

November 24, 2020

**Via Email & Regular Mail**

Board of Directors  
San Simeon Community Services District  
c/o Jeffrey A. Minnery, Esq.  
Adamski, Moroski, Madden,  
Cumberland & Green LLP  
P.O. Box 3835  
San Luis Obispo, CA 93403-3855

Re: Robert Hather's Hardship Application for a Will-Serve Letter

Dear Sirs and Madams:

The San Simeon Community Services District's long-standing water moratorium has created an unjust financial burden on local property-owner Robert Hather. It is within the powers of the Board of Directors to grant Mr. Hather immediate relief from this hardship. The overdue repeal of the water moratorium may or may not require a lengthy environmental review process, but Mr. Hather has waited patiently for nearly seventeen years and now, at 67-years, he simply cannot afford to wait any longer. Mr. Hather has plans to develop his vacant property on Avonne Avenue—once a Will-Serve Letter has been issued—completion of that townhouse project which includes affordable housing units that would allow him to finally retire while simultaneously providing the north coast with desperately needed housing.

Furthermore, the lack of water treatment and storage infrastructure that caused the original water moratorium in 1986 has since been remedied. The water emergency no longer exists. Therefore, in light of the unfair financial losses sustained by Mr. Hather under Ordinance No. 102 as well as his distinct investment-backed expectations in the otherwise valueless vacant property, there is ample justification to issue him a Will-Serve Letter prior to repealing the moratorium. Alternatively, there is evidence in the record that the application of certain provisions of Ordinance No. 102 to Mr. Hather's property is affecting an unconstitutional taking and any such provisions should be disregarded.

Because (1) sufficient water supply now exists, (2) granting a single Hardship Application will have a minuscule or no environmental impact, and (3) any resulting project will be subject to environmental review throughout the subsequent permitting process, this limited action qualifies for exemption from the California Environmental Quality Act under the "Common Sense" exemption.

**FACTUAL BACKGROUND**

**The Parties**

Robert Hather is a 67-year-old resident of San Luis Obispo County. Mr. Hather is no stranger to water issues. His former company, Lifewater Drilling Technology, designs and distributes water well drilling

systems “especially equipped to overcome the challenges found in developing countries.”<sup>1</sup> Their LDT 360 Cable Tool Drill Rig was recognized at the March 2014 World Water Day event in Washington, D.C.<sup>2</sup>

Mr. Hather is a dedicated Rotarian and active member of the community. He hopes to retire soon but is currently unable to stop working as a money manager because a goodly portion of his retirement planning has been tied to the property which is the subject of this Hardship Application for nearly seventeen years.

The San Simeon Community Services District (“CSD”) was formed by election under California’s Community Services District Law (Gov Code § 61000 et seq) in May 1961 to provide a variety of services to residents of the San Simeon area, including water and sewage. In 1966 the CSD acquired the water and sewage infrastructure of Rancho San Simeon Acres Service Corporation. The CSD currently serves about 208 water and sewage connections for residential and commercial users.<sup>3</sup>

An elected five-person Board of Directors (“Board”) governs the CSD and is its main decision-making body. The Board’s purview includes the consideration of Hardship Applications for relief from the CSD’s long-standing moratorium on new water connections.

### **Description of the Property**

The property that is the subject of this Hardship Application is identified as San Luis Obispo County Assessor’s Parcel Number 013-071-009. The legal description is attached as Exhibit A. It is a vacant lot comprising 1.1 acres of the Arbuckle Tract in Rancho San Simeon along the northeast side of Avonne Avenue. It is bordered on the southeast by an apartment complex and on the northwest by single and multi-family residences. The lot directly across Avonne Avenue is also vacant. Beyond that, along Cabrillo Highway, is Motel 6, interposed between the property and the view from the ocean.

The property is zoned Residential Multi-Family. A map of San Simeon showing existing developments and zoning overlays is attached as Exhibit B. The property falls within the California Coastal Zone. The lot currently sits empty, devoid even of trees; its only vegetation is seasonal grass which Mr. Hather is required to keep mowed no higher than six inches.

