ("Mitigation"), including but not limited to any requirement to compensate for or otherwise offset impacts of an activity, without the written approval of the State acting through the Executive Director of WCB or its successor"

Therefore any lands purchased in the Los Osos greenbelt using restricted funds might potentially be restricted in terms of their use as mitigation space for species 'take' within the framework of the HCP.

Active management within mature Manzanita habitat is not needed, but it is possible that veldt grass removal from the northern and mid slope fringes of Morro Manzanita dominated shrubland would be of use.

8.19
(cont'd)

We thank you for the opportunity to participate in this important process. In summary, CNPS believes that the implementation of the DHCP will result in a net loss to existing populations of Morro manzanita, in addition to damage to a rare and endemic natural community, Morro manzanita chaparral, recognized by the CDFW as a global- and state-rare alliance that consists of fewer than 6 viable occurrences (Sawyer, Keeler-Wolf, and Evens, 2009).

8.20

Sincerely,



Conservation Chair:
San Luis Obispo Chapter, CNPS
1530 Bayview Heights Drive, Los Osos, CA 93402
(805) 528-0914 dchippin@calpoly.edu

Letter sent via email, November 22, 2019



Figure 1: 1948 photos showing cleared land west of Bayview Heights Drive and Calle Cordoniz, and east of Broderson

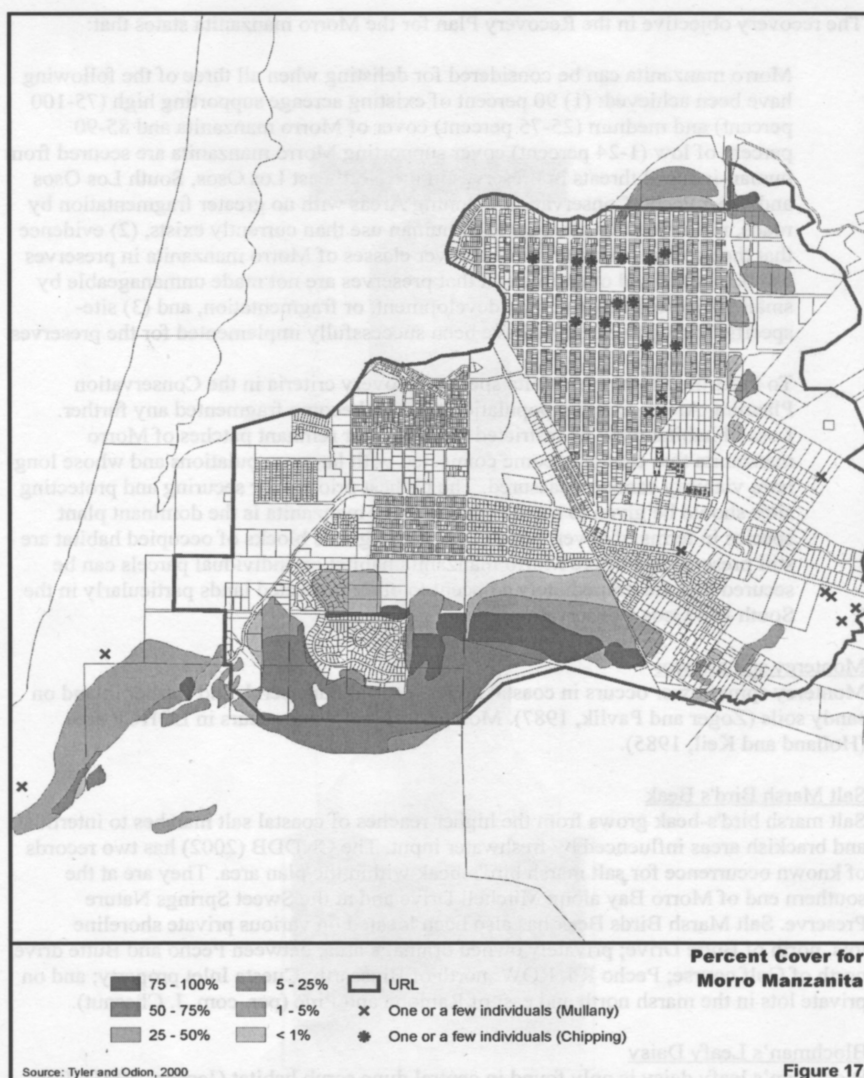


Figure 2: Manzanita habitat from the 2009 DHCP, derived from Tyler and Odion (2000)

Lisa Denker

1347 Pasadena Drive , Los Osos CA 93402

November 18, 2019

Ventura Fish and Wildlife Office

To: Ventura Fish and Wildlife Office and Planning& Building Kerry Brown,

Subject: Los Osos resident input for 2019 Habitat Conservation Plan for Los Osos.

We live on the Baywood Peninsula and are stewards of south facing shoreline property. Having lived here for over 25 years our family has seen a huge change in the wildlife of this special local, along with seeing first hand the growing stressors that are adding up to interfere with the shores seabird activity and birds of all types on our coastal dune shoreline. As the local community activity has grown here in Baywood Park along with more daily visitors, we have seen wildlife diminishing at a dramatic rate. When looking at the Habitat Conservation Plan, it seems void of acknowledgement that the Baywood Park peninsula shoreline is a habitat. On map Figure 6 - Vegetation Communities within the Plan Area, there is no acknowledgement of the true scope of shoreline intertidal habitat area that the Pickleweed grows in, it is not shown on the Baywood Peninsula at all. By not acknowledging the amount of Pickleweed / *Salicornia virginica* at all, along with the special plant community at the intertidal and high tide mark, the map graphic does not seem to be a true inventory of the array of rare special native plants in this highly impacted zone. Inventory is critical for knowing what we have - both plant and animal, so that it can be looked out for as good stewards into the future. For example, the extremely rare/almost extinct *Suaeda Californica* is a plant growing on the Baywood Peninsula, and it should be protected at all costs. Studies are being done planting it in the Bay Area for creating wildlife habitat as sea level rises.

The stressors are many, from human and dog foot traffic along the shores edge, noise, and from invasive plants like ice plant smothering out what grows here natively. By not showing the shores edge plant communities, the map makes it questionable as to whether "1.3 acres" is accurate. Just along the creek alone

9.1

looks to be many acres. Additionally, Map 7 Critical Habitat within the Plan Area, omits habitat on the bay shoreline of Los Osos that hosts sensitive natural communities.

9.1
(cont'd)

The question of how management will be done to deal with growing population impacts on the bay directly from human foot traffic is really something to work out. By minimizing erosion of human foot traffic, the plant communities can continue to live here, along with an invasive plant removal management system that is long overdue here on the Baywood peninsula. Also, limiting where to walk by use of paths and signage, installing trash cans at access lateral points, education of the leash ordinance and enforcement. The shoreline areas need to have an invasive plant removal programs(long over due), plus a replanting program where soil stabilization needed to prevent erosion, especially on the entire Baywood Peninsula which is over run by exotic ice plant/*Carpobrotus Edulis* and *Conicosia Pugioniformis*, plus Velt grass problem, and English Ivy/*Hedera Helix*(on north side of Baywood Peninsula surrounding the Audubon Outlook to the east and west.

9.2

Lastly, I think it is time to adopt two forward thinking impacts upon the bay. First become a pesticide free zone(At minimum, a no-RoundUp zone), and secondly abolish hunting on the Estero Bay. With smaller birds counts yearly, it just makes since to give them the retreat they need.

9.3

Sincerely yours,

Lisa Denker

**[EXTERNAL] Support for San Luis Obispo County Incidental Take Permit**

1 message

James Gentilucci [REDACTED]

Wed, Oct 9, 2019 at 11:34 AM

To: "julie_vanderwier@fws.gov" <julie_vanderwier@fws.gov>, [REDACTED]
[REDACTED]

Stephen P. Henry, Field Supervisor

Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service

2493 Portola Road, Suite B

Ventura, CA 93003

Dear Mr. Henry:

10.1

My wife and I have lived in Los Osos since 1980, and we own both our primary residence and an undeveloped building lot located within the current wastewater prohibition zone. We have been in touch with the Planning Department of San Luis Obispo County, and they told us to expect publication in the Federal Register of the Los Osos HCP sometime this summer/fall. We are please to learn that this has occurred, and your office is seeking input from community residents.

We are writing to share our **strong support** of the County's application for an incidental take permit (ITP) under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.). More than 30 years of conservation efforts and exceptional land use management have prepared Los Osos to move ahead with judicious use of land previously unavailable for development. We understand that now the community wastewater system is in place, the Los Osos Community Plan, which includes the HCP, and improvements to our water system must be resolved before the Community Plan can be adopted by the County Board of Supervisors. We are excited that once the remaining regulatory issues are resolved, the community can move ahead with much desired and long-awaited local improvements such as a dog park, a new library, home remodels/additions, and infill lot development.

The HCP submitted by the County is comprehensive in scope and represents countless hours of intense and thoughtful deliberations among local scientists, County planners, local residents, and government officials. Consequently, **we believe it to be the best way forward** for managed growth while protecting threatened/endangered species and the general environment of our of our beautiful community.

Kindly add our names to the **list of supporters** for the application.

Most sincerely

James Gentilucci, Ph.D.

Catherine Gentilucci, M.B.A.

[REDACTED]
[REDACTED]
[REDACTED]

From: Eve Gruntfest <evegruntfest@gmail.com>

Sent: Sunday, November 17, 2019 7:32 PM

To: Kerry Brown <kbrown@co.slo.ca.us>; Leilani_takano@fws.gov

Subject: [EXT]Re: Response to Los Osos HCP Draft Environmental Impact Report (DEIR)

ATTENTION: This email originated from outside the County's network. Use caution when opening attachments or links.

November 18, 2019

Department of Planning & Building
Attn: Los Osos HCP/Kerry Brown
976 Osos Street, Room 300
San Luis Obispo, CA 93408

And US Fish and Wildlife Service

Via E-mail: kbrown@co.slo.ca.us and to Leilani Takano: Leilani_takano@fws.gov

Re: Response to Los Osos HCP Draft Environmental Impact Report (DEIR)

Dear Ms. Brown and Ms. Takano:

Here are my comments on the HCP. I have benefited by the careful reading of the plan by my neighbors and add these comments for your consideration.

1. I strongly support Alternative 1 but it must be modified to account for the necessary wildfire mitigation efforts my neighbors at the Wildland-Urban Interface are demanding. Everyone in Los Osos will benefit from the wildfire mitigation efforts There must be an alternative that allows for the essential wildfire mitigation efforts to protect our town in the Community Wildfire Protection Plan but at the same time does not authorize the addition of thousands of new residents to Los Osos.

11.1

2. I agree with what my neighbor Ellen Nelson has found:

Figure 5-1 is a map showing the Priority Conservation Areas and comparing this to Figure 4-1 which shows the Morro Shoulderband Snail Habitat it shows that the Los Osos Nature Corridor is glaringly the only significant area of Primary Habitat that is not also designated as a Priority Conservation Area. The intricate ecology of the central corridor of Los Osos - what I refer to as the Los Osos Nature Corridor - must be considered in more detail than it is the HCP Draft EIR.

11.2

Protected Natural areas and Open Space benefit not only the endangered and threatened species that live there, but everyone who enjoys living in Los Osos.

11.3

3. Open Space areas should not only be on the edges of Los Osos, but in the center of town where the majority of residents and visitors can appreciate the walkable benefits they provide.

4. I second the comments of my neighbor Jeanne Howland when she writes in her comments:

11.4

Included in the 266 acres of Alternative 2 are 177 acres of Morro Manzanita Habitat and 151 acres of Morro Shoulderband Snail habitat or potential habitat. The LOHCP DEIR does not identify where the 266

acres in Alternative 2 are located. Potentially 62+ total acres shown as "Morro Shores Mixed-Use Area" (Figure 7-30 in the Los Osos Community Plan) are included in the 266 acres of Alternative 2.

Including the Morro Shores Mixed-Use Area (62+ acres) [Area] in Alternative 2 allows for two specific areas of concern:

The Area is too large to be statistically or logically covered under an Incidental Take Permit. The Morro Shores Mixed-Use Area [62+ acres] at 23% of the total acreage under review in the Alternative 2 proposal, should be subject to its own EIR. An ITP single family should apply to home construction.

The Area is located across the street from the Sweet Springs Nature Preserve (owned by the Morro Coast Audubon Society) and next to land owned by the San Luis Land Conservancy. Clearly construction and use of commercial complexes, apartment/condo buildings or even single family homes in such close proximity (directly across a two-lane street and adjacent) to these habitat treasures of Los Osos is incompatible on seven levels:

1. reduced air quality by more inhabitants and motorists;
2. reduction of biological resources by elimination of acreage for endangered species;
3. reduction of cultural resources by desecration of documented historical native Chumash habitation lands and territory;
4. geology and soils degradation by disruption of historically undisturbed land;
5. reduction of water availability by allowing more people to move to Los Osos where water is a limited resource given the historically documented lack of available community water;
6. increased noise by increased population living and shopping in this area;
7. increased transportation and traffic congestion in an area already identified as needing reconfiguration (4th St and Ramona intersection).

In the past Community comments to Draft Environmental Impact Reports have seemingly been ignored as indicated by lack of inclusion of the multi-organization (Surfrider, Santa Lucia Chapter of the Sierra Club, SLO Green Build, Terra Foundation, Los Osos Sustainability Group and Northern Chumash Tribal Council) 2008 work product presented to the San Luis Obispo County Board of Supervisors (at the request of then County Board of Supervisor Chairman Patterson) entitled: *Statement of Key Environmental Issues for the Collection System of the Los Osos Wastewater Treatment Project*; and, the January 30, 2009 response by the Surfrider Foundation to the Draft Environmental Impact Report for the Los Osos Wastewater Project.

Los Osos is included in the Morro Bay National Estuary. The DEIR does not currently include comments or findings related to this nationally designated area devoted to sensitive habitat.

I support the adoption and certification of Alternative 1 in this proposal. A map clearly showing the proposed Alternative 2 plan **must** be included in any final documentation.

According to CEQA Guidelines, if significant new information is added to the EIR in response to public comment, the County should prepare a revised Draft EIR prior to certification pursuant to *CEQA Guidelines* Section 15088.5(a)(4) and make sure that it has adequate public review.

Sincerely,

Eve Gruntfest

633 Ramona Ave Space 126

11.4
(cont'd)

11.5

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11.7

11.8

Los Osos, CA 93402

evegruntfest@gmail.com

November 11, 2019

Department of Planning & Building
Attn: Los Osos HCP/Kerry Brown
976 Osos Street, Room 300
San Luis Obispo, CA 93408

Via E-mail: kbrown@co.slo.ca.us

Re: **Response to Los Osos HCP Draft Environmental Impact Report (DEIR)**

Dear Ms. Brown:

The current web page for the San Luis Obispo County, Planning & Building Departments (posted in October 2019) states under the Los Osos Habitat Conservation Plan (HCP) summary:

“The County is seeking a programmatic incidental take (ITP) permit from the US Fish and Wildlife Service. The County, as the applicant, is requesting a permit term of **25 years** to authorize ‘take’ [as defined by California Department of Fish and Wildlife: to hunt, pursue, catch, capture or kill or attempt to do so] of covered species associated with covered activities in the HCP area, which is approximately 3,560 acres.”

The covered activities in the HCP are:

- Commercial and residential development and redevelopment on privately-owned parcels;
- Public entity and private utility company facility and infrastructure development projects;
- Public entity and private utility company activities to operate and maintain, including repair and replace existing facilities; and
- Activities conducted to implement the Habitat Conservation Plan conservation strategy.

The SLO County summary further states that “the purpose of issuing a programmatic incidental take permit (ITP) is to allow the County to authorize the covered activities while conserving the covered species and their habitats. Adoption of the Habitat Conservation Plan and issuance of the incidental take permit(s) will facilitate a streamlined permitting process and also provide a cohesive conservation strategy managed by one entity with a single funding source. The Conservation strategy will focus on expansion, conservation, maintenance and enhancement of the Los Osos greenbelt.”

“To mitigate the effects of the covered activities on the covered species, which could otherwise threaten their persistence, the County will be responsible for the implementation of the LOHCP conservation program – a conservation program designed to avoid, minimize and mitigate the impacts of the covered activities to the maximum extent practicable. Given the rarity of these narrowly endemic covered species, this regional plan is also designed to contribute to their recovery by arresting and reversing threats to survival to ensure long-term persistence.”

