

# UnClog Cambria LLC

July 16, 2009

Mr. John Hofschroer  
Department of Planning  
976 Osos Street Room 300  
San Luis Obispo CA 93408

Subject: Request For Appeal to the Board of Supervisors pursuant to Section(s) 23.01.041, 23.01.042, 23.01.022, 23.01.031, 23.01.033, 23.01.034, 23.01.040, 23.02.020 thru 23.02.026, and 23.04.430 of Title 23 (Coastal Zone Land Use Ordinance); Request for the Board of Supervisors to initiate a planning area standard amendment to allow for an alternative water supply source (Title 23.01.050)

Enclosures: (1) Appeal Form to the Board of Supervisors  
(2) Appeal submittals dated June 25 and June 26, 2009.

Chairman Gibson and Members of the Board of Supervisors:

Please let this letter serve as our formal request for appeal to the Board of Supervisors from separate decisions by the Zoning Administrator and the Planning Commission to not hold a hearing, or render a determination, that informs 179 property owners whether a planning area standard of the North Coast Area Plan, which requires that water and sewer services must come from the Cambria CSD, prevents the use of an alternative water supply source to support development.

The managers of this company filed an appeal via correspondence dated June 26, 2009 to the Planning Commission. The appeal request resulted from the planning department staff's decision to not hold an administrative hearing that was requested to obtain the County's criteria for an alternative water supply source. The administrative hearing was requested because the Zoning Administrator refused to provide the design criteria that an applicant could use to propose an alternative water supply source development plan.

The planning area standard requires that water and sewer service must be provided by the CCSD and, therefore, the planning area standard appears to prohibit an alternative water supply source. Determining whether water must come from the CCSD is germane to any property owner seeking to develop while the CCSD remains in a water emergency, including the 666 property owners on the CCSD wait list. Therefore, while trucking in and self storing potable water may provide a viable solution to the only true developmental resource constraint, a potential applicant must first be informed whether an alternative water supply source can be used to process a MUP; and, second, he must be informed of the County's design criteria.

The County elected to not hold the requested appeal hearing, and returned the appeal request to us citing various explanations why the appeal could not be heard. We have

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included the previous appeals as Enclosure (2) and request that they be included as part of the administrative record. Notably, “alternative” services were not mentioned in the letter dated July 2, 2009 that was enclosed with our returned appeal submittal. Therefore, we are left to speculate whether the planning department even considered the issues that formed the basis for the appeal, or whether it is instructed to read documents through a prism that focuses on deflecting issues and preparing defenses. Thus, because the appeal apparently failed certain procedural standards, and no viable procedure was offered to obtain the requested determinations, we are left to appeal to the Board; and we consider our administrative remedies exhausted by bringing this matter to the Board.

While the planning department may take comfort from a narrow interpretation of regulations that control when an “appeal” can be heard, it also appears that the planning department misses the point. There actually is a problem that requires attention: The regulatory scheme prevents about 1700 property owners from obtaining the water and sewer services from the CCSD that are required for development; it prevents affected property owners from solving the only true resource constraint; it prevents them from being able to obtain a formal determination of what “use” can be made of their property; and it caps growth by arbitrarily rationing water and sewer services. Consequently, the County controlled elements of the regulatory scheme, including the planning area standard and the dysfunctional land use permitting process, may present significant potential liability to County taxpayers and voters.

Rather than hold the requested administrative hearing or the appeal hearing, either of which would have informed the Board and other stakeholders of how the regulatory scheme affects specific properties, the planning department elected to split legal hairs. The July 2, 2009 response suggests that property owners have no right to obtain information unless someone pays for it. Specifically, the planning department informed this company that the steps available include filing a development plan (MUP) with a variance request.

However, the only variance that can allow development involves the CCSD code: even if an alternative water supply source is available to support development, unless sewer service is provided by the CCSD, no development can occur. We asked the CCSD to hold a hearing to determine whether these services would be available for the 179 affected property owners; and we also requested a variance to the offending code that limits service to wait list holders. The CCSD refused to grant a hearing or a variance. Consequently, the only variance that would allow the 179 property owners to obtain the services required for development has been sought; and it was not granted.

Perhaps we can agree that the CCSD code means what it says: water and sewer service will only be made available to properties on the CCSD’s wait list; *all others are not eligible for these services*. The water emergency does not affect those not on the wait list: if the emergency were lifted today, the non-wait list holders would not get sewer service or one drop of water from the CCSD; they are not eligible to receive water or sewer service because they are the intended victims of a growth capping scheme (the build out reduction program). The non-wait list holders are not “potential customers” that

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the CCSD plans to serve: they are specifically excluded from the water master plan's future service connections calculations.