### **San Simeon Water Moratorium**

On January 15, 1986, the CSD Board passed Ordinance No. 61 “Establishing a Temporary Moratorium on the Issuance of Water and Sewer Connections Within the Boundaries of the District.” They found that “[t]he granting of additional water and sewer connections within the District would result in an immediate threat to the public health and safety” due to “a serious water quality problem” in the district. By its own terms, Ordinance No. 61 would be automatically repealed on August 15, 1986 unless extended or replaced. On August 13, 1986, Ordinance No. 62 extended the temporary moratorium for another eight months, until April 1, 1987.

On April 1, 1987, the CSD Board passed Ordinance No. 63, extending the moratorium for a full year. Finally, on March 9, 1988, Ordinance No. 66 extended the moratorium indefinitely, leaving its provisions

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<sup>1</sup> <https://www.lifewaterdrillingtechnology.com/about-us.html>

<sup>2</sup> <https://www.lifewaterdrillingtechnology.com/april-9-2014--world-water-day.html>

<sup>3</sup> Tanner, Kathe; [San Simeon CSD has banned new water hookups for 31 years. This study could change that](#); The Tribune, December 3, 2019.

“in effect until repealed.” The new ordinance stated that “[t]he District is diligently pursuing long term supplemental water supplies, but until the time when such supply is available, it is necessary to continue the existing moratorium.” Ordinance No. 65, adopted February 10, 1988, established a waiting list for water service: “any property owner may deposit the then current connection fees and be placed on the District’s waiting list for service.” This waiting list is currently published and has been the subject of additional ordinances, including Ordinance No. 101, which identifies “Waiting List Commitments” as a category of existing commitments for water service.

On October 11, 2006, the CSD Board passed Ordinance No. 102, which remains in effect “until repealed.” In addition to carrying forward the terms of its predecessors, Ordinance No. 102 introduced a Hardship Application, permitting “any person aggrieved by this moratorium law” to petition the Board for a public hearing on the merits of their claim for an exemption. Ordinance No. 102 also gives the Board the ability to disregard any provision that may lead to an unconstitutional taking of property. It claims exemption from the California Environmental Quality Act (“CEQA”) under Water Code section 10652 and CEQA Guidelines 15269(c) and 15282(w).

Since 2006, significant infrastructure improvements have drastically reduced or eliminated the CSD’s water emergency. In 2012, the Water Re-Use Project was completed. A Reverse Osmosis Unit was installed in 2016 to “treat brackish and mineral heavy community water from the existing well field.”<sup>4</sup> The CSD filed a mitigate negative declaration in September 2019 for the installation of two new water storage tanks which hold more than 800,000 gallons for fire suppression. The Notice of Completion is attached as Exhibit C.

At its regular meeting on November 13, 2019, the Board discussed lifting the water moratorium. They voted to direct staff to pursue proposals for an environmental review document after receiving information that repeal of the moratorium could be subject to the provisions of CEQA. A request for proposals was issued in February 2020, but only one response was received. The Board decided to seek a second round of proposals, but COVID-19 delayed the process.

The moratorium was again discussed at the regular meeting of the Board on September 9, 2020. The Board considered the implications of either lifting the moratorium or serving those on the waiting list without further environmental review. Board members were encouraged to do their own research and staff was directed to develop a process to move forward with the repeal of Ordinance No. 102.

At the October 14, 2020 CSD Board meeting, an ad hoc committee was established to review the process of Will-Serve letters. On October 28, 2020, the Board discussed policies and procedures for reviewing proposals from environmental consultants to conduct the environmental analysis regarding repeal of the water moratorium. In November 2020, the Board hired consultant Paavo Ogren, recently retired from the Oceano Community Services District, to help guide the process of lifting the moratorium.