In other words the SLO County Planning and Building Department proposes to implement conservation measures over 3,560 acres for a period of 25 years in the Los Osos defined area, by allowing hunting, pursuing, catching, capturing or killing federal and state protected species to streamline the permitting process. Further the “conservation program designed to avoid, minimize and mitigate the impacts of

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12.2

the covered activities to the maximum extent practicable” and . . .”designed to contribute to their recovery by arresting and reversing threats to survival to ensure long-term persistence” **is not mentioned or included** in the Los Osos Habitat Conservation Plan EIR as currently presented.

12.2
(cont'd)

The Los Osos Habitat Conservation Plan (LOHCP) DEIR identifies two projected alternatives for approval and certification:

Alternative 1: No Project (Alternative required by CEQA). Under the No Project alternative the LOHCP would not be implemented.

Alternative 2: Reduced Take. The LOHCP would be implemented but the maximum amount of development covered under the LOHCP and associated ITP would be 266 acres which is 50 percent of the maximum amount under the proposed project.

Included in the 266 acres of Alternative 2 are 177 acres of Morro Manzanita Habitat and 151 acres of Morro Shoulderband Snail habitat or potential habitat. The LOHCP DEIR does not identify where the 266 acres in Alternative 2 are located. Potentially 62+ total acres shown as “Morro Shores Mixed-Use Area” (Figure 7-30 in the Los Osos Community Plan) are included in the 266 acres of Alternative 2.

Including the Morro Shores Mixed-Use Area (62+ acres) [Area] in Alternative 2 allows for two specific areas of concern:

1. The Area is too large to be statistically or logically covered under an Incidental Take Permit. The Morro Shores Mixed-Use Area [62+ acres] at 23% of the total acreage under review in the Alternative 2 proposal, should be subject to its own EIR. An ITP single family should apply to home construction.
2. The Area is located across the street from the Sweet Springs Nature Preserve (owned by the Morro Coast Audubon Society) and next to land owned by the San Luis Land Conservancy. Clearly construction and use of commercial complexes, apartment/condo buildings or even single family homes in such close proximity (directly across a two-lane street and adjacent) to these habitat treasures of Los Osos is incompatible on a number of levels:
 - a. reduced air quality by more inhabitants and motorists;
 - b. reduction of biological resources by elimination of acreage for endangered species;
 - c. reduction of cultural resources by desecration of documented historical native Chumash habitation lands and territory;
 - d. geology and soils degradation by disruption of historically undisturbed land;
 - e. reduction of water availability by allowing more people to move to Los Osos where water is a limited resource given the historically documented lack of available community water;
 - f. increased noise by increased population living and shopping in this area;
 - g. increased transportation and traffic congestion in an area already identified as needing reconfiguration (4th St and Ramona intersection).

12.3

In the past Community comments to Draft Environmental Impact Reports have seemingly been ignored as indicated by lack of inclusion of the multi-organization (Surfrider, Santa Lucia Chapter of the Sierra Club, SLO Green Build, Terra Foundation, Los Osos Sustainability Group and Northern Chumash Tribal

12.4

Council) 2008 work product presented to the San Luis Obispo County Board of Supervisors (at the request of then County Board of Supervisor Chairman Patterson) entitled: *Statement of Key Environmental Issue: for the Collection System of the Los Osos Wastewater Treatment Project*; and, the January 30, 2009 response by the Surfrider Foundation to the Draft Environmental Impact Report for the Los Osos Wastewater Project.

12.4
(cont'd)

Another indication of past lack of due diligence by SLO County Planning and Building, is the current controversy in the poor air quality for Nipomo housing compromised by dust particulates blowing from the Nipomo sand dunes. It is abundantly clear that the San Luis Obispo County EIR that allowed for housing development adjacent to the Nipomo dunes was not properly investigated or researched. Now public access to the Nipomo dunes is threatened while a reasonable compromise is being investigated by County staff and the California Coastal Commission. A lack of thorough research, documentation and a rush to approve an EIR for development in order to allow –

“Implementation of a programmatic, multi-species Habitat Conservation Plan, rather than a species-by-species or project-by-project approach, will maximize the benefits of conservation measures for covered species and eliminate potentially expensive and time-consuming efforts associated with processing individual incidental take permits for each project within the proposed Habitat Conservation Plan area”;

12.5

as proposed by the SLO County in this Draft EIR, is a false avoidance of potentially expensive and time-consuming activities for land use and development in Los Osos’ future.

Los Osos is included in the Morro Bay National Estuary. The DEIR does not currently include comments or findings related to this nationally designated area devoted to sensitive habitat.

12.6

I support the adoption and certification of Alternative 1 in this proposal. A map clearly showing the proposed Alternative 2 plan **must** be included in any final documentation.

12.7

According to CEAQ Guidelines, if significant new information is added to the EIR in response to public comment, which I believe will be the case given the information presented here, I would urge the County to recirculate a revised Draft EIR prior to certification pursuant to *CEQA Guidelines* Section 15088.5(a)(4).

12.8

I hope that the County will accept and respond to my comments in earnest.

Sincerely,

Jeanne Howland
633 Ramona Avenue, Space 127
Los Osos, CA 93401
805.235.7067
Jghowland58@hotmail.com

November 17, 2019

Ventura Fish and Wildlife Office
U.S. Fish and Wildlife Service
Attn: Stephen P. Henry, Field Supervisor
2493 Portola Road, Suite B
Ventura, CA 93003

Via E-mail: julie_vanderwier@fws.gov

Re: **Response to Los Osos HCP Draft Environmental Impact Report (DEIR)**

Dear Ms. Vanderwier:

The current web page for the San Luis Obispo County, Planning & Building Departments (posted in October 2019) states under the Los Osos Habitat Conservation Plan (HCP) summary:

“The County is seeking a programmatic incidental take (ITP) permit from the US Fish and Wildlife Service. The County, as the applicant, is requesting a permit term of **25 years** to authorize ‘take’ [as defined by California Department of Fish and Wildlife: to hunt, pursue, catch, capture or kill or attempt to do so] of covered species associated with covered activities in the HCP area, which is approximately 3,560 acres.”

The covered activities in the HCP are:

- Commercial and residential development and redevelopment on privately-owned parcels;
- Public entity and private utility company facility and infrastructure development projects;
- Public entity and private utility company activities to operate and maintain, including repair and replace existing facilities; and
- Activities conducted to implement the Habitat Conservation Plan conservation strategy.

13.1

The SLO County summary further states that “the purpose of issuing a programmatic incidental take permit (ITP) is to allow the County to authorize the covered activities while conserving the covered species and their habitats. Adoption of the Habitat Conservation Plan and issuance of the incidental take permit(s) will facilitate a streamlined permitting process and also provide a cohesive conservation strategy managed by one entity with a single funding source. The Conservation strategy will focus on expansion, conservation, maintenance and enhancement of the Los Osos greenbelt.”

“To mitigate the effects of the covered activities on the covered species, which could otherwise threaten their persistence, the County will be responsible for the implementation of the LOHCP conservation program – a conservation program designed to avoid, minimize and mitigate the impacts of the covered activities to the maximum extent practicable. Given the rarity of these narrowly endemic covered species, this regional plan is also designed to contribute to their recovery by arresting and reversing threats to survival to ensure long-term persistence.”

In other words the SLO County Planning and Building Department proposes to implement conservation measures over 3,560 acres for a period of 25 years in the Los Osos defined area, by allowing hunting, pursuing, catching, capturing or killing federal and state protected species to streamline the permitting

13.2

process. Further the “conservation program designed to avoid, minimize and mitigate the impacts of the covered activities to the maximum extent practicable” and . . .”designed to contribute to their recovery by arresting and reversing threats to survival to ensure long-term persistence” **is not mentioned or included** in the Los Osos Habitat Conservation Plan EIR as currently presented.

13.2
(cont'd)

The Los Osos Habitat Conservation Plan (LOHCP) DEIR identifies two projected alternatives for approval and certification:

Alternative 1: No Project (Alternative required by CEQA). Under the No Project alternative the LOHCP would not be implemented.

Alternative 2: Reduced Take. The LOHCP would be implemented but the maximum amount of development covered under the LOHCP and associated ITP would be 266 acres which is 50 percent of the maximum amount under the proposed project.

Included in the 266 acres of Alternative 2 are 177 acres of Morro Manzanita Habitat and 151 acres of Morro Shoulderband Snail habitat or potential habitat. The LOHCP DEIR does not identify where the 266 acres in Alternative 2 are located. Potentially 62+ total acres shown as “Morro Shores Mixed-Use Area” (Figure 7-30 in the Los Osos Community Plan) are included in the 266 acres of Alternative 2.

Including the Morro Shores Mixed-Use Area (62+ acres) [Area] in Alternative 2 allows for two specific areas of concern:

13.3

1. The Area is too large to be statistically or logically covered under an Incidental Take Permit. The Morro Shores Mixed-Use Area [62+ acres] at 23% of the total acreage under review in the Alternative 2 proposal, should be subject to its own EIR. An ITP should apply to single family home construction not 62+ acres.
2. The Area is located across the street from the Sweet Springs Nature Preserve (owned by the Morro Coast Audubon Society) and next to land owned by the San Luis Land Conservancy. Clearly construction and use of commercial complexes, apartment/condo buildings or even single family homes in such close proximity (directly across a two-lane street and adjacent) to these habitat treasures of Los Osos is incompatible on a number of levels:
 - a. reduced air quality by more inhabitants and motorists;
 - b. reduction of biological resources by elimination of acreage for endangered species;
 - c. reduction of cultural resources by desecration of documented historical native Chumash habitation lands and territory;
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 - e. reduction of water availability by allowing more people to move to Los Osos where water is a limited resource given the historically documented lack of available community water;
 - f. increased noise by increased population living and servicing in this area;
 - g. increased transportation and traffic congestion in an area already identified as needing reconfiguration (4th St. and Ramona intersection).

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13.4

Club, SLO Green Build, Terra Foundation, Los Osos Sustainability Group and Northern Chumash Tribal Council) 2008 work product presented to the San Luis Obispo County Board of Supervisors (at the request of then County Board of Supervisor Chairman Patterson) entitled: *Statement of Key Environmental Issue: for the Collection System of the Los Osos Wastewater Treatment Project*; and, the January 30, 2009 response by the Surfrider Foundation to the Draft Environmental Impact Report for the Los Osos Wastewater Project.

13.4
(cont'd)

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“Implementation of a programmatic, multi-species Habitat Conservation Plan, rather than a species-by-species or project-by-project approach, will maximize the benefits of conservation measures for covered species and eliminate potentially expensive and time-consuming efforts associated with processing individual incidental take permits for each project within the proposed Habitat Conservation Plan area”;

13.5

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Los Osos is included in the Morro Bay National Estuary. The DEIR does not currently include comments or findings related to this nationally designated area devoted to sensitive habitat.

13.6

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13.8

I hope that the County will accept and respond to my comments in earnest.

Sincerely,

Jeanne Howland

[Redacted signature block]

November 18, 2019

Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service
2493 Portola Road, Suite B, Ventura, CA 93003
Stephen P. Henry, Field Supervisor

Via: Email: julie.vanderwier@fws.gov.

RE: Los Osos Habitat Conservation Plan; Environmental Assessment and Receipt of Application; Community of Los Osos, San Luis Obispo County, California
FWS-R8-ES-2019-NO77

Dear Mr. Henry,

Please consider these comments as they relate to subject Habitat Conservation Plan and Draft Environmental Assessment.

The unincorporated coastal area of Los Osos/Baywood Park largely serves as a “bedroom” community to the city of San Luis Obispo. In July of 1998 the Land Conservancy of San Luis Obispo County had prepared the Baywood and Los Osos Conservation Plan. The goal of the Conservation Plan was to protect sensitive habitat including the scenic quality of the larger surrounding open space and achieve both of these resources goals through voluntary interaction between land owners and public agencies. Since 1998, hundreds of acres of open space and multi-species habitat protection lands have been acquired and assembled into a greenbelt.

14.1

The subject Los Osos Habitat Conservation Plan (LOHCP) refers to the greenbelt area as the Priority Conservation Area (PCA). Today there are approximately 950 acres of existing protected lands in the planning area. According to Table 5-5 on page 5-55 approximately 800 of the 950 acres lie in the PCA. While the acquisition of additional protected lands may be relevant, the fundamental component of the LOHCP is to create a management function to administer the PCA.

The completion of the community wastewater facility in 2016 has set the stage for additional development in Los Osos, subject to further requirements. However, moving forward, constraints to development remain in the form of water resource limitations and residential growth management under Title 26 of the County Codes. In San Luis Obispo County, residential growth is limited to 2.3% per year. Individual communities within the county are able to establish growth rates at less than 2.3%. In the case of Los Osos, it is highly likely that the community will establish a residential growth rate of 1% through the Estero Area Plan update (Community Plan) and amendments to Title 26. This would equate to a maximum of approximately 50 new residential units per year. Commercial development and the

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associated demand in Los Osos is quite modest and not expected to experience any rapid expansion over the term of the ITP, especially given the limited available land.

With restricted residential growth in mind, it should be the goal of the LOHCP to mirror the projected development including redevelopment and public/private utility projects. The LOHCP must achieve a balance between the goals of the plan with social, environmental and economic limitations of the community. For example, the majority of the community is currently saddled by \$180 million of debt for the 2016 wastewater project. The debt includes \$80 million loans to the State Revolving Fund and USDA respectively, in addition to \$20 million of bonded indebtedness going back to the Los Osos Community Services District wastewater project. Given the limitations and burdens currently facing the community, I respectfully submit the preferred alternative is Alternative 2: Reduced Take, as outlined in paragraph 8.2 on page 8-2. "Under the Reduced Take alternative, the total acres of habitat disturbed by the covered activities would be capped at 266 acres, ..." Over the course of the 25-year Incidental Take Permit (ITP) this would allow for over 10 acres of habitat to be eliminated each year, which again appears to be more proximate to the rate and scope of activities requiring coverage under the ITP.

14.1
(cont'd)

In Table 2-9, on page 2-33, a summary of anticipated covered activity impacts is provided. I respectfully submit the acreage estimates are inflated given the scope and rate of projected activity. For instance, residential development in the PCA will be very limited at a 3:1 ratio of conservation to development area. A further example indicates if every vacant single-family residential lot (6,000 sq. ft. average x 500 = 69 acres) were to be developed over the next 25 years, which is highly unlikely, the total impacts would affect less than 80 acres, as shown below. Yet, in Table 2-9, on page 2-33, the total area anticipated is over 150 acres. This is excessive. Likewise, existing developed parcels with redevelopment potential are anticipated to impact over 155 acres under the Proposed Plan (Alternative 4), which simply is not realistic in terms of timing and scope of redevelopment. Lastly, public and private utility projects include activities that are not likely to ever happen such as a 10-acre park or 3.5 acre aquatic center. There is a modest Los Osos public library expansion anticipated for the community that may be covered by the ITP and one new community expansion water well, which may or may not, require an ITP.

14.2

Realistic anticipated covered activities and impacts in acres under Alternative 2 should be as follows:

1. Private Land Development	
a. Single-Family Residential	80 acres
b. Multi-Family and Commercial	40 acres
2. Redevelopment	70 acres
3. Public/Private Utility Projects	<u>65 acres</u>
	255 acres

14.3

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The LOHCP goes to considerable length to minimize the efficacy and appropriateness of Alternative 2, citing degradation due to invasive species, incompatible fire management and recreational uses and loss of “economies of scale” associated with the management effort. Most of the statements and arguments are conclusory and lack substantive support for the assertion. In the unlikely event, the Reduced Take cap of 266 acres was exceeded by projects or activities, they would have the ability to process individual HCP’s as we have for the past 20 years or amend the subject ITP. Finally, if the arguments against Alternative 2 Reduced Take were accurate, few of the successes related to greenbelt formation and habitat management in Los Osos would have been realized since 1998. Additionally, the Draft Environmental Assessment provides a brief discussion of the Reduced Take Alternative under paragraph 2.3 on page 10. The discussion seems to agree that Alternative 2 (Reduced Take) “would allow for development within the 1,584-acre septic tank discharge prohibition zone.” “As with the proposed action, issuance of an ITP under the Reduced Take Alternative would streamline compliance with the ESA for development within the 266-acre area and facilitate coordinated habitat restoration, management, and protection efforts with implementation of a Preserve System that is commensurate with the reduced level of Take.”