Of note, the build out reduction program (BRP) was adopted as a mitigation measure to offset the growth inducing impact of the proposed desalination plant; the program was adopted as part of the water master plan by the CCSD Board in August 2008. The BRP was adopted to comply with requirements found in the certified LCP update. The programs own language confirms it is a "growth capping" tool.

The fundamental issue is that both the Coastal Act and the Subdivision Map Act require evidence of available water and a wastewater treatment solution before new development can be approved or permitted. Further, state law requires a connection to sewer when it is available, and individual sewage disposal systems are not permitted when sewer lines front the subject property. Because the CCSD has exclusive authority to control access to its sewer facilities, the County can theoretically cure only ½ of the problem if it amends the planning area standard to allow for an alternative water supply source. Therefore, unless the County has the authority to grant a waiver or a variance that permits development without a wastewater treatment solution, properties without a wait list position are prevented from enjoying the "bundle of rights" associated with residentially zoned property; they cannot develop.

The key variance question is this: Can the County waive or grant a variance to the requirement that wastewater treatment must be available before development can be permitted? If not, the County cannot provide relief to the service dilemma and, therefore, no action we can initiate through the County can lead to an approved development plan. Thus, any development proposal that includes a variance request cannot succeed; and any planning staff recommendation to submit a development plan with a variance either suggests an inability to understand the problem, or is purposefully wasteful of resources.

Gregg Berge and I addressed the Board on September 25, 2007, during an appeal to Mr. Berge's denied MUP. At that hearing, I informed the Board that in excess of 1,000 properties were affected by the CCSD code that limits future service to holding a wait list position; and that those property owners without a wait list position could not develop because the CCSD refused to inform property owners whether services would be, or would not be, provided. We both informed the Board that the MUP permitting process was dysfunctional because the MUP exhibit list (water, fire, and sewer service letters) could not be obtained from the District, because the District would not inform property owners whether these services would, or would not, be provided. Therefore, the record will reflect that your Board received testimony that water and sewer services could not be obtained by any property owner not holding a CCSD wait list position; that the CCSD was not responding to referrals from the County to provide ministerial input to the land use permit process; and that the CCSD code does not allow water or sewer service to be provided to a property without a wait list position.

Despite hearing this testimony, the Board subsequently approved, and the Coastal Commission certified, the update to the LCP which included a planning area standard that

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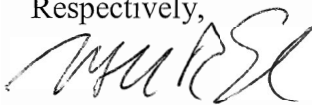
water and sewer service must come from the CCSD, and that a MUP application would not be accepted for processing without written evidence that the CCSD would provide these services. Why did your Board approve a planning area standard that requires written verification of water and sewer services from the CCSD, when the Board and the Coastal Commission knew the CCSD would not provide these services to over a 1,000 properties? If the intention was to adopt regulations that support the growth capping measures required by the state, then the rationale is understandable.

Whether this matter is heard as an appeal, or heard as some any other named event, we believe the Board has a duty to investigate the aforementioned circumstances to determine if a particular course of action will improve the efficiency of the plan, and whether action can be taken to limit future liability. Accordingly, we believe that a public hearing is warranted so that the Board can make informed decisions that are in the best interest of the County.

Additionally, let this letter stand as our request that the Board instruct the Planning Director (see Title 23.01.050) to take the steps necessary to amend the planning area standard to allow for an alternative water supply source for properties in Cambria. However, if the County does not intend to seek a legislative fix that will compel the CCSD to provide sewer service to those properties prepared to use an alternative water supply source, then modifying the planning area standard will not alter the status quo: development cannot occur without available water and a wastewater treatment solution.

In closing, unless the legislative intent is to cap growth for the class of property owners not holding a wait list position, an amendment that allows an alternative water supply source is the only step we can recommend that might lead to a service solution. Such an amendment would open the door for immediate development by wait list holders; it will collapse the build out reduction program; and it will unwind countless hours of scheming to devise a “free” growth capping scheme. However, it might save various agencies the potential liability of a ruling that excessive regulations have “taken” the development rights of the remaining class of about 1500 property owners. Such an amendment may still leave the County vulnerable to a temporary taking cause of action, but there’s no free lunch at the table you have set.

Respectively,



Michael R. Erickson  
Manager