### **Property Narrative**

Applicant Robert Hather purchased the property in July 2004 as a retirement investment. He relied in part on the water that would be freed by the Hearst Ranch conservation easement, but instead of loosening restrictions on new connections, Ordinance No. 102 was passed in 2006, extending the moratorium on water and sewer service on August 27, 2014. In 2008 or 2009, Mr. Hather agreed to sell the property for

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<sup>4</sup> <https://sansimeoncsd.org/facilities/>

\$50,000, an astonishing loss of nearly 75% of its value less than half a decade prior. But escrow fell through and he has since been unable to resell the property while water service remains unavailable.<sup>5</sup>

In September 2019 Mr. Hather paid for a pre-application planning meeting with the County of San Luis Obispo Department of Planning and Building. The letter summarizing this meeting is attached as Exhibit D. They discussed plans for a 15-unit residential housing development proposal, attached as Exhibit E. According to the County of San Luis Obispo, a Will-Serve Letter for water and sewer is required before applying for any of the associated permits.

Mr. Hather wrote to the CSD on October 30, 2019 to seek relief from the water moratorium. The Board considered his request at the November 13, 2019 meeting but decided that environmental review was required before repealing Ordinance No. 102. Mr., Hather renewed his efforts at the September 9, 2020 meeting, submitting a letter from attorney William Walter. He also participated in the October and November 2020 CSD meetings to continue advocating for the repeal of the water moratorium as well as the issuance of a Will-Serve letter for his property.

The property was recently reassessed for tax purposes and valued at \$86,593. However, the practical value of the property is currently a net-loss; Mr. Hather has no viable economic use for the property without water service but is still paying the property taxes and various maintenance charges. Once a Will-Serve Letter is issued, Mr. Hather has a good faith offer to develop the property in concert with a builder who intends to carry out the residential development plans.

### **HARDSHIP APPLICATION**

Section V of Ordinance No. 102 states that “any person aggrieved” by the water moratorium may seek redress in the form of a Hardship Application which shall be considered by the CSD Board at a public hearing. A variety of factors may be considered by the board, including, but not limited to, the “nature and extent of financial hardship,” the extent of the proposed water usage, and the actual environmental impacts, if any that the project may have.

The Board’s decision to grant a Will-Serve Letter should, in the spirit of substantial justice, balance the general intent and purpose of the water moratorium with the actual effect on the individual property owner. In addition, the Board may impose reasonable stipulations and conditions on the grant of the Will-Serve Letter to ensure that the public purpose of the moratorium is fulfilled.

The equities in this case are firmly on the side of granting Mr. Hather’s Hardship Application. The financial hardship imposed by the moratorium is considerable, no potentially significant environmental impacts were identified during the pre-application planning process, and the project will provide much-needed housing to the region. Because the water emergency has been alleviated by new infrastructure, there is no longer a legitimate public interest in denying the Will-Serve Letter.

#### **The Financial Hardship Is Preventing Mr. Hather from Retiring**

Applicant Robert Hather invested a substantial part of his retirement savings into this property. Additionally, since purchasing the property in 2004, he has paid an estimated \$26,000 in property tax, \$2,400 in mowing services, \$3,940 to join the water and sewer waiting list, and \$3,094 in pre-application design and planning fees.

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<sup>5</sup> Note that Mr. Hather, a professional well-driller, explored the possibility of wells to supply the development, but the groundwater rights underlying his property were previously acquired by the CSD.

### **The Water Use Will Be Modest (Fifteen Residential Units)**

The proposed development on the property (see Appendix E) comprises fifteen residential units, each with two-bedrooms and totaling approximately 1,100 square feet. Therefore, it will likely utilize fifteen “Equivalent Dwelling Units” as defined in CSD Ordinance No. 101. Under Article X, section Two of the California Constitution, “the water resources of the State [should] be put to beneficial use to the fullest extent of which they are capable.” Currently, housing is one of the most urgent needs on the Central Coast, making residential water service a highly beneficial use.

### **There Are No Known or Anticipated Environmental Problems**

Mr. Hather, who has owned the property for nearly seventeen years, is unaware of any environmental problems associated with it. Furthermore, the pre-application planning meeting with the County of San Luis Obispo Department of Planning and Building identified no potential significant adverse environmental impacts related to the proposed development.