14.4

In conclusion, Alternative 4: Proposed Plan which includes 532 acres of land projected to be impacted by covered activities; is overly excessive and overshoots the foreseeable needs of the community and the associated activities, which would require coverage under an ITP. Therefore Alternative 2 is the preferred alternative. The cost of this alternative is likely to be closer to the \$10 million estimate projected in the February 2005 draft LOHCP. The implementation of Alternative 2 over the next 25 years, would likely lead to the delisting of the Morro shoulderband snail and provide permanent protection for the great majority of Morro manzanita habitat.

14.5

On a housekeeping note, I take considerable issue with Figure 5-3 Morro Bay Kangaroo Rat Avoidance Area on page 5-70. The map includes islands of undeveloped infill properties within the Urban Services Line (USL). Any K-Rat surveys or other requirements should be confined to the PCA. Secondly, Figure 4-2 Morro Manzanita Habitat, page 4-46. The map of Potential Biological Impacts/Take Assessments for the Morro Manzanita is inaccurate. The figure shows extensive Morro Manzanita habitat east of South Bay Blvd. which is simply not accurate. The Morro Manzanita are included in the Maritime Chaparral which typically occupy the North facing slopes primarily along the southern fringe of the community and a small area in the Elfin Forrest. Please eliminate all properties within the USL from any K-rat surveys or restrictions and correct the mapping of Morro Manzanita habitat.

14.6

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Please feel free to contact me with any questions you may have.

Sincerely,

Jeff Edwards

Jeff Edwards

November 19, 2019

County of San Luis Obispo
Planning and Building Department
976 Osos Street, Room 300
San Luis Obispo, CA 93408
Attention: Kerry Brown/Project Manager, Sr. Planner

Via Email: kbrown@co.slo.ca.us

RE: Los Osos Habitat Conservation Plan Draft Environmental Impact Report
SCH#2013091071 September 2019/Rincon Consultants, Inc.

Dear Ms. Brown,

The following comments are related to the Draft Environmental Impact Report (DEIR) for the proposed Los Osos Habitat Conservation Plan (LOHCP).

As you know, the LOHCP contains four alternatives. They are Alternative 1: No Take. Alternative 2: Reduced Take. Alternative 3: Greater Mitigation Requirement and Alternative 4: Proposed Plan. Unfortunately, the DEIR only refers to Alternatives 1, the No Take Alternative & Alternative 2, the Reduced Take Alternative. Another confusing aspect is taken from the Draft Environmental Assessment (DEA) in that under paragraph 2.3 Reduced Take Alternative, on page 10, it states "...the County proposes to reduce the total acres of habitat used as a surrogate for Take resulting from covered activities to 266 acres, which represents 50 percent of that for the Proposed Action." The DEIR refers to Alternative 2: Reduced Take on a number of occasions but fails to adequately compare Alternative 2 with the proposed project. In fact; what analysis there is, beginning with paragraph 6.2.2 Impact Analysis on page 267 of the DEIR repeats the same statement 11 times. The Reduced Project Alternative...is "similar to the proposed project".

15.1

Alternative 2: Reduced Take would allow 266 acres in the plan area to be developed, while the proposed project would allow for up to 532 acres of land to be developed within the Plan Area. It is highly unlikely, for the foreseeable future, i.e. 25 years that more than 266 acres of land would be impacted in the Plan Area given a broad range of development limitations. These limitations include, water resources, coastal habitat protection, cultural resource protection and most importantly residential growth management under Title 25 of the County Codes.

15.2

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As a result, I agree with the County of San Luis Obispo and urge approval of Alternative 2: Reduced Take. Over the course of the 25-year Incidental Take Permit (ITP) this would allow for over 10 acres of habitat to be eliminated each year, which again appears to be more proximate to the rate and scope of activities requiring coverage under the ITP. Moreover, with regard to the DEIR I respectfully submit Alternative 2 is the environmentally superior alternative. In this instance, less is more. It is common sense, that the impacts from the community buildout of 266 acres would have less environmental impacts than the development of 532 acres over the same time frame.

An argument supporting the proposed plan is that if the 266 acres were to be exceeded, individual project proponents would have to file their own HCP's and obtain ITP's as needed. If in the unlikely event the acreage threshold was exceeded, individual applications could be processed just as they have over the past 20-years. If arguments against Alternative 2 Reduced Take were accurate, few of the successes related to greenbelt formation and habitat management in Los Osos would have been realized since 1998.

The DEIR cannot determine the Environmentally Superior Alternative without a full analysis comparing the proposed project with Alternative 2: Reduced Take. Please complete an analysis for Alternative 2 including any reasons Alternative 2 should be considered but rejected.

It is the view of this commenter that Alternative 2 for the LOHCP is the Environmentally Superior Alternative. This may be confirmed with the proper analysis.

Please feel free to contact me with any questions you may have.

Sincerely,

Jeff Edwards

Jeff Edwards

15.2
(cont'd)

November 17, 2019

Mr. Stephen P. Henry
Field Supervisor
U. S. Fish and Wildlife Service
2493 Portola Road-Suite B
Ventura, CA 93003

RE: Los Osos Habitat Conservation Plan-Los Osos, CA

Dear Mr. Henry:

Following are some of my comments regarding the proposed draft HCP for the Los Osos community.

1. The draft HCP and EA and EA-Appendices total 621 pages. These are documents that have been secretly in process for 10 years with no prior release or indication of the substance of the plan. When published in the Federal Register, we are then given 45 days to review the 621 pages and consult with planners, private consultants and various staff to try and form an opinion of the contents. I believe this restrictive time frame is patently unfair and unjust.
2. I own 3 vacant parcels in Los Osos that are affected by the outcome of the HCP. For two of them on the periphery, it is understandable to want a survey for the K-Rat (even though no one has seen one in well over 20 years), only because of the parcel's locations adjacent to other large open parcels. For the parcel that I own in the urban area on Pine, it is bordered by development on all sides. As an urban parcel, it makes no sense to require K-Rat surveys. Please amend the draft HCP to remove the requirement for K-Rat surveys on urban in-fill parcels within the USL.
3. One of the parcels I own is outside of the USL and is just under 5 acres. Limiting a maximum disturbance envelope to 30,000 SF is an extreme and unjust taking of property relative to the parcel size. For a parcel of this size a more appropriate disturbance envelope would be in the order of 1.5 acres with 3 acres of conservation space as a maximum. Please review this area of the plan.
4. This same 4.7 acre parcel was purchased in December, 2016 at \$100,000 as an open, arm's length, market transaction. This comp sale was not included in the analysis of land value for mitigation. At this value, the mitigation costs are approximately half of those

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16.4

defined in the plan. Why was this recent comparable ignored in favor of other higher cost parcels?

16.4
(cont'd)

5. The entire plan seems to be geared toward punitive, required mitigation by remaining vacant parcel owners, regardless of whether there are actual takings. Although this approach may be convenient in requiring mitigation from everyone seeking to develop, it may be contrary to law and to FWS guidance. I have attached to my letter the Department of Interior—FWS memo of April 26, 2018 that spells out the triggers for a taking. This memo clarifies that habitat modification in and of itself is not a taking, unless it is likely to result in the actual killing or injury of wildlife. Many of the vacant parcels in Los Osos would fall into this category. Please include a copy of this memo in the final version of the HCP.

16.5

Thank you for considering the points I have raised.

Respectfully submitted,

R.E. KIRK

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Attachment: Department of Interior—FWS memo of April 26, 2018



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240




In Reply Refer To:
FWS/AES/067974

APR 26 2018

Memorandum

To: Regional Directors 1-8

From: Principal Deputy Director 

Subject: Guidance on trigger for an incidental take permit under section 10 (a)(1)(B) of the Endangered Species Act where occupied habitat or potentially occupied habitat is being modified.

The U.S. Fish and Wildlife Service (Service) Field and Regional personnel often provide critical technical assistance to private parties who may take actions affecting listed species, and who may decide to invest significant resources to prepare an incidental take permit application pursuant to ESA Section 10(a)(1)(B). It is vital that Service staff apply correct and consistent interpretations of ESA statutory and regulatory provisions.

It is also vital that Service staff recognize that whether to apply for a section 10(a)(1)(B) permit is a decision of the applicant. Service staff can and should advise non-federal parties on the law, our regulations and guidance, and the potential for take of listed species incidental to their activities, but it is not appropriate to use mandatory language (e.g., a permit is "required") in the course of that communication. The HCP process is applicant driven, and that includes the threshold determination of whether to develop an HCP and apply for a permit. That threshold determination ultimately rests with the project proponent. Project proponents can take Service input into account and proceed in a number of ways, based upon their own risk assessment. They may proceed (at their own risk) as planned without a permit, modify their project and proceed without a permit, or prepare and submit a permit application. The biological, legal, and economic risk assessment regarding whether to seek a permit belongs with the private party determining how to proceed¹.

After consultation with the Solicitor's Office, I am providing guidance on how one determines whether a project is likely to result in "take" of a listed species as it relates to habitat modification. Further, I am requiring that : 1) the Assistant Director – Ecological Services post this memorandum and the attached questionnaire on the Headquarters Endangered Species web page; and 2) that Service regional and field staff include direction to that web site

¹ However, once a project proponent has decided to apply for a permit, the structure and scope of the HCP and associated permit are subject to negotiation between the permittee and the Service.

www.fws.gov/endangered/esa-library/pdf/Guidance-on-When-to-Seek-an-Incidental-Take-Permit.pdf) when project proponents seek information about whether their action needs an incidental take permit under section 10 (a)(1)(B). By operating in a consistent manner, with clear standards, we can reduce conflict, minimize public frustration and increase government efficiency.

Simply put, as set out below, a section 10 (a)(1)(B) incidental take permit is only needed in situations where a non-federal project is likely to result in “take” of a listed species of fish or wildlife. That is, the requirement for an incidental take permit, as set forth in section 10 (a)(1)(B) of the ESA and its accompanying regulations, is only activated when non-Federal activities are likely to result in the take of listed wildlife.² As discussed in more detail below, habitat modification, in and of itself, does not necessarily constitute take. Chapter 3 of the Fish and Wildlife Service’s Habitat Conservation Plan Handbook (Handbook) sets out the pre-application process and plainly states that if take is not anticipated then an incidental take permit is not needed. Further, it explains that an incidental take permit is only needed if a non-federal party’s activity is “in an area where ESA-listed species are known to occur and where their activity or activities are reasonably certain to result in incidental take.” The Handbook clarifies that the standard for determining if activities are likely to result in incidental take is whether that take is “reasonably certain to occur.” In addition, the Handbook directs that the Service should avoid “processing applications submitted purely ‘as insurance’ when take of ESA –listed species is not anticipated.” (*See Handbook, Chapter 3 “Phase 1:Pre-Application”*)

An essential component of analysis needed to determine whether an incidental take permit (ITP) is needed is an understanding of what constitutes take under the ESA. The ESA defines “take” as: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct. 16 U.S. C. 1542(b). The ESA’s take definition has been supplemented by the Service with regulatory definitions of the terms “harm” and “harass”.

The terms “harm” and “harass” have been redefined several times. In July 1975, the Service proposed “harass” to be defined as an act that “either actually or potentially harms wildlife by killing or injuring it, or by annoying it to such an extent as to cause serious disruption in essential behavior patterns, such as feeding, breeding, or sheltering. Significant environment modification or degradation which has such effects is included in the meaning of harass.” 40 F.R. 28712 (July 8, 1975). After notice and comment on the proposed definition, the Service reworked the definition of harass (as well as the definition of harm) and redefined the Service’s regulatory definition of “harass” as follows: “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding feeding or sheltering.” 50 C.F.R. §17.3.

² Listed plants are not included in the ESA’s prohibition on take of listed species.

The preamble to the final rule explicitly stated that the Service moved the concept of environmental modification or degradation from “harass” to the term “harm.” 40 F.R. 44412 (Sept. 26, 1975). Specifically, the preamble explained that the “concept of environmental damage being considered a ‘taking’ has been retained, but it now found in a new definition of ‘harm.’” In addition, the Service chose to modify the definition of “harass” by “restricting its application to acts or omissions which are done ‘intentionally or negligently.’” The preamble explained that this change – to have “harass” only apply to intentional or negligent actions – was made as otherwise under the proposed language, harass would have “applied to any action, regardless of intent or negligence.” Harass, therefore, is not a form of take permitted under section 10(a)(1)(B), which applies to taking “incidental to, but not the purpose of, the carrying out of an otherwise lawful activity.”

Take in the form of “harm” is particularly significant and relevant to section 10 ITPs because it can be manifested in the form of habitat modification, a common component of non-Federal activities. As discussed above, the term “harm” has also been redefined several times, always with the intention to clarify that “harm” relates to activities that are likely to result in the actual death or injury of listed species. In 1975, the Secretary issued a regulation that defined “harm” to mean an act that “actually injures or kills wildlife, including acts which annoy it to such an extent as to significantly disrupt essential behavior patterns, which include but are not limited to, breeding, feeding or sheltering,” and which include “significant environmental modification or degradation which has such effects.” This regulation’s preamble noted that “harm” was “expressly limited to those actions causing actual death or injury to a protected species of fish and/or wildlife. The actual consequences of such an action upon a listed species is paramount.” See, 40 F.R. 44,413 (Sept. 26, 1975).

In 1981, the Secretary established the current regulatory definition of “harm” because of concerns that the prior regulatory definition was being interpreted to bar habitat modification even when there was no resulting injury to species. The regulatory definition of “harm” was modified to read: “Harm in the definition of ‘take’ in the Act means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering.” 50 C.F.R. §17.3. Some commenters on the rule asserted that habitat modification alone could be a “take” under section 9; the Service’s response in the preamble was that “in the opinion of the Service Congress expressed no such intent.” Further, the preamble explained that the use of the word “actually” clarifies that a “standard of actual adverse effects applies to section 9 taking” and that it was clear that “habitat modification or degradation, standing alone, is not a taking pursuant to section 9.” It went on to emphasize that “modification must be *significant*, must *significantly impair essential* behavior patterns, and must result in *actual* injury” (emphasis in original). Finally, the preamble discussed the specific choice to use the word “impair” rather than “disrupt” in the phrase “significantly impair essential behavior patterns” to “limit harm to situations where a behavioral pattern was adversely affected

and not simply disturbed on a temporary basis with no consequent injury to the protected species.” *See*, 46 FR 54,748 (Nov. 4, 1981).

The validity of the regulatory definition of “harm” as applied to habitat modification faced a facial challenge, which eventually reached the Supreme Court in *Babbitt v. Sweet Home Chapter of Communities For a Greater Oregon*, 515 U.S. 687, 115 S. Ct. 2407 (1995). The Supreme Court upheld the regulatory definition of “harm” and emphasized that while “harm” could result from habitat modification “every term in the regulation’s definition of ‘harm’ is subservient to the phrase ‘an act which actually kills or injures.’”

After the Supreme Court’s decision, the 9th Circuit also analyzed the definition of “harm” and agreed that harming a species may be indirectly caused by habitat modification but concluded that habitat modification in and of itself does not constitute harm unless it “actually kills or injures wildlife.” *Defenders of Wildlife v. Bernal*, 204 F.3d 920 (9th Cir. 1999). The *Bernal* court highlighted the Supreme Court’s emphasis that every term in the definition of harm is “subservient to the phrase ‘an act which actually kills or injures wildlife.’” In a later case, the 9th Circuit again tackled the definition of “harm” and held that, while the harm could be prospective, the “mere potential for harm, however, is insufficient.”³ *Arizona Cattle Growers’ Association v. Fish and Wildlife Service*, 273 F.3d 1229 (9th Cir.2001). The *Arizona Cattle Growers’* Court opined that without evidence that a take would likely occur, a finding of take based on habitat modification alone would impose conditions on otherwise lawful use of land and such an action by the Service would be arbitrary and capricious.

The law is clear, then, that in order to find that habitat modification constitutes a taking of listed species under the definition of “harm”, all aspects of the harm definition must be triggered. The questions that should be asked before a determination is made that an action involving habitat modification is likely to result in take are:

1. Is the modification of habitat significant?
2. If so, does that modification also significantly impair an essential behavior pattern of a listed species?
3. And, is the significant modification of the habitat, with a significant impairment of an essential behavior pattern, likely to result in the actual killing or injury of wildlife?

All three components of the definition are necessary to meet the regulatory definition of “harm” as a form of take through habitat modification under section 9, with the “actual killing or injury of wildlife” as the most significant component of the definition.

In summary, potential applicants should be advised that an ITP is only needed when an activity (or the results of the activity) is likely to result in the take of listed wildlife and that it is the

³ The impact on a species may be prospective but it still must hit all the components of the definition of “harm” and must be reasonably certain to occur.

potential applicant's decision whether to apply for an ITP. If an applicant seeks technical assistance from the Service, a careful examination of what constitutes take (using guidance from this document, the attached questionnaire, and the HCP Handbook) should be central to the discussion as to whether an ITP is needed. Further, it should be noted that habitat modification, in and of itself, does not constitute take unless all three components of the definition of "harm" are met.

Please ensure that each non-Federal party who seeks information about a section 10(a)(1)(B) permit is directed to this memorandum and questionnaire as posted on the Service's Endangered Species webpage (www.fws.gov/endangered/esa-library/pdf/Guidance-on-When-to-Seek-an-Incidental-Take-Permit.pdf).

QUESTIONNAIRE FOR POTENTIAL APPLICANTS FOR INCIDENTAL TAKE AUTHORIZATION UNDER SECTION 10(a)(1)(B) of the ENDANGERED SPECIES ACT

Respond to these questions to help decide if you need an Endangered Species Act (ESA) permit:

1. Keeping in mind that the ESA does not apply to take of plants incidental to otherwise lawful activities, are there ESA listed species present in the area where your activity will occur or will they be present at some point in the duration of your activity?

Yes? Then proceed to question 2.

No? Then you do not need a permit.

2. Is it likely that any of these listed species will be exposed to your activities (or the results of your activity) during any of the various phases of your activity (construction, operation, maintenance, etc.)?

Yes? Then proceed to question 3.

No? Then you do not need a permit.

Review questions 3, 4, 5, and 6 to determine if the exposure from your activity to the listed species constitutes prohibited “take” under the ESA. A permit under section 10 (a)(1)(B) of the ESA does not cover purposeful take. As you review the questions below remember that only take that is “incidental” to an otherwise lawful action can be covered under an incidental take permit.

3. If your activity overlaps with the listed species at some point of its duration, will that exposure likely result in any of the following actions to the listed species: pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct? Keep in mind that some of these definitions most likely only apply to purposeful take (e.g. hunting, shooting).

Yes to incidental take? Then you likely need a permit.

No? Then proceed to question 4.

4. Is your activity likely to harass a listed species? To answer this question ask whether your activity, through an intentional or negligent act or omission, is likely to annoy the listed species to such an extent as to cause **an injury** to the species by **significantly disrupting normal behavior patterns** (e. g. breeding, feeding or sheltering, etc.)?

Yes? This take is not permitted as it is not “incidental.”

No? Then proceed to question 5.

5. Is your activity likely to result in an act that actually injures or kills a listed species?

Yes? Then you likely need a permit.

No? Then proceed to question 6.

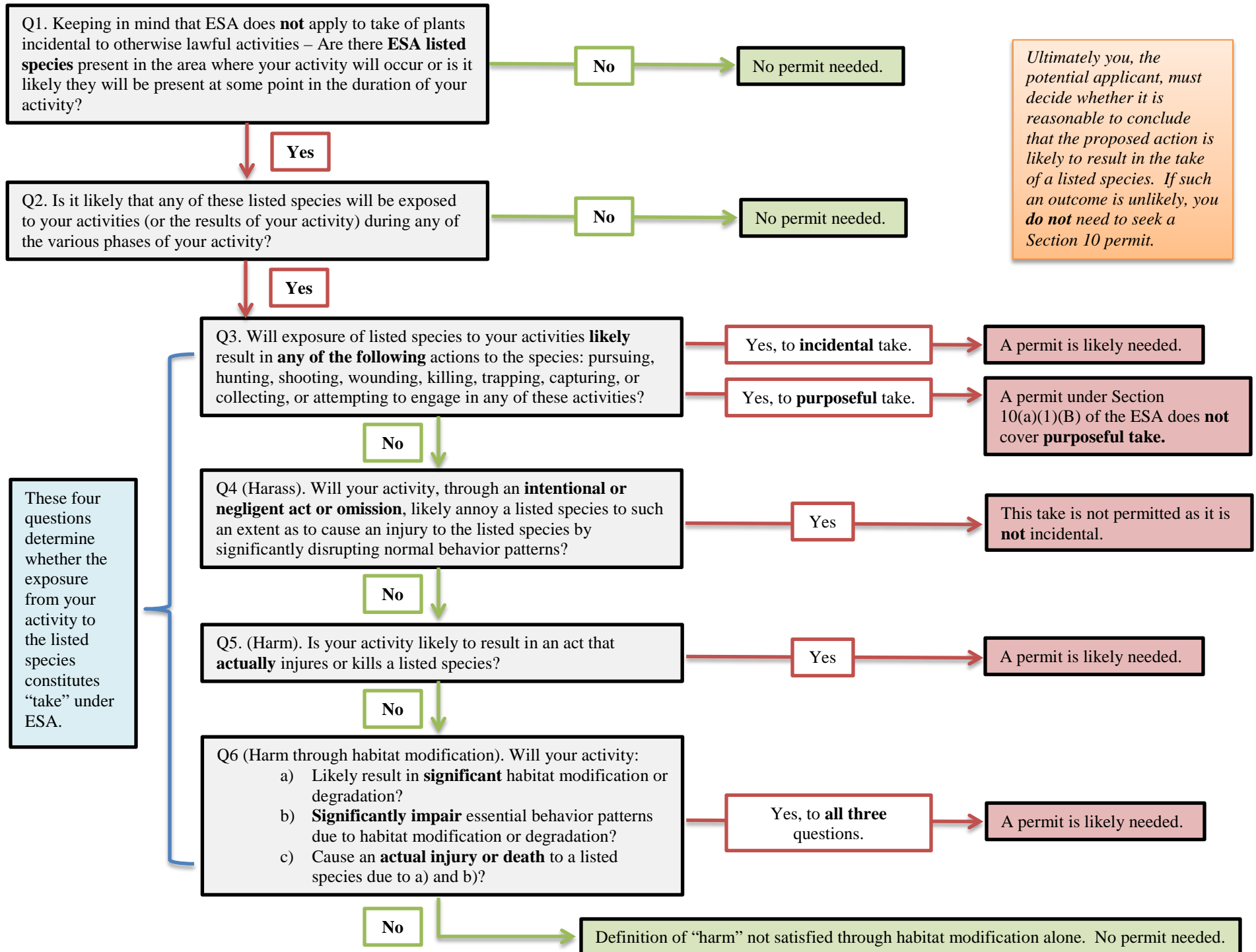
6. Is your activity likely to harm a listed species through habitat modification? To answer this question, ask:
- Is my activity likely to result in **significant** habitat modification or degradation?
 - Will that modification or degradation **significantly impair** essential behavior patterns, including breeding, feeding, or sheltering?
 - As a result of a. and b. above, is it likely there will be **an actual injury or death** to a listed species?

Yes to all three questions? Then you can anticipate take through habitat modification and likely will need a permit.

No? Then you have not satisfied the definition of “harm” through habitat modification.

Ultimately you, as a potential applicant, must decide whether it is reasonable to conclude that the proposed action is likely to result in the take of a listed species. If such an outcome is unlikely, you do not need to seek a section 10 permit.

Guidance on Determining Need for ITP under ESA Section 10(a)(1)(B)



**[EXTERNAL] Los Osos Habitat Conservation Plan**

1 message

Roxanne Lee <[REDACTED]>
To: julie_vanderwier@fws.gov

Fri, Nov 15, 2019 at 9:30 AM

Dear Ms. Vanderwier,

As a resident of Los Osos, I would like to submit comments re: The Los Osos Habitat Conservation Plan (LOHCP). **The proposed land use and development identified in the LPHCP should maintain the rural character of Los Osos.** Specific comments re: the LOHCP include the following:

17.1

- Figure 2-2 Land Use Map: The undeveloped area along LOVR between Palisades St. and Broderson St. should be classified as open space or recreation. It is currently designated as a mix of commercial, office professional, and residential single family. However, commercial and office land uses should be clustered east along LOVR, where there are already existing commercial/office uses, e.g., there are already vacant commercial properties adjacent to Grocery Outlet, Chase Bank, and the US Postal Office. Don't sprawl these commercial uses; especially if there are already plenty of vacant commercial lots. Density where they already exist to preserve the rural character of Los Osos. Single family residential should be set back from LOVR to make space for a large regional park that connects to the existing community park. There are no large regional parks that are walking distance for residents in Los Osos. The National Recreation and Parks Association states that importance of having easily accessible recreational parks of small, medium, and regional parks. The area along LOVR is the perfect location for a larger central regional park. It would also conserve important habitat area along LOVR and maintain the rural character. While there is Montana Del Oro State Park, it requires driving. The regional park could include the following facilities that currently have not been sited: aquatic center and library. 17.2
- Figure 2-3 Existing Protected Lands: Notice how there are minimal protected lands within Los Osos. The undeveloped area along LOVR between Palisades St. and Broderson St. would make the perfect central gathering area and regional park for Los Osos. 17.3
- Table 4-1: Take/Impacts Assessment Methods for Anticipated Covered Activities within the LOHCP Area:
 - Activity Items #1 and 2: New Park in Los Osos (10-acre) The new park location should be along LOVR to create a large regional park that includes the aquatic center and library. We need large grassy areas with large-shade trees for family barbecues/parties, outdoor amphitheater for events, native plant / water conservation demonstration garden, multiuse fields (e.g., soccer, kickball, disc sports), outdoor courts (basketball, pickleball, tennis), etc. The existing community park has picnic areas adjacent to LOVR, but they are loud and noisy from traffic. The park would act as the central community gathering area. It would also be safe location for families to walk to the library without high traffic volumes. 17.4
 - Activity Item: Bike Lanes: More bike lanes! There needs to be a designated bike lane with cones or fencing between Los Osos and Morro Bay. This would be great for families and tourists. 17.5

Thank you,
Roxanne Lee

From: Patrick McGibney <patindi@aol.com>

Sent: Tuesday, December 3, 2019 5:23 PM

To: Takano, Leilani <leilani_takano@fws.gov>; Kerry Brown <kbrown@co.slo.ca.us>

Subject: [EXT]Add'l comments LOHCP

ATTENTION: This email originated from outside the County's network. Use caution when opening attachments or links.

Dear Ms. Takano and Ms. Brown,

These are the additional comments I spoke to Ms. Takano about in our request for an extension to the Comment period for the LOHCP. These comments are being submitted by the Los Osos Sustainability Group, which I sit on the Board of. Please review these comments and consider them part of our comments submitted on November 18, 2019.

Thank you.

Sincerely,

Patrick McGibney

Los Osos Sustainability Group.

We would like to add two changes/clarifications to our comments submitted on November 18, 2019.

We point out in our letter that the LOHCP EIR's omission and treatment of cumulative impacts justify selecting a "No Project" alternative--and we cite a few examples of potential impacts from the LOWWP and Basin Plan programs. We want to clarify that the impacts we cite are not the only cumulative impacts that should be addressed. A reasonable range of impacts including cumulative impacts from the three projects, LOWWP, Basin Plan, and HCP, are required to be addressed under CEQA. We note that "adaptive management" is recommended to address some impacts of the LOWWP and BP. CEQA requires that impacts must be analyzed to determine the adequacy of adaptive measures, and the measures must be feasible and time-specific. We understand that additional conservation, recycled water reuse, and shifts in pumping, also cut backs in pumping, have been proposed as adaptive measures. We think all of these may be infeasible and/or ineffective in that the LOWWP CDP requires conservation and recycled water use to be maximized within the LOWWP service area and high levels of both are already in place; the ability to shift pumping is limited by limited wells, piping, and interconnections between purveyors; and there may be legal constraints on stopping pumping. Effective adaptive programs further require good preplanning, e.g., modeling climate change scenarios and devising specific contingency plans.

18.1

18.2

We would also like to clarify our statement that the current EAP should be kept in place assumes the current restrictions on building imposed by the Coastal Commission are kept in place.

Thank you for adding these clarifications to our comments.

18.3

Statement in earlier letter:

“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.”

On Nov 14, 2019, at 3:40 PM, Takano, Leilani <leilani_takano@fws.gov> wrote:

Hello Mr. McGibney,

As discussed today, we are not able to extend our 45-day comment period on the Notice of Availability for the Los Osos HCP and Environmental Assessment. However, we encourage you to submit your comments as close to the November 18th deadline as possible. We may be able to address your comments received after November 18, but cannot guarantee this. As discussed, our office will work with SLO County to address the public comments on their HCP in the coming weeks, so the sooner you can provide us with your comments the better the chances are that we will have the opportunity and time to consider them in our decision process.

Please let me know if you have any additional questions or concerns. We appreciate you reaching out to us regarding this matter.

Best regards,
Leilani

Leilani Takano
Assistant Field Supervisor
North Coast Division
Ventura Fish and Wildlife Office
US Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, California 93003
Tel: (805) 677-3330

On Wed, Nov 13, 2019 at 5:18 PM Patrick McGibney <patindi@aol.com> wrote:

Greetings Steve and Leilani. Kerry Brown with San Luis Planning suggested contacting you in requesting an extension to the Los Osos Habitat Conservation Plan. This is an important document and the Community just recently found out about it on the social media site Nextdoor. Ms. Brown only sent a comment notice to the few on her email list and now will post on Nextdoor but the Community still only has until 11-18-19 to comment. Would you please give us at least an additional two weeks to study and comment.

Sincerely,
Patrick McGibney
Los Osos Sustainability Group.

Kerry Brown

From: Rebecca McFarland <backbaybeck@icloud.com>
Sent: Monday, November 18, 2019 4:52 PM
To: Kerry Brown
Subject: [EXT]Los Osos HCP

ATTENTION: This email originated from outside the County's network. Use caution when opening attachments or links.

Dear Ms. Brown,

I would like to submit the following comments on the Los Osos Habitat Conservation Plan:

- | | |
|---|------|
| 1. As a citizen living adjacent to the Morro Dunes Ecological Reserve, I am greatly concerned with the lack of plan and oversight to patrol and maintain the area. There is abundant dead plant life ready to burn right up behind people's property lines. Dead Brush was trimmed to 50 feet recently, but left in large mounds at the 50 ft line. Just from Broderon to Ravenna there are 26. If this is the sort of maintenance we can look forward to it is unacceptable in our new age of year-round-fire season. From what I have been told. Fish and Wildlife have no monies to patrol or maintain the property. For us neighbors on Highland, fire is our greatest fear and now with homeless camping out in the reserve our concerns are even greater. | 19.1 |
| 2. While we are on the topic of homelessness, I think that part of the plan should be looking to the growth of our homeless population in our area. An area of the town should be set aside for facilities to deal with this and proper services should be in place to keep this population from further affecting our conservation areas. This would include trash and hazardous bio waste removal to include human feces and used hypodermic needles. | 19.2 |
| 3. Wildfire is a concern of everyone in our town. We currently do not have enough fire staff or equipment to fight a large wildfire in our area. Plans to "bulldoze" in the reserve area if a fire should start would be hampered by the fact that the bulldozers are parked at the SLO airport. | 19.3 |
| 4. In Figure 16 a new road is shown from Travis in Cabrillo Estates to Bayview Heights. I am hoping this is in error as it would pass right through some of the habitat to be conserved. In addition a Highland Dr. is shown to continue to Pecho - there are homes there now, so it seems to be drawn in error. | 19.4 |
| 5. I am in serious doubt that retrofitting and water recycling will ever conserve enough water to provide sufficient water supply for the buildout show in this Community Plan. Are we not still in Stage III Drought in Los Osos? | 19.5 |

Sincerely,

Rebecca McFarland
2455 Broderon Ave.
Los Osos, CA 93402
(805) 440-6643

**To: Kerry Brown, Environmental Coordinator,
Department of Planning and Building
976 Osos Street, Room 300, SLO, CA 93408-2040**

LOHCP DEIR: Executive Summary, page 1

“Although the primary purpose of the LOHCP is to streamline the permitting of covered activities by providing a program for the protection and enhancement of habitat for listed species impacted by such activities, adoption of the LOHCP and issuance of an ITP would commit the County to a course of action that could adversely impact the environment“

20.1

COMMENT 1: Streamlining the permit process is detrimental to habitat, species, the Los Osos Groundwater Basin and the Community of Los Osos. It does not provide a program for protection and enhancement.