Because any development project on the property must be fully permitted by the County of San Luis Obispo before construction can begin, the CSD Board is assured that regardless of when the Will-Serve Letter is issued, all appropriate environmental review will be conducted prior to the actual connection of water and sewer services. It has not yet been determined whether any kind of environmental review will be necessary, however if it is, the initial study is unlikely to find significant environmental impacts.

#### *Vegetation*

The property is a vacant lot on which nothing grows but grasses, which are routinely mowed. There are no trees, shrubberies, or other vegetation present.

#### *Traffic*

According to San Luis Obispo County Department of Planning and Building, a Traffic Engineer Report will be required as part of the permit process for the project. Additionally, the project provides substantially more than the 27 required on-site parking spaces by incorporating a two-car garage into the ground floor of every dwelling unit.

#### *Stormwater*

The project proposal also requires a drainage plan as part of the permit process. There is a 20-foot set back surrounding the property, which is more than ample to accommodate depressions and gravel areas for drainage. Paved surfaces throughout the project will be permeable.

### **Existing Zoning is Appropriate for the Project Proposal**

San Simeon currently has two zoning overlays: multi-family residential and commercial retail. The property where the project is being proposed is in the multi-family residential zone. The 1.1-acre property is zoned to support the fifteen residential units currently proposed.<sup>6</sup>

California’s housing crisis is ongoing. San Luis Obispo County completed its latest Regional Housing Needs Assessment (“RHNA”) in 2019.<sup>7</sup> The total allocation for unincorporated areas of the county, including San Simeon, was 3,256 units; more than half of those need to be for very-low to moderate

<sup>6</sup> The development plan for this property was originally more intensive, but zoning changes enacted while waiting for the water moratorium to be lifted required a reduction in the number of proposed units to the current fifteen.

<sup>7</sup> San Luis Obispo County Regional Housing Needs Allocation 6th Housing Element Cycle: 2020 to 2028.

income households. Mr. Hather's development proposal will provide fifteen new homes, including two designated as affordable housing.

**This Application Is in Harmony with the Purpose and Intent of Ordinance 102**

The purpose of this Hardship Application is not to subvert the significant public interest regarding health and safety that underlies Ordinance No. 102. Its Section I: Findings state that "it is necessary to continue the existing water connection moratorium" until "long-term supplemental water supplies" are available. Given the considerable infrastructure improvements since Ordinance No. 102 was passed, the public policy justifications for the moratorium no longer exist.

Indeed, new and different threats have emerged to public health and safety, including an increasingly dire shortage of housing on the Central Coast. Mr. Hather's significant financial hardship as well as the public interest in promoting the development of new housing substantially outweigh any remaining public benefit to health and safety that Ordinance No. 102, now obsolete by its own terms, still offers.

**Withholding the Will-Serve Letter Effects a Constitutional Taking of Mr. Hather's Property**

Under Section VI of Ordinance No. 102, if the Board determines that the application of the Ordinance to a particular project raises the issue of a constitutional taking of private property, they "shall disregard such provision or provisions" of the Ordinance to "avoid such unconstitutional taking."

Constitutional takings are a complex and fact-intensive area of law. They deal with the principle that private property cannot be taken for public use without compensation. USCS Const. Amend. 5; Cal. Const. art. 1 § 19. A regulatory taking occurs when government action substantially diminishes the value of private property. Depending on the circumstances, the affected owner may be entitled to compensation for their loss even though they still retain title to the property.

When a government regulation eliminates nearly all (95% or more) economic value in the property the taking is "categorical" and the owner is entitled to compensation. *See Lucas v. S.C. Coastal Council* (1992) 505 U.S. 1003 (landowner barred from any development of her coastal lots in a developed subdivision entitled to compensation).

In *Lucas*, the plaintiff property owner was prevented from building on her beachfront land by a law designed to protect public resources. Despite the public interest underlying the regulation, the fact that there was no economically viable use for her property led the Supreme Court of the United States to hold that a constitutional taking had occurred and she was entitled to compensation. Mr. Hather is similarly situated regarding his vacant lot on Avonne Avenue; he is indefinitely enjoined from any economically viable use of his land while the moratorium remains in effect.