The Los Osos Groundwater Basin has been in overdraft for decades causing, as of yet, an irreversible flow of seawater intrusion. As a result, streamflow has decreased, impacting habitat and species, and water quality has been dramatically degraded to the point where many choose to drink bottled water instead of from the tap. The following points of concern have been taken directly from the LOHCP. Because of these concerns it is recommended that alternative 1 be implemented. All **BOLD** highlights have been added for emphasis.

LOHCP DEIR: Project Impacts, page 203

HWQ-6 THE PROJECT MAY AFFECT THE QUANTITY OF AVAILABLE SURFACE OR GROUNDWATER. . .

20.2

The Los Osos Groundwater Basin is the sole source of water supply for the Los Osos area and the LOHCP would result in impacts to groundwater supplies. A number of the covered activities listed in the LOHCP (e.g., residential and commercial development, parks, libraries, aquatic center) would increase water demand in the Plan Area. **As a result, groundwater resources for the Los Osos area may not be sufficient to meet future demand** as currently planned by the EAP. **According to the Basin Plan for the Los Osos Groundwater Basin, the Basin has been found to be in a state of overdraft and is at a Level of Severity III** (i.e., the amount of consumption has reached the dependable water supply) (County et al. 2015).

Covered activities, including expedited residential, commercial, and infrastructure development, would have the potential to impact surface water and groundwater quality. Activities that disturb soil or require the use of fuel or other hazardous materials at work sites could introduce pollutants to the environment that could be carried in stormwater runoff to surface waters or percolate through to groundwater. Ground disturbance can result in accelerated soil erosion, which can increase sediment delivery to surface waters and degrade water quality. Activities in or near streams and other water features could loosen and mobilize bed and bank materials, which could result in suspended sediment in the receiving waters. Construction activities could require vehicle fuels, lubricants, adhesives, waterproofing compounds, and hydraulic fluid for vehicles and equipment and could also require concrete, epoxy, paints, and/or asphalt paving. Specific hazardous material use at individual project sites would vary and would depend upon the type, size, and location of the project. The discharge of pollutants into waterbodies could degrade water quality and affect beneficial uses of the downstream waterbodies.

Comment 2: The LO Ground Basin is in overdraft. It is the sole source of water for the community. There is no other dependable water supply and it may not be sufficient to meet future demand.

LOHCP DEIR 4.7 Hydrology and Water Quality
Page 193

Surface Water Resources:

The most significant sources of recharge for the Basin are direct percolation of precipitation and percolation of surface runoff. The primary stream overlying the Basin is Los Osos Creek and its tributaries, including Willow Creek and Warden Creek. Los Osos Creek originates in the Irish Hills to the

20.2
(cont'd)

20.3

south of the Basin, flows through Clark Valley into the Basin area, and then northeast and then northwest into Morro Bay. **Water flow in Los Osos Creek is highly variable** by season, due to topographic features and soils that do not hold significant quantities of water.

Comment 3: The LOHCP does not factor in climate change or the droughts that are predicted to come. Many habitats and species are dependent on surface waters for survival; surface water is tied to groundwater recharge.

20.3
(cont'd)

LOHCP DEIR: Water Quality, page 194

Water quality standards for surface waterbodies in the vicinity of Los Osos are developed by the Central Coast RWQCB in order to fulfill designated beneficial uses. **Waterbodies which fail to meet these standards supporting their beneficial uses are listed as impaired**, and a Total Maximum Daily Load (TMDL) may be required to allocate the maximum pollutant load the waterbody may receive while still meeting its water quality standards. **Los Osos Creek and other surface waterbodies near the Plan Area are listed on the 2014/2016 California 303(d) list as impaired** with an Integrated Report category of 5, indicating water quality standards are not met and a TMDL is required but not yet completed for at least one of the pollutants being listed for the segment (SWRCB 2018).

Table 23 summarizes existing impairments and TMDLs for reaches of Los Osos Creek in the vicinity of the Plan Area, as well as Warden Creek and Morro Bay.

20.4

LOHCP DEIR: Water – Los Osos, page 197

2. Alternative Water Sources. Supplementary water, such as reclaimed sewage effluent and water from existing impoundments, should be used to prevent overdraft of groundwater. New impoundments for recharging underground basins should be carefully considered along with other alternatives.

Comment 4: There are no “new impoundments” to be used for recharge. Reclaimed sewage effluent has been sold (through contract agreement) to agricultural interests and others. There is no data to support the claim that it could be used to prevent overdraft of the groundwater basin.

IMPACT HWQ-1

Approval and implementation of the LOHCP and issuance of the programmatic ITP would allow the County to authorize take coverage for covered activities, including new development and remodels, capital improvement projects, and facilities operations and maintenance activities, **which may accelerate the rate at which the covered activities could occur.** County Resource Management System:

20.5

The current RMS 2016-2018 Resources Summary Report recommends that the Los Osos Valley Groundwater Basin be identified as having a “Level of Severity III” ranking, which indicates that **water demand projected over 15 years would equal or exceed the estimated dependable supply (County 2019c).**

Comment 5: As stated throughout both the LOCP and the LOHCP, the LOS Osos water basin is in overdraft, approval and implementation of the LOCHP could accelerate the development of the project area. Safeguards must be in place before habitat is lost and species displaced due to development.

(HWQ-1 mitigations, p. 204). The mitigations proposed for potentially significant impacts cited in HWQ-1 include use of recycled water and water conservation offsets. First, since impacts are unknown, not adequately identified, and/or have an unknown severity; adequate mitigation cannot be assumed. Further, all recycled water from the LOWWP is used now and reserved in the future for mitigating LOWWP impacts. Any remaining conservation potential in inside the LOWWP is supposed to go to mitigating for the LOWWP and any conservation potential outside the service area should be used to mitigate for seawater intrusion. We note that even the County Conservation ordinance that currently allows limited development outside of the LOWWP service area has very limited retrofit potential due to current high level of conservation within the Los Osos area, and the conservation ordinance, itself, causes potentially significant impacts to the

20.6

Basin and dependent resources (despite a 2:1 offset ratio) by hardening demand at a higher level than is possible without the ordinance.

20.6
(cont'd)

Comment 6: The LOHCP is part of the LOCP. The LOCP has 4 Alternatives; alternative 3 ties development to a sustainable water supply:

Los Osos Community Plan EIR, page ES-4

Alternative 3: Reduced Development Based on Water Availability

This alternative assumes a development pattern and policy framework similar to that proposed under the LOCP, except that **growth would be restricted by water availability**. This scenario is based on restrictions set forth in a key proposed LOCP policy related to the 2015 Los Osos Groundwater Basin Plan.

Alternative 4 “address potentially significant impacts [to habitat and species] previously identified with respect to implementation of the proposed LOCP.

20.7

Alternative 4: Mitigated Project

This alternative assumes the same development pattern, buildout potential and policy framework as under the proposed LOCP, except that it includes the policy-related mitigation measures prescribed to **address potentially significant impacts previously identified with respect to implementation of the proposed LOCP**.

Comment 7: Alternatives 3 and 4 must first be combined into one alternative and adopted as the preferred alternative to the LOCP before adoption of the LOHCP. Until that time, it is recommended that alternative 1 (No Project) be adopted as the preferred alternative for the LOHCP.

Alternatives:

As required by Section 15126(d) of the CEQA Guidelines, this EIR examines a range of reasonable alternatives to the project that could feasibly achieve similar objectives. This includes the following two alternatives:

Alternative 1 (No Project). Under the No Project Alternative, the LOHCP would not be implemented. Activities would continue in a manner consistent with current practices. Project proponents would be required to prepare individual ITP applications, including HCPs.

20.7
(cont'd)

Lastly: The California Coastal Commission recognized potentially significant on-going adverse impacts to resources within the Los Osos area resulting from the Los Osos Wastewater Project (LOWWP). The impacts included potential adverse impacts to the Basin (seawater intrusion), to sensitive habitat from a reduction in ground water flows, and to sensitive habitat on sites affected by project operations.

To address the impacts, the Coastal Commission required the County of SLO to implement several mitigation measures and programs, including a “Habitat Management Plan” for the Broderson and Midtown sites intended to protect resources “in perpetuity,” and a monitoring and adaptive management program to protect habitat potentially harmed by a reduction in ground water flows, including springs, wetlands, and riparian habitat along Morro Bay Estuary and in the vicinity of Willow Creek, Eto Creek, and Los Osos Creek. Special Condition 5 of the CDP provides a CDP “Basin Plan” that requires groundwater-related mitigation programs “...designed to maximize the long-term ground and surface water and related resource (including wetlands, streams, creeks, and lakes, riparian corridors, marshes, etc.) health and sustainability, including with respect to offsetting seawater intrusion as much as possible, within the Los Osos Groundwater Basin.” (see CDP 9/7/2010, pp. 90-95).

20.8

The EIR should include the Coastal Commission findings and CPD requirements in related sections, including but not limited to Section 4.7.1 (b) Hydrology and Water Quality—Regulatory Setting (pp. 194-197), previous habitat conservation plans (e.g., Table 7, p. 49), and sections relating to water quality and water quantity impacts and mitigations (e.g., Section 4.7.2, Impact HWQ-6, pp. 203 & 204).

The LOHCP EIR should also include the LOWWP in the section entitled “ Los Osos Cumulative Projects” and address the potential cumulative impacts of the LOWWP and HCP throughout the EIR, including the impacts of potential additional development in combination with the possibility that sustaining sensitive habitat will require using water from the Basin or recycled water over an extended period of time.

The County of SLO may consider some of the actions of the Los Osos Basin Management Committee (BMC), such as the annual monitoring reports to satisfy some or all of the groundwater-related mitigations required by the CDP. However, the Basin Plan Annual Monitoring Reports for 2016 – 2018 do not refer to or address key requirements, such as the monitoring of groundwater flows to sensitive habitat and related adaptive management programs. Further, the Los Osos Basin Plan and related County conservation and development programs and policies do not “maximize the long-term ground and surface water and related resource ...health and sustainability...” of the Basin consistent with the CDP.

20.8
(cont'd)

Patrick McGibney
Los Osos, California 93402

**[EXTERNAL] LO HCP -Comments**

1 message

Emily Miggins <emiggins@gmail.com>

Sun, Nov 17, 2019 at 6:52 PM

To: Leilani_takano@fws.gov, kbrown@co.slo.ca.us

Cc: Julie Vanderwier <julie_vanderwier@fws.gov>

Here are my my comments to you HCP.

Thank you, and my invite to "tour the land with LO FSC stands open.

Thank you!

21.1

Using recommendations of CALFIRE Community Wildfire Protection Plan: e.g. Defensible Space recommendations in Wildland Urban Interface to homes/structures CALFIRE has recommended 300' clearance to homes and structures from brush.

• What will State, Federal and County agencies due to improve fire hazard mitigation in the Wildland-Urban Intermix? (Wildland-urban intermix areas are those where housing and vegetation intermingle. In the Intermix, wildland vegetation is continuous and greater than 50% of the land area is vegetated with combustible fuels. The wildland fire risk associated with Intermix areas includes vegetation-to-house fire spread or ember intrusion.)

21.2

CDFW is failing citizens of Los Osos now, it does nothing to maintain the lands it owns as a state agency. I worked very hard to bring the first ever FSC funding to trim down your out of control Chaparral at my property line. Your agencies are ignoring us the citizens and FSC and CALFIRE, we need fuel breaks from your land-immediately.

o CALFIRE would like a fuel break 300' from residential and commercial building from wild-land to fight fire, I think this should happen as fire is imminent in coastal chaparral.

21.3

• For example, how will CDFW, maintain and fund the interface of Morro Dunes Ecological Reserve (MDER where covered species live (ESA) and State Responsibility Areas (SRAs) where homes are less than 25' from unmaintained chaparral and CDFW and County public lands and chaparral is right next to LO homes?

21.4

o I suggest all agencies publish a plan to take care of their lands and mitigate fire risk, make it transparent to the public.

21.5

• How will the County and State Agencies enforce year over year fuel reduction activities such as he CSD/CALFIRE annual weed abatement notifications and citing landowners? Will enforceable code be created?

o Would your agencies publish a task matrix for the public?

• Will legitimate fuel reduction activities be funded and accomplished year over year in public wild lands and parks?

21.6

o Please answer this question, I think you should be open and honest, California Chaparral is burning. Please publish your schedule of maintenance and mitigation activities on public land.

• Will a schedule of annual maintenance and creation of defensible space be published? Such as mitigation tasks of dead brush reduction and removal on public land (e.g. MDER/Los Osos Oaks Preserve/MDO/Elfin Forest and Broderon Trail surrounding LO?

o How will this annual necessary be accomplished? How will you be transparent and honest with citizens and tax payers?

• Will there be a published budget to fund these hazardous mitigation activities in the WUI on public lands year over year? Fire Safe Council cannot be the soul source of funding of these actives- not by a long shot. What is the State's budget for maintaining mitigation activities on public land. Current you are failing (County,State and even the Fed in protecting citizens and endangered ecosystems and its species.

o Please publish the schedule of planned activities and how they are funded, the public clearly need to task manage your agencies.

- Will county and CDFW fund new signage and rules in public areas such as: "no fires, no camping, no smoking etc. hours of operation of these public lands- sun up/sundown?
- o clearly right now from county to state, our public lands are mismanaged. We need more patrol immediately. I live it every day. It is my backyard in MDER: Homeless encampments with fires, routine fireworks being set off, motorized bikes and horses and their rifer daily. Your agencies fail the species and the humans who live here routinely by not managing the land.
- Will Sheriff and CDFW patrol our public lands to enforce rules? How frequently?
- o We the citizens always hear how underfunded CDFW and SO are to meet the demand of patrol for public lands, I suggest you publish a staffing budget and provide better protection of People Planet and our investments as citizens.
- Will county and CDFW and CA State Parks publish a clear matrix/timeline and due dates to accomplish these signage and hazard prevention tasks? How will they be accomplished? How will these activities be funded?
- o The public needs to understand how our tax payer monies are working to protect our wildlands and our CSD.We need to keep tabs on your agencies. {ease be transparent and publish your goals and time lines so we may keep your agencies accountable.

Thank you!

Very disappointed in your non response to go hiking on a "tour" with FSC and myself.

Emily

--

Emily Elizabeth Miggins

mobile: 510.292.9078

Surf: <https://www.linkedin.com/in/emilymiggins>

Babak Naficy
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November 18, 2019

Kerri Brown,
Senior Planner
San Luis Obispo Planning Department
kbrown@co.slo.ca.us

RE: Los Osos HCP EIR

Dear Ms. Brown, I only very recently found out that the County has prepared an EIR for the Los Osos HCP which has been in the works for decades. I have not had adequate time to prepare comments. I therefore want to add my voice to the many San Luis Obispo residents who have asked the County to extend the comment deadline. I offer the following comments merely as my preliminary thoughts. I also request that in the future, the County notify of me of any proposed actions, meetings, and documents relative to the Los Osos HCP and Community Plan.

22.1

According to the EIR, the County will implement the following Avoidance and Minimization Measures (AMM)

ECOSYSTEM

AMM E1: Minimize habitat fragmentation and maintain connectivity between aquatic, riparian, and upland habitats by limiting the creation of barriers to species movement, maintaining corridors to connect remaining habitat for the covered species, clustering development, and minimizing length of driveways and other impervious surfaces.

22.2

COMMUNITY

AMM C1: Minimize loss and degradation of the natural communities of the Baywood fine sand, including coastal sage scrub, central maritime chaparral, and oak woodlands by minimizing the area of permanent and temporary habitat disturbance and by siting projects in already developed or degraded areas.

AMM C2: Restore all areas of temporary disturbance such as staging areas or areas adjacent to the project footprint, to pre-project conditions or ecologically-superior conditions for the covered species. Avoid installing plants identified as invasive by the California Invasive Plant

Council and include plants native to the Baywood Fine Sand communities from local sources (i.e., the LOHCP Plan Area).

AMM C3: Avoid use of herbicide and pesticides; where necessary, apply biocides as part of integrated pest management strategies, and following all local, state, and federal regulations.