The *Lucas* standard of no economically viable use is admittedly hard to prove. In *Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency* (2002) 535 U.S. 302, a temporary moratorium on development was not a categorical taking. However, Mr. Hather's case is distinguished from *Tahoe-Sierra* because the moratoria there were limited, one for 24 months and the other for about 8 months; the San Simeon Water Moratorium has been in place for 34 years with no end yet in sight.

Alternatively, if Mr. Hather has not been deprived of all economically viable use of his property, he may still be entitled to compensation under the landmark three-part test announced in *New York v. Penn Cent. Transp. Co.* (1972) 406 U.S. 944. When a government regulation diminishes the value of private property, courts look at (1) the economic impact on the claimant, (2) the extent of the interference with distinct investment-backed expectations, and (3) the nature of the governmental action. In particular, when a

regulation that is in the general public interest results in an unfair share of the cost being born by a few individual property owners, a taking is more likely to be found.

Mr. Hather and the other handful of property owners on the waiting list for water and sewer connections have long-standing investment backed expectations. Whatever the remaining public interest served by the water moratorium, those vested members of the waiting list are surely bearing the brunt of its economic burden for the entire community. And because they are not yet connected to water or sewer service, the members of the waiting list enjoy none of the benefits.

In California, the issue is always more complicated when water is involved.

Under California law, potential water use is not a property right. "[A] potential water user does not possess any absolute right to be afforded water service . . ."

Bank of America Nat'l Trust & Sav. Asso. v. Summerland County Water Dist. (9th Cir. 1985) 767 F.2d 544, *citing* Swanson v. Marin Municipal Water District, 56 Cal. App. 3d 512, 522, 128 Cal. Rptr. 485, 491 (1976).

However, in Lockary v. Kayfetz (9th Cir. 1990) 917 F.2d 1150, a Ninth Circuit Court of Appeals case cited by attorney William Walter in his recent letter on Mr. Hather's behalf, the court reversed a grant of summary judgement and allowed plaintiffs to proceed on a constitutional takings claim when their property value was impaired by a water moratorium.

Withholding available water from land zoned exclusively for residential use might interfere with the landowners' reasonable investment-backed expectations by preventing all practical use of that land. That the [plaintiffs] can still walk on, or ride a bike on, or look at their land does not, at this preliminary stage of the case, reassure us to the contrary. In this context, assuming the [plaintiffs] can show that sufficient water was available, then [the utility's] water moratorium may indeed constitute more than a mere reduction in property value.

*Id.* at 1155 (citations omitted). The court went on to explain that the key question was whether there actually was an ongoing water shortage; if the emergency that occasioned the moratorium had been rectified then it was more likely that the refusal to allow new hookups was arbitrary. Note that the plaintiffs in Lockary owned hundreds of acres of undeveloped land in Marin County. They truly could use their land for outdoor recreation. Mr. Hather owns a 1.1-acre vacant lot in the middle of a subdivision, surrounded by apartment complexes.

San Simeon's water emergency is over, yet the moratorium endures indefinitely. Mr. Hather has no economically viable use for his land without a Will-Serve Letter. His claim of a constitutional taking should be seriously considered by the Board and the provisions of Ordinance No. 102 prohibiting him from obtaining a Will-Serve Letter should be disregarded as to his Avonne Avenue property.

#### **Granting Mr. Hather's Hardship Application Qualifies for the Common Sense CEQA Exemption**

Discretionary acts that are otherwise subject to environmental review under the California Environmental Quality Act may be exempted from its provisions if they fall into one or more statutory or categorical exemptions, or if "it can be seen with certainty that there is no possibility that the activity in question may

have a significant effect on the environment.” 14 CCR 15061. This so-called “common sense” exemption from CEQA comes into play when, based on evidence and factual evaluation of the proposed activity, the lead agency determines that there can logically be no impact on the environment. Muzzy Ranch Co. v. Solano County Airport Land Use Com. (2007) 41 Cal.4th 372, 385.