AMM C4: Minimize impacts of vegetation management projects conducted for fire safety, including to create and maintain defensible space, by implementing the best management practices. The list of BMPs will be maintained by the County and reviewed periodically by the Service and CDFW, and will include specific fuel-reduction prescriptions designed to minimize impacts to the covered species.

AMM C5: Install temporary construction fencing to prevent disturbance outside of the designated footprint.

MORRO SHOULDERBAND SNAIL

AMM MSS-1: Avoid and minimize the impacts to Morro shoulder band snail to the maximum extent practical by locating projects away from known or likely occupied habitat, as well as suitable but unoccupied habitat.

AMM MSS-2: Prior to and during all ground-disturbing activities in designated parcels, a biologist approved by the Service shall capture and move all Morro shoulderband snails to suitable habitat away from the project impact area. (Refer to Section F.2 in Appendix F, *Covered Animal Avoidance and Minimization Surveys*, of the LOHCP for a more detailed description of the pre-project surveys that would be required to be conducted to minimize take of Morro shoulderband snail.)

AMM MSS-3: Avoid introducing non-native snails, and the use of snail control applications, such as molluscicide, beer, or salt.

MORRO BAY KANGAROO RAT

- **AMM MBKR-1:** Prior to ground-disturbing activities in habitat suitable for Morro Bay kangaroo rat, the project proponent will retain a CDFW- and Service-approved biologist to conduct a visual assessment of the site, which will be followed by a survey, as needed, to ensure the site is not occupied. (Refer to Section F.1 in Appendix F, *Covered Animal Avoidance and Minimization Surveys*, of the LOHCP for a more detailed description of the pre-project surveys that would be required to be conducted to minimize take of Morro Bay kangaroo rat.)

INDIAN KNOB MOUNTAINBALM

- **AMM IKM-1:** Prior to ground-disturbing activities in habitat suitable for Indian Knob mountainbalm, the project proponent will retain a CDFW- and Service-approved biologist to conduct a survey for the species in the project area. If the species is present, the project proponent will work with the County, Service, and CDFW to develop a plan to ensure that no

22.2
(cont'd)

impacts to this species occur during project implementation. If a plan cannot be developed, the project proponent will be required to obtain a permit from CDFW.

MORRO MANZANITA

- **AMM MM-1:** Avoid and minimize impacts of project activities on Morro manzanita by siting project disturbance envelopes at least 10 feet away from existing plants wherever possible.
- **AMM MM-2:** Avoid or minimize trimming or removing Morro manzanita when conducting vegetation management, including in association with required hazard abatement activities. (This AMM does not apply to projects to implement the conservation program of the LOHCP, where impacts to individuals may be needed to promote regeneration and maintain suitable habitat.)
- **AMM MM-3:** Avoid planting manzanita species (*Arctostaphylos* spp.) other than Morro manzanita.

Comments:

These AMMs are problematic and violate CEQA for a number of reasons. Most importantly, none of these measures are stated in concrete, mandatory terms, making it impossible to assess the extent to which these measures would be implemented or to enforce them if they are not being implemented.

The County may argue that the AMMs are not mitigation measures and are instead should be considered components of the Project. This argument, however, would be without merit because the AMM are clearly intended to address the impacts associated with the development that would occur under the provisions of the HCP. As such, the AMMs must be considered mitigation measures because they do not meet core project objectives, which is to promote and allow private and commercial development and capital improvement projects. While the distinction between a mitigation measure and a project feature may not always be crystal clear (Lotus v. Dep't of Transportation (2014) 223 Cal. App. 4th 645, 656, fn. 8), the general rule is that measures whose only function is to “reduce or eliminate” one or more potentially significant impact on the environment are properly characterized as mitigation measures and are not properly considered as project feature. Id. . Lotus in part held that the EIR was defective because it incorporated the proposed mitigation measures into its description of the project when, in fact, the “avoidance, minimization and/or mitigation measures,” were not “part of the project,” but, rather, were “mitigation measures designed to reduce or eliminate the damage to the redwoods. Id. at 655-56.

AMMs that call for “minimization” of certain impacts (eg. habitat fragmentation, trimming or removing Morro manzanita) are impermissibly vague, as the EIR does not define a standard by which to decide whether any particular impact has been “minimized.” This makes it impossible to gauge the effectiveness of such measures and the significance of residual impacts.

22.2
(cont'd)

Likewise, it is not clear whether the directive to “avoid” pesticides and herbicides is mandatory and/or absolute. Does avoid mean use of such chemicals is strictly prohibited? If so, this must be made more clear.

22.3

Any mitigation measure that requires impact avoidance “whenever possible” is likewise impermissibly vague and therefore inadequate.

22.4

The term “maximum extent practical” in connection with shoulderband snail AMM is vague and unlawful. Who will decide what is practical? Does this phrase mean maximum extent relative to a particular project design, or can a project proposal be modified to maximize the protection for the snail? This issue is critical because an applicant for a commercial or residential project may propose a design that maximizes the footprint that destroys all suitable habitat. Would the County require a redesign of the project, or conclude that maintaining any snail habitat would be impractical?

22.5

Some measures, for example AMM MSS-2, propose capture and removal of individual animals to “suitable habitat away from the project impact area.” This directive assumes without any explanation that “suitable habitat” that is currently not occupied, or is not occupied to carrying capacity, is available. If substantial evidence supports this assumption, please identify the evidence. If you don’t agree that this type of mitigation measures assumes the availability of unoccupied suitable habitat, or of suitable habitat that is not occupied at carrying capacity, then please explain why this assumption is warranted. Finally, please provide analysis of the potential impact of the loss of occupied habitat, even if individual animals are successfully translocated.

22.6

Impermissible deferral of mitigation measuers

Although not adequately explained in the EIR, the LOHCP includes the following description of the proposed management plan for the restoration and management of the LOHCP Preserve System AMMP:

Specific Habitat restoration and management activities will be identified in the LOHCP Preserve System AMMP, which will be developed during the first three years of Plan implementation (Sections 5.3.3.2 and 6.2.3.2). Criteria used to select and prioritize projects will include:

22.7

1. **Number of Plan Goals and Objectives Advanced:** Projects that can advance multiple biological goals and objectives of the Plan (Section 5.1, Table 5-1) will be prioritized over those that advance fewer goals. For example, projects that can restore habitat for multiple covered species, and connect existing protected habitat areas, will be prioritized over projects that might benefit just a single covered species.
2. **Likelihood of Success:** Projects with a high likelihood of being successful, in terms of advancing one or more Plan goals and objectives, will be prioritized over those that are experimental or otherwise have lower probability of success;
3. **Cost Effectiveness:** To maximize effective use funds at achieving the Plan’s biological goals and objectives, projects that are lower cost will be prioritized over

projects that are higher cost, all else being equal (i.e., if they advance similar numbers of goals and objectives); and

4. Sustainability: Restoration and management projects that can have sustained benefits for the covered species, communities, and ecosystem will be prioritized over those that will require ongoing inputs, all else being equal.

Management and restoration projects will be required to meet specified success criteria before the acres of habitat benefited can be credited as mitigation and be used to offset the impacts of covered activities. **Success criteria will be developed in the LOHCP Preserve System AMMP and, as appropriate, in project specific plans (e.g., for detailed restoration projects).** The success criteria will reflect the specific functions or values that the project or strategy is designed to address and provide quantitative methods for objectively evaluating its benefits for the covered species, communities, and/or ecosystem, in order to clearly link the proposed work to the biological goals and objectives of the LOHCP (Section 5.1, Table 5-1). [HCP at p. 5-10, emphasis added]

22.7
(cont'd)

The EIR violates CEQA by impermissibly deferring the formulation of the management and restoration plans which form the heart of the proposed HCP. The HCP and EIR merely identify the criteria for choosing specific restoration activities, but defer the actual drafting of the restoration/management plan to the first three years of the Project implementation. Moreover, the EIR fails to identify any concrete “success criteria” by which to judge the effectiveness of restoration and/or management measures. The EIR and HCP’s failure to include a management and restoration plan, coupled with the failure to identify success criteria (i.e. performance standards) renders the EIR defective as an informational document and violates the prohibition against impermissible deferral of mitigation measures. Put another way, owing to the absence of detailed management plan and performance criteria, it is impossible to gauge whether the implementation of the proposed HCP would result in a significant adverse impact on protected species.

More specifically, with regards to Morro shoulderband snail, the EIR explains that

..., implementation of the LOHCP would result in an estimated 301 acres of new and existing protected habitat (including potential habitat) for the Morro shoulderband snail that would be incorporated into the LOHCP Preserve System. Specific habitat to be included in the LOHCP and specific restoration and management activities to be implemented would be identified by the IE in conjunction with the agencies and conservation organizations responsible for the existing protected lands. Restoration and management activities would be detailed in the LOHCP Preserve System Adaptive Management Plan and may include activities such as vegetation management, exotic and non-native species eradication, erosion control, or removal of structures, infrastructure, and debris. The amount of habitat and potential habitat to be enhanced

22.8

through such activities is unknown, as the location of LOHCP Preserve System lands has yet to be identified.

The proposed deferral of the identification of the location of the LOHCP Preserve System lands, along with the deferral of the preparation of a management plan, amounts to unlawful deferral of mitigation measures. The EIR includes insufficient detail to enable the public and/or public decision-makers to evaluate the likelihood that the proposed mitigation measures would be successful. The EIR, moreover, is deficient in that it does not propose any meaningful performance standards by which to measure the success or failure of the proposed mitigation measure.

The EIR explains that the Morro shoulderband snail mitigation would include plans to “protect, restore, and/or manage in perpetuity approximately 54.7 acres of Morro shoulderband snail habitat and potential habitat that is currently unprotected, and thus, is subject to development and other land uses that could degrade such habitat. Of the 54.7 acres, approximately 5.5 acres of habitat would be restored; such restoration would include repair of areas that have been severely degraded by erosion or dense exotic plant infestations). The LOHCP Preserve System would also include protection, restoration, and/or management in perpetuity of 164.9 acres of Morro shoulderband snail habitat and potential habitat within existing protected lands” EIR p. 120. The terms “protect, restore and/or manage” has not been explained. Thus, based on this vague proposal, the County to could restore habitat, without managing it, or to protect habitat, without restoring it or managing it. The extent or success criteria for such effort is not delineated, making it possible for the county to manage property without any evidence that the restoration or management has resulted in a healthy snail population. As such, these proposed mitigation measures are unlawful.

Based on the foregoing, the EIR’s contention that “implementation of the LOHCP is anticipated to have an overall beneficial impact on the Morro shoulderband snail” is not supported by substantial evidence.

Morro Kangaroo rat

The EIR claims the Project would not impact Morro Bay kangaroo rat (MBKR) habitat because “[i]n areas of suitable habitat for the species, covered activities would only be permitted under the LOHCP pending a negative visual assessment or, as needed, a negative presence/absence survey (refer to Section 5.2.1 of the LOHCP).” The term “visual assessment” is vague and unenforceable. Potentially suitable habitat should be surveyed for the MBKR according to US Fish and Wildlife protocol. “Visual assessment” by a biologist hired by the project proponent is not an adequate substitute for a protocol survey and would not amount to substantial evidence supporting a conclusion that the site is not occupied by the MBKR.

The EIR also claims that “as part of the compensatory mitigation component of the LOHCP conservation program, the IE would **work with** individual landowners to protect remaining private land with suitable habitat for the Morro Bay kangaroo rat as part of the LOHCP Preserve System.” (EIR at p. 120, emphasis added.) The phrase “work with” is hopelessly vague and unenforceable, making it impossible to predict the extent to which the IE’s efforts to “work with” any landowner would result in protected habitat.

There is no indication, for example, as to the how or the extent to which landowners would be incentivized to protect MBKR habitat. As such, the promise to “work with” landowners to protect MBKR

22.8
(cont'd)

22.9

22.10

habitat is essentially meaningless and does not amount to any substantial evidence that any MBKR habitat on private land would be protected above current levels.

22.10
(cont'd)

Mitigation Measures are unworkable and violate CEQA

BIO-1 (a) mitigation measures vaguely calls for informal and formal surveys for protected species prior to development activities. These measures, however, do not pass muster under CEQA because they are impermissibly vague. EIR 126-128. It is not clear, for example, what is meant by the claim that “[o]n a project-by-project basis, a preliminary biological resource screening shall be performed as part of the environmental review process to determine whether the project has any potential to impact biological resources other than covered species.” What is meant by a preliminary biological resource screening? Does it mean a visual inspection, walking transects, aerial photography or? What is the “environmental review process” in this context? Would this review in the context of an Initial Study? What if the project is otherwise categorically exempt or does not require a discretionary approval? Who would be involved in the preliminary determination? Would there be public notice? Would notice go to other agencies? Would the public be notified? Would anyone other than the neighbors be notified?

22.11

BIO-1(c) provides that “if special-status plant species cannot be avoided and would be impacted by a project, the biologist must also evaluate whether population-level effects would occur, and if habitats preserved in the LOHCP Preserve System are suitable for the species and known to be occupied.” This measure essentially turns any biologist hired by project applicant into an expert who can decide for example, if “population-level effects would occur.” According to CEQA law, as a lead agency, the County may rely on the opinions of its own experts, but it is not clear whether in this instance the “biologist” referred to in BIO-1(c) would be considered a County expert?

22.12

The EIR does not analyze an adequate range of alternatives

The alternative considered in the EIR calls for a 50% reduction in development. Under this alternative, the EIR assumes development footprint of the Project would be reduced by half. The EIR does not offer any meaningful explanation for choosing a 50% reduction is the only alternative.

22.13

The EIR should consider an alternative reduced development alternative whereby development is reduced or eliminated in locations that are currently occupied by protected species or provide prime habitat for expansion of the range of these species. By so doing, the County could substantially reduce the overall impact on protected species by protecting the most valuable habitat while allowing some development in areas that are not occupied or do not provide suitable habitat.

I am a resident of Los Osos and I would like to comment on the Los Osos Habitat Conservation Plan. I read the entire Plan, and I am very impressed with the thoroughness and detail and the work that went into it. I do however, have several concerns:

1) A general question and concern about the data going into the Plan:

As we are all aware, climate change is real, and it is appropriate there is a section on Climate Change and its potential effects on the Plan. My concern is that the references cited in this section (and actually throughout the document) are all at least 9 years old. For example, you cite the IPCC report from 2007, shouldn't the more current report be used? Current indications seem to be that the effects of climate change are accelerating.

Please see:

- a) How Fast are the Oceans Warming? L.Cheng, J. Abraham, Z.Hausfather, K.E.Trenberth – Science 11 Jan 2019: Vol. 363, Issue 6423, pp. 128-129.
- b) Increasing precipitation volatility in twenty-first-century California. Daniel L. Swain, Baird Langenbrunner, J. David Neelin, Alex Hall – Nature Climate Change 8, 427-433 (2018).

Wouldn't it be practical to update your models and include more adaptive measures? Wouldn't it be practical to include more land in the Priority Conservation Areas? And more fees set aside to deal with the changes we now know will be coming faster than originally anticipated?

23.1

2) Concerns about Priority Conservation Areas only on the edges of the community:

As far as I can determine, Priority Conservation Areas are parcels of land that should be included in the LOHCP Preserve System to maximize the benefits for the covered species. The LOHCP planning process evaluated habitat within the Plan Area for protection, restoration, and management. The specific properties that will ultimately be included in the LOHCP Preserve System will be determined during implementation of the plan by the Implementing Entity, which will work with willing landowners to acquire additional lands (Section 6.2.2) and enroll existing protected lands in the Preserve System based on approval from the USFWS (Section 6.2.3).

I spent a lot of time studying the maps and it appears to me there may be an oversight or error in designating the Priority Conservation Areas. Figure 5-1 is a map showing the Priority Conservation Areas. When I compare this to Figure 4-1 which shows the Morro Shoulderband Snail Habitat, I note that there is a **significant** parcel in the center of town, that IS **Primary Morro Shoulderband Snail Habitat**, but it is NOT also designated as a Priority Conservation Area. I am not an expert in this kind of thing, but I am concerned that this area was somehow erroneously not included as a Primary Conservation area. I also understand that protected Natural areas and Open Space are of benefit to not only the endangered and threatened species that live there, but also to the community as a whole. Please consider including this open space area, in the center of Los Osos where all community members can enjoy it, as a Primary Conservation Area.

Please note the area outlined in red on the maps below.

23.2

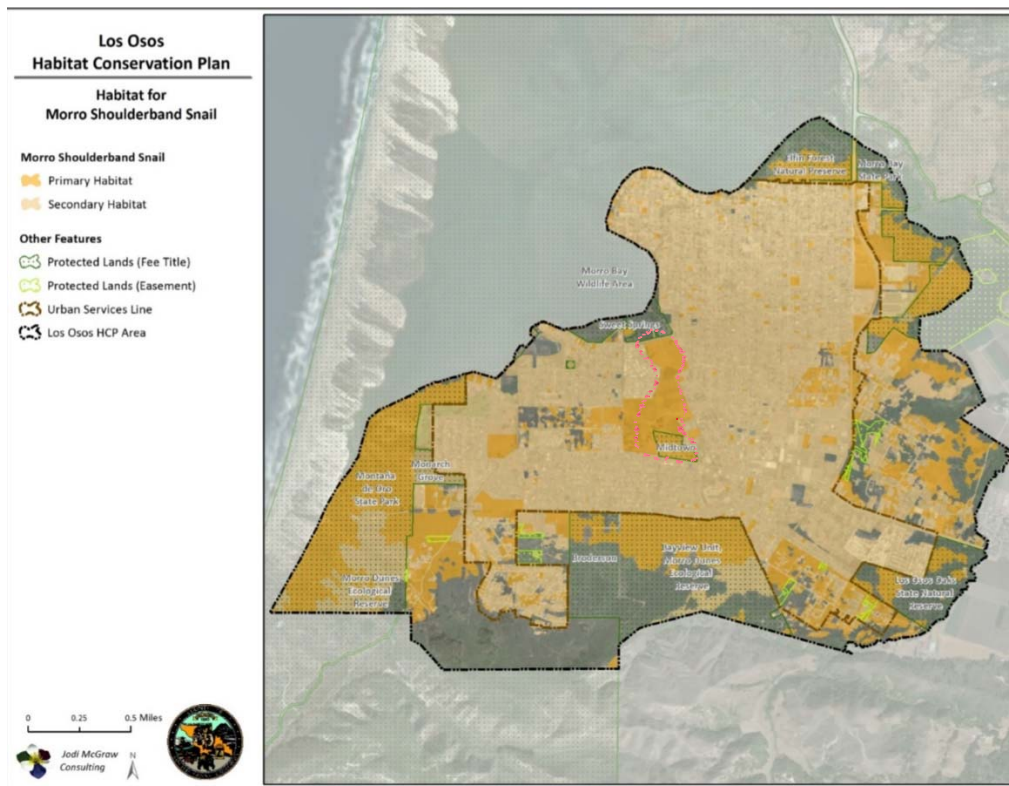


Figure 4-1: Morro Shoulderband Snail Habitat

Figure 4-1 Primary Morro Shoulderband Snail Habitat

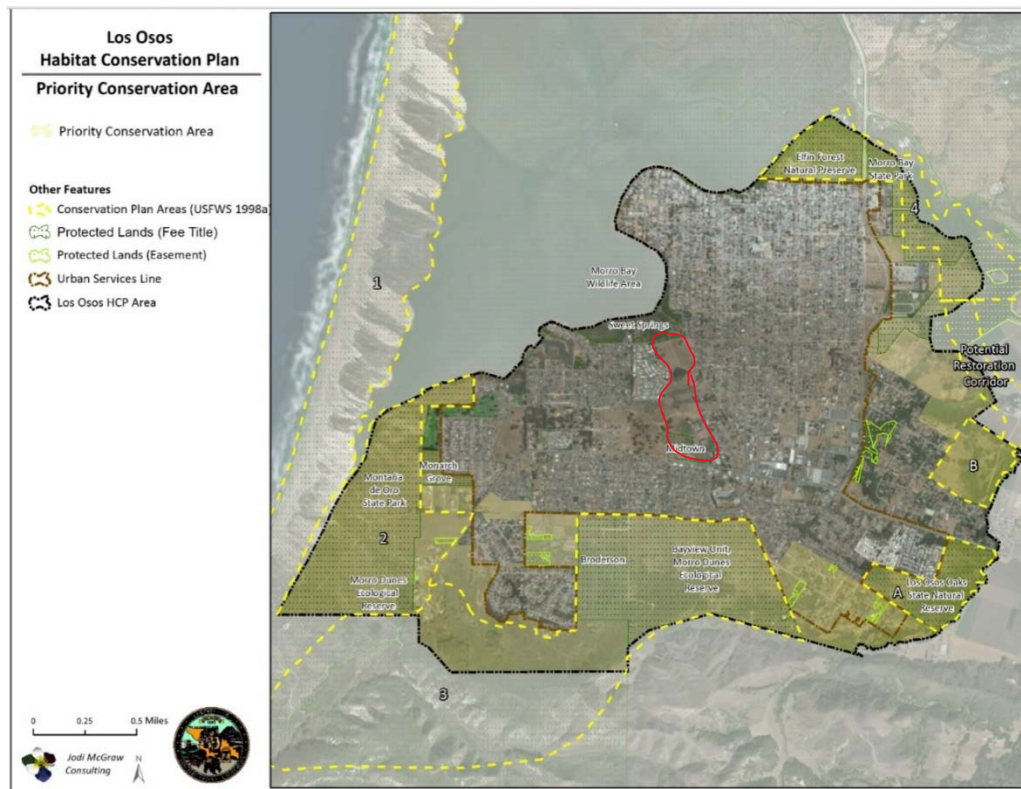


Figure 5-1: Priority Conservation Area

Priority Conservation Areas – note that they differ from figure 4-1 because the Primary Morro Shoulderband Snail habitat in the middle of the map (outlined in red) is not included.
Surely this is a mistake?

- 3) Concerns about steep slopes in areas of Morro Manzanita Habitat that are not included as Protected Areas:

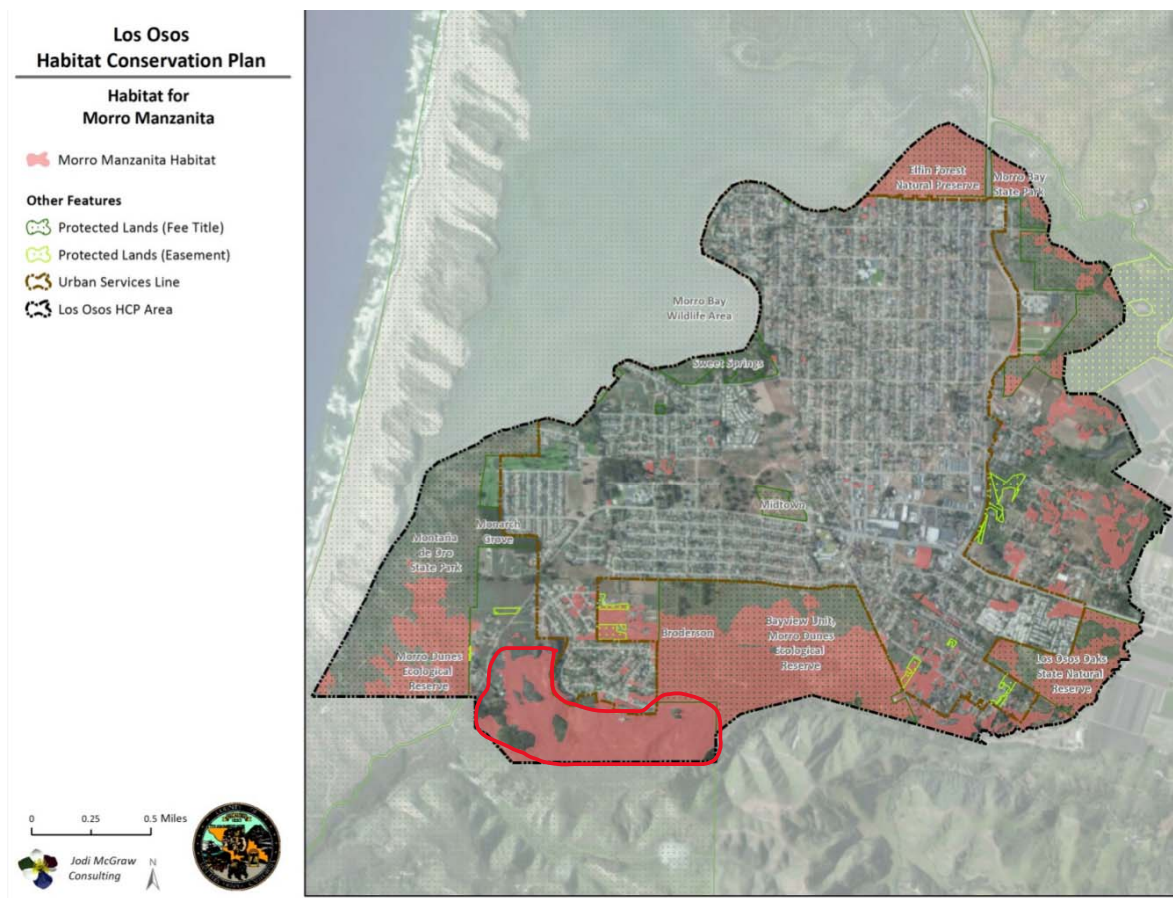


Figure 4-2: Morro Manzanita Habitat

Please note the substantial area along the southern edge of Los Osos which is designated as Morro Manzanita Habitat but is NOT also designated as "Protected Lands". I have hiked these areas frequently and note that these are generally steep slopes which contain a significant number of very large impressive stands of Morro Manzanita. It is stated on in section 4.1.2.2 of the Habitat Conservation Plan that Habitat Fragmentation can negatively impact covered species. It also states that the Plan includes "efforts to maintain habitat connectivity and protect large contiguous blocks of habitat that cone promote long-term viability of the covered species". If this is the case, these areas of Morro Manzanita habitat on the southern edge of Los Osos need to be protected from development under the Habitat Protection Plan.

I hope that you will consider the issues I have noted.

Thank you,
-ellen

Ellen Nelson
2249 Inyo St
Los Osos, CA 93402
970 218-8520

**[EXTERNAL] Fw: public COMMENT on federal register**

Jean Public [REDACTED]

Wed, Oct 2, 2019 at 1:40 PM

To: "leilani_takano@fws.gov" <leilani_takano@fws.gov>, "foe@foe.org" <foe@foe.org>, "info@earthjustice.org" <info@earthjustice.org>, "info@pewtrusts.org" <info@pewtrusts.org>, "center@biologicaldiversity.org" <center@biologicaldiversity.org>

24.1

i oppose any murder or killing or habitat loss for these endangered species that are under massive threat in the increased population of san luis obispo county where the sneaking central americans sneak into america and are using up land that does belong to the protected status and should remain in the protected status. californai shows huge growth because of their allowing millions of illegal imigrants flowing into that state so that no land is left for american citizens there anymore. the sneaking lawbreaking foreigners from central america are flooding into california causing loss of habitat and loss of land in all sites in california. clearly we need to clean up this illegal immigration problem so that land is not severely impacted by the millions that sneak into america. much of the building that is taking place and land loss that is taking place is due to foreigners flooding into california and taking up habitat. habitat is being lost. the animals are losing out., they have a right to life too. they should be protected as we detrmind years ago we wanted them protected. there has been no change in the population from that desire to protect these species. this plan should be shut [down.it](#) needs to be denied. this commetn is for the public record please receipt. jean publiee jean [REDACTED]

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[Federal Register Volume 84, Number 191 (Wednesday, October 2, 2019)]

[Notices]

[Pages 52528-52529]

From the Federal Register Online via the Government Publishing Office [www.gpo.gov]

[FR Doc No: 2019-21339]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2019-N077; FXES11140800000-190-FF08EVEN00]

Los Osos Habitat Conservation Plan; Environmental Assessment and
Receipt of Application; Community of Los Osos, San Luis Obispo County,
California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from the County of San Luis Obispo for an incidental take permit under the Endangered Species Act of 1973, as amended. The

permit, if issued, would authorize take of the federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) and Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*) and provide assurances for the federally endangered Indian Knob mountainbalm (*Eriodictyon altissimum*) and federally threatened Morro manzanita (*Arctostaphylos morroensis*). We invite public comment on the draft habitat conservation plan and a draft environmental assessment prepared in accordance with the National Environmental Policy Act of 1969, as amended.

DATES: We will receive public comments on the draft habitat conservation plan and draft environmental assessment until November 18, 2019.

ADDRESSES:

Obtaining Documents: You may download a copy of the draft HCP and draft EA at <http://www.fws.gov/ventura/> or you may request copies of the documents by U.S. mail (below) or by phone (see FOR FURTHER INFORMATION CONTACT).

Submitting Written Comments: Please send your written comments using one of the following methods:

U.S. Mail: Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

Email: julie_vanderwier@fws.gov.

FOR FURTHER INFORMATION CONTACT: Leilani Takano, Assistant Field Supervisor, by phone at 805-677-3330, via the Federal Relay Service at 1-800-877-8339 for TTY assistance, or at the Ventura address (see ADDRESSES).

SUPPLEMENTARY INFORMATION: The County of San Luis Obispo (applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (ITP) under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.). The applicant is requesting an ITP with a 25-year term, for incidental take of two animal species likely to result from implementation of activities covered by the applicant's habitat conservation plan (HCP), and seeking assurances for two plant species. The permit, if issued, would authorize take of the federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) and Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*) and provide assurances for the federally endangered Indian Knob mountainbalm (*Eriodictyon altissimum*) and federally threatened Morro manzanita (*Arctostaphylos morroensis*). Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 et seq.), we advise the public of the availability of the proposed HCP and our draft environmental assessment (EA).

Background

Section 9 of the ESA prohibits the take of fish or wildlife species listed as endangered; by regulation, the Service may extend the take prohibition to fish or wildlife species listed as threatened. ``Take'' is defined under the ESA to include the following activities: ``[T]o

harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the ESA, we may issue permits to authorize incidental take of listed species. The ESA defines ``incidental take'' as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are in the Code of Federal Regulations (CFR) at 50 CFR 17.32 and 17.22, respectively. Under the ESA, protections for federally listed plants differ from the protections afforded to federally listed animals. Issuance of an incidental take permit also must not jeopardize the existence of federally listed fish, wildlife, or plant species. The Permittee would receive assurances under our ``No Surprises'' regulations (50 CFR 17.22(b)(5)) and 17.32(b)(5)) regarding conservation activities for the Morro shoulderband snail, Morro Bay kangaroo rat, Indian Knob mountainbalm, and Morro manzanita.

The proposed HCP includes measures intended to avoid, minimize, and mitigate take of the Morro shoulderband snail and Morro Bay kangaroo rat and impacts to Indian Knob mountainbalm and Morro manzanita (covered species) expected to occur incidental to otherwise lawful covered activities.

The applicant is requesting coverage for incidental take and impacts resulting from the following categories of covered activities:

1. Private development (new construction, remodels, defensible space),
2. Capital improvement projects,
3. Facilities operation and maintenance projects,
4. Community wildfire protection plan, and
5. Conservation program.

Incidental take or impacts to the covered species resulting from the covered activities would be restricted to the 3,200-acre (ac) permit area, which includes the majority of Los Osos, an unincorporated community in western San Luis Obispo County. The permit area excludes all existing State park lands, with the exception of approximately 5 ac contiguous with Elfin Forest Reserve. Covered activities could result in the loss of up to 532 ac of habitat for the covered species present within the permit area.

The proposed conservation program includes species-specific avoidance and minimization measures and the establishment of a preserve system for the covered species. The preserve system would be subject to monitoring, management, and protection in perpetuity. The conservation program would remain in step with take/impacts, and the assembly of the preserve system would occur throughout the permit term.

National Environmental Policy Act Compliance

The EA analyzes the effects to the human environment for three project alternatives: No action, proposed action, and reduced take.

Under the No-Action alternative, the Service would not issue the ITP and

[[Page 52529]]

there would be no implementation of the HCP. Operation and maintenance

of existing infrastructure facilities would continue, as long as take of Morro shoulderband snail and Morro Bay kangaroo rat would not result from these activities. Any new development, including private development and capital improvement projects, with the potential to result in take of either animal species would need to seek authorization on an individual basis.

Under the Proposed Action alternative, the Service would issue the ITP and the County would implement the HCP that addresses the covered species and covered activities. The maximum extent of area affected would be 532 ac within the permit area.

Under the Reduced Take alternative, the Service would issue the ITP and the County would implement the HCP that addresses the proposed covered species and covered activities. While the permit area and permit term would remain the same, the maximum area affected would be 266 ac, which represents 50 percent of the maximum amount under the Proposed Action alternative. There would be a commensurate reduction in conservation actions.

Public Review

If you wish to comment on the draft HCP and draft EA, you may submit comments by one of the methods in ADDRESSES.

Any comments we receive will become part of the decision record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, please be aware that your entire comment--including your personal identifying information--may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 et seq.) and NEPA regulations (40 CFR 1506.6).

Stephen P. Henry,
Field Supervisor, Ventura Fish and Wildlife Office, Ventura,
California.

[FR Doc. 2019-21339 Filed 10-1-19; 8:45 am]

BILLING CODE 4333-15-P

U.S. Government Publishing Office



[EXTERNAL] San Luis Obispo HCP

1 message

Joey Racano <[REDACTED]>
Reply-To: Joey Racano <[REDACTED]>
To: "julie_vanderwier@fws.gov" <julie_vanderwier@fws.gov>
Cc: Sandra Brazil <[REDACTED]>

Thu, Oct 3, 2019 at 6:43 PM

Ms Vanderwier,

25.1

The 'take' of Kangaroo Rats, Morro Shoulderband Dune Snails, Legless lizards, Silver Lupine, Manzanita etc, must not be allowed for any reason. Private development is not a good enough reason to ignore the protections these biological entities need under the ESA. Fire prevention is laughable when the wires that start fires aren't needed at all (solar panels on rooftops instead) and how about burying them if have them we must? Time to pay attention to 50 year old laws that were created to protect endangered species, and stop trying to mealy-mouth our way around them through the rampant corruption that is business as usual for SLO county.

Thank you,

Joey Racano
[REDACTED]

www.oceanoutfallgroup.com

writing: <https://www.facebook.com/spiritpen>

**[EXTERNAL] Proposed additional thousands of people in Los Osos - especially around Morro Shores Mobil Home Park**

1 message

Stephanie M. Raphael <[REDACTED]>
To: Leilani_Takano@fws.gov

Mon, Nov 18, 2019 at 3:34 PM

Dear Mz. Nagano:

I am a resident of Morro Shores Mobile Home Park, [REDACTED]. I am also a senior citizen about to have my 78 birthday. I am very much against the proposed housing/multi apartment complexes that have been proposed for Los Osos and particularly in the areas around our Park.

26.1

First, of course, is the water issue. Despite having a rainy year last year, we are a community that is mostly in drought and mandated water restrictions. It's only been a year since people were being reported to the authorities for excessive water use. According to predictions, we are not going to have much rain this year. So, where are all these additional thousands of people going to get their water. There has been a mention of recycled water from the new Morro Bay sewer plant (if it ever gets built). Please! No thank you.

26.2

Second, the ecology of Los Osos is extremely fragile as I'm sure you are aware. Many of us have been working for years to help in this regard. A massive amount of construction would be a tremendous strain on the animals, insects and plants of this area.

26.3

Finally, there are many elderly living in Los Osos. All of us in Morro Shores Mobil Home Park are elderly. A few of us are in our 60s, but most of us are in our 70s, 80s and 90s. Our health is fragile and one of the reasons we live here is for quiet, clean air and a gentle life. We've paid for it. It would be a major strain on my health, for example, to have massive development here. My husband has COPD and already has trouble breathing. Our home is 15 feet from the open land that is in the proposed development and the dust raised would be terrible for both of us

26.4

While we realize that there must be growth, it should not be more than a few small buildings at a time here in Los Osos. We also need parks and green areas for ourselves and for the abundant wildlife here.

26.5

Thank you,

Stephanie Raphael
[REDACTED]

**[EXTERNAL] My comments on the Draft EIR**

1 message

Deborah Ross <deb@drfilmdesign.com>

Sat, Nov 16, 2019 at 3:26 PM

To: k.brown@slo.co.ca.ua

Cc: Leilani_takano@fws.gov

To Kerry Brown

I have a couple of serious concerns about the proposed EIR and it's impact on the LO Community Plan.

1) As quoted from the current draft EIR:

"With regard to water supply within Los Osos, the Draft EIR for the Los Osos Community Plan (County 2019a) determined impacts to water supply would be potentially significant, but mitigable, because development under the Community Plan would be limited to the sustainable capacity of the Groundwater Basin through the County's Growth Management Ordinance (County Municipal Code Title 26) and additional review standards tied to the Updated Basin Plan for the Los Osos Groundwater Basin (County et al. 2015). Implementation of the water supply mitigation measure from the Draft EIR for the Los Osos Community Plan would satisfy the requirement of the County to provide adequate groundwater supply to the community."

27.1

Problem: I simply don't see how the impacts to our general water supply will be "mitigable". Even if development IS limited to what has been predetermined by the County to be sustainable capacity, the assessment it is based upon is way out of date. The realities of climate change and salt water intrusion have severely altered the course of future sustainability projects. The damages will be far greater than previously acknowledged or understood. At this moment in time, we simply don't have the infrastructure (or the money to create it) required to provide water for such a huge population growth spike.

Solution: This needs to be taken into consideration BEFORE **ANY NEW BUILDING PERMITS ARE CONSIDERED OR GRANTED**. We need smart, sustainable, green *development standards in place as guard rails*, before thousands of new units are built and the population of Los Osos expands by more than 1/3 on top of our current population of @15K.

2) As quoted from the current draft EIR:

"CAL FIRE/San Luis Obispo County Fire - Draft Community Wildfire Protection Plan A CWPP serves as a mechanism for community input and identification of areas presenting high fire hazard risk as well as identification of fire hazards potential projects intended to mitigate such risk."

A CWPP must be collaboratively developed with input from interested parties, federal, state, and local agencies managing land within the County, as well as local government representatives. The CWPP for San Luis Obispo County is currently under development and, when complete, would

address fire protection planning efforts occurring in the County to minimize wildfire risk to communities, assets, firefighters, and the public. The CWPP presents the County's physical and social characteristics, identifies and evaluates landscape-scale fire hazard variables, utilizes Priority

Landscape data sets for evaluating wildfire risk, identifies measures for reducing structural ignitability, and identifies potential fuel reduction projects and techniques for minimizing wildfire risk."

27.2

Problem: As I understand it, the most recent CWPP hasn't been updated since 2013. It is in a relatively unfinished state, and wouldn't be useable for our community plan in this state. (<https://www.wildfirelessons.net/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=927bc270-5fd8-48ab-aab5-68a1b8c09ca4>). Additionally, many of the abatement tactics it discusses haven't even been undertaken in Los Osos up till this point in time (Wildfire Season 2019-20). There is still no proper fire line around the Urban Wilderness Interface, especially along Highland Ave. where dozens of 4' high piles of wood chips were left behind after a recent clearing of the area by Public Works. Shamefull!

Solution: The CWPP needs to be updated to current climate change predictions, a substantial budget must be created and set aside for this purpose, and the planners and community itself must begin **implementation and enforcement** of all the recommended tactics BEFORE **ANY NEW BUILDING PERMITS ARE CONSIDERED OR GRANTED**.

Thank you for your time!

Sincerely,

Deborah Ross and Robbie Conal

1347 6th Street, Los Osos 93402

NOV 19 11:20AM

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. 28.1

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. 28.2

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. 28.3

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. 28.4

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. 28.5

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.

28.6

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.

28.7

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.

28.8

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.

28.9

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.

28.10

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.

28.11

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

28.12



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

28.12
(cont'd)

November 18, 2019

Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service
2493 Portola Road, Suite B, Ventura, CA 93003
Stephen P. Henry, Field Supervisor

Via: Email: julie_vanderwier@fws.gov.

RE: Los Osos Habitat Conservation Plan, Community of Los Osos, San Luis Obispo County, California

Dear Mr. Henry,

Please find the enclosed focused comments on the Los Osos Habitat Conservation Plan; for the Community of Los Osos, San Luis Obispo County, California, generally referred to as LOHCP as it refers to the Morro Shoulderband snail in section 3.2.2.1.

As you are aware, the Morro Shoulderband Snail (*Helminthoglypta walkeriana*) is a species endemic to San Luis Obispo County. It was first identified in 1911 living in areas south of Cayucos. Since then its range has decreased considerably, due largely to habitat destruction and degradation. According to the U.S. Fish and Wildlife Service, "The Morro shoulderband snail is threatened principally by habitat destruction and degradation due to increasing development, invasion of non-native plant species (i.e. veldt grass), senescence of dune vegetation, and recreational use (e.g. off-road vehicle activity). Competition with the brown garden snail (*Helix aspersa*), molluscicides, and increased likelihood of extinction due to the small size and isolation of populations are potential threats."

As you are also aware, there has never been a study that quantifies MSS throughout the areas identified as "habitat". The LOHCP suggests "the current known range of Morro shoulderband snail is estimated to encompass approximately 7,700 acres (Roth and Tupen 2004). Most of the area is centered on Los Osos north of Hazard Canyon, west of Los Osos Creek, and south of Morro Bay; however, it also includes a narrow strip of coastal dunes north of Morro Bay in Morro Strand State Park (Roth and Tupen 2004, USFWS 2006). Within this geographic area, native habitat occupied by the species includes coastal sage scrub along the immediate coast, and coastal sage scrub and open central maritime chaparral communities on stabilized dunes further inland. Within these areas, Morro shoulderband snail is often found in areas featuring dense plant cover comprised of shrubs or mat-forming species (e.g. iceplant) where plant cover including branches is in contact with the ground (USFWS 1998). Individuals are typically patchily dispersed and observed

29.1

in clumps of coastal sage scrubs or clumps of veldt grass (SWCA 2014).” Given the lack of baseline data on the MSS and the fact that “Morro shoulderband snail is also often found in litter that accumulates on the soil surface, and under piles of rock, downed wood, or other debris (SWCA 2013). These microsites provide moist, sheltered environments of reduced desiccation stress that are required by the terrestrial mollusk (Roth 1985). The species is occasionally observed in shallow (less than ½ inch) depressions within the soil (Belt 2016).” MSS can and may thrive beyond the estimated 7,700 acres earlier identified as suitable habitat.

The LOHCP recognizes that there was a Five-Year Review of the MSS in 2006 and its recommendation was to down list the species. From the Service’s Five-Year review: “Threats to the survival of the Morro shoulderband snail through habitat loss and degradation have been reduced considerably. The Service hopes to expand habitat maintenance into other areas essential for the snail using habitat conservation plans and additional regulatory mechanisms as applicable. Development is occurring in a planned fashion in areas that are less important for the survival of the snail. We developed a preserve design for the Morro shoulderband snail that should allow it to recover to the point that it no longer requires protection under the Act. Much of this preserve area is already protected. Therefore, many of the threats to the snail under Factor A have been partially controlled and, in some cases, eliminated; however, many of the management activities still need to be accomplished for this species to be considered for delisting (i.e., management implementation, vegetation maturation management).” This suggests management of the current lands under preservation is the primary focus for the health of the species.

It appears there is no basis for the statement in the LOHCP; “Though the recommendation from the five-year review was that the species be down listed to ‘threatened’ (USFWS 2006), that status of Morro shoulderband snail remains ‘endangered’.” Since, “The down listing was based in part, on the findings of the most recent five-year review, which found the population appears stable and that species’ threats have been reduced considerably, including through protection of large tracts of suitable habitat (USFWS 2006).”

The LOHCP arbitrarily states, “*However, there are no data indicating about population performance within existing protected lands. The reclassification would mean that Morro shoulderband snail is at risk of becoming endangered, rather than risk of becoming extinct.*” The LOHCP cannot support this statement without the baseline quantity data and ongoing research necessary to qualify this statement. In fact, based on the studies done during the Los Osos Wastewater Project it appears the status of the species is healthy and well distributed in the urban area particularly.

The LOHCP fails to fully depict the extent to which species is threatened. Nor does it fully recognize the conservation efforts that have been ongoing in the community since 1994 when the species was listed. Conservation efforts began in 1997 with the preparation of

29.1
(cont'd)

the Los Osos/Baywood Park Greentbelt Conservation Plan. Since that time, numerous land acquisitions have occurred further conserving and protecting the species in question.

↑ 29.1
(cont'd)

Over the last 20 years the Service has processed individual Low Effect HCP's and individual ITP's, fees have been collected. How much? What was the intent of those fees? Where has the money been spent? Additionally, during these 20 years it appears the species has thrived, while the proposed LOHCP comes at tremendous expense -- further burdening an already indebted community.

29.2

The LOHCP fails to fully explain why the MSS is listed as "endangered". The MSS should be down listed as least or delisted entirely.

29.3

Please feel free to contact me with any questions you may have.

Sincerely,



Julie Tacker

From: Marc Weber <mlwwriter@yahoo.com>

Sent: Sunday, November 17, 2019 7:42 PM

To: leilani_takano@fws.gov; Kerry Brown <kbrown@co.slo.ca.us>; julie_vanderwier_fws.gov
<julie_vanderwier@fws.gov>

Subject: [EXT]Comment on the Los Osos HCP Draft Environmental Impact Report (DEIR)

ATTENTION: This email originated from outside the County's network. Use caution when opening attachments or links.

Re: Response to Los Osos HCP Draft Environmental Impact Report (DEIR)

To Whom It May Concern:

I believe more study is needed and should be added to the DEIR--in particular study of species-specific impacts on the ecology of the Morro Bay Estuary--because as it is currently written, not enough consideration is given to the areas directly adjacent to the current Audobon Society nature preserve called Sweet Springs on Ramona Avenue in Los Osos.

30.1

NOTE: Los Osos is included in the Morro Bay National Estuary so what happens in the interior of Los Osos is directly relevant to the Estuary but this DEIR primarily addresses impacts on the areas surrounding Los Osos, not INSIDE Los Osos.

30.2

I think, even if such further study is not allowed, consideration should be given to creating at least a narrow though still viable "nature corridor" within such "multi-family and commercial" development so that all the species that live in the area are not lost forever.

30.3

I suppose this means I support Alternative 2 if the DEIR is never going to be revised as I detailed above.

30.4

I would like to add that at least some open space should be designated in this interior area adjacent to Sweet Springs as many people even now use the trail through there on a daily basis.

30.5

Thank you all for your hard work in this regard.

Marc Weber

633 Ramona Avenue spc 126, Los Osos, CA 93402

mlweber@hotmail.com

Kerry Brown

From: Amber Wiehl <amberkabamber@gmail.com>
Sent: Monday, November 18, 2019 5:02 PM
To: Leilani_takano@fws.gov; Kerry Brown
Subject: [EXT]Re: Los Osos Habitat Conservation Plan

ATTENTION: This email originated from outside the County's network. Use caution when opening attachments or links.

Re: Los Osos Habitat Conservation Plan

I support the adoption of the Plan because the alternative of having no plan continues is unacceptable. But, the absence of a related CWPP and the lack of assurances of improved flexibility by USFWS that more appropriately balances public safety with habitat conservation when developing fire mitigation programs severely limit the attractiveness of the Plan overall. 31.1

Thank you,
Amber Wiehl

November 11, 2019

Dear Mr. Henry,

As a resident of Los Osos, I am writing to express my opposition to the Los Osos Habitat Conservation Plan which will add a potential eight thousand plus new residents and destroy highly valued open space within the interior of lower Los Osos.

This plan will destroy forever the habitat of many native species of animals and plants and will adversely affect our already strained, precious water supply.

I urge you to deny this ITP application which affects and negatively impacts the open space which is located at Los Osos Valley Road and Palisades Avenue and beyond.

Thank you for your consideration.

Susan S. Wiest

[REDACTED]

Kerry Brown

From: Laurie Wright <lawrn@charter.net>
Sent: Thursday, November 14, 2019 3:12 PM
To: Kerry Brown
Subject: [EXT]Los Osos HCP

ATTENTION: This email originated from outside the County's network. Use caution when opening attachments or links.

Dear Ms/Mr Brown,

Please add my concerns to those that you have and will receive from concerned citizens of Los Osos regarding the proposed Habitat Conservation Plan.

33.1

I ask that before this plan gets approved, additional opportunities be given for public input and comment.

Respectfully,

Laurie Wright

2100 Pecho Road

Los Osos, CA 93402