Before Mr. Hather can build any structure or facility capable of connecting to water and sewer services, he will need to obtain a number of permits and approvals from the County of San Luis Obispo. Any project proposal will be subject to all necessary environmental review. Additionally, because the project falls within the Coastal Zone, it will also be subject to provisions of the California Coastal Act.

Issuing a Will-Serve Letter will have no actual effect independent of the larger project approval and permitting process, all of which will be subject to the provisions of CEQA. The granting of a Will-Serve Letter to Mr. Hather will have no impact on the environment and therefore qualifies for the Common-Sense Exemption.

### CONCLUSION

The emergency that occasioned San Simeon’s water moratorium no longer exists, yet Robert Hather continues to suffer unnecessary financial hardship regarding his Avonne Avenue property. It is within the Board’s power to grant him immediate relief without waiting for a lengthy process to repeal Ordinance 102. The equities are strongly in favor of immediately issuing Mr. Hather a Will-Serve Letter.

Sincerely,

  
Jeffrey D. Stulberg

cc: Robert Hather – via email



# **EXHIBIT A**

**LEGAL DESCRIPTION**

Real property in the City of San Simeon, County of San Luis Obispo, State of California, described as follows:

THAT PORTION OF LOT A OF THE PARTITION OF THAT PART OF THE SAN SIMEON RANCHO OWNED BY IRA VAN GORDON, SR., ACCORDING TO MAP RECORDED JULY 27, 1899, DESCRIBED AS FOLLOWS:



BEGINNING AT A POINT OF S. NO. 3 BEING THE SOUTHEAST CORNER OF THE ARBUCKLE TRACT IN SAID LOT A OF RANCHO SAN SIMEON AS SHOWN ON LICENSED SURVEYOR'S MAP RECORDED MAY 22, 1952, IN BOOK 6, AT PAGE 49 OF RECORD OF SURVEYS; THENCE NORTH 62 DEG. 29' EAST, 25.11 FEET TO A 1/2 INCH BAR SET IN THE CENTER LINE OF FORMER COUNTY ROAD NO. 3 NOW ABANDONED; THENCE NORTH 33 DEG. WEST ALONG SAID CENTER LINE, 488.58 FEET TO THE MOST NORTHERLY CORNER OF THE PROPERTY CONVEYED TO GRACE IRWIN, ET AL., BY DEED DATED MAY 11, 1955 AND RECORDED MAY 17, 1955 IN BOOK 804, AT PAGE 109 OF OFFICIAL RECORDS, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID CENTER LINE NORTH 33 DEG. WEST, 234.42 FEET TO A R. R. SPIKE; THENCE SOUTH 45 DEG. 51' WEST, 265.3 FEET TO THE CENTER LINE OF AVON AVENUE; THENCE SOUTH 44 DEG. 09' EAST ALONG SAID CENTER LINE, 230 FEET TO THE MOST WESTERLY CORNER OF THE PROPERTY CONVEYED TO GRACE IRWIN, AFORESAID; THENCE NORTH 45 DEG. 51' EAST ALONG THE NORTHWESTERLY LINE OF THE PROPERTY SO CONVEYED, 220 FEET TO THE TRUE POINT OF BEGINNING.






EXCEPTING THEREFROM THAT PORTION OF AVONNE AVENUE OFFERED FOR DEDICATION FOR PUBLIC USE BY INSTRUMENT RECORDED NOVEMBER 19, 1953 IN BOOK 734, PAGE 52 OF OFFICIAL RECORDS AND ACCEPTED BY THE SAN SIMEON ACRES COMMUNITY SERVICE DISTRICT, COUNTY OF SAN LUIS OBISPO BY RESOLUTION RECORDED NOVEMBER 15, 1962 IN BOOK 1211, PAGE 448 OF OFFICIAL RECORDS.

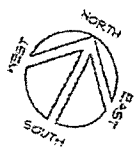
APN: 013-071-009

## **EXHIBIT B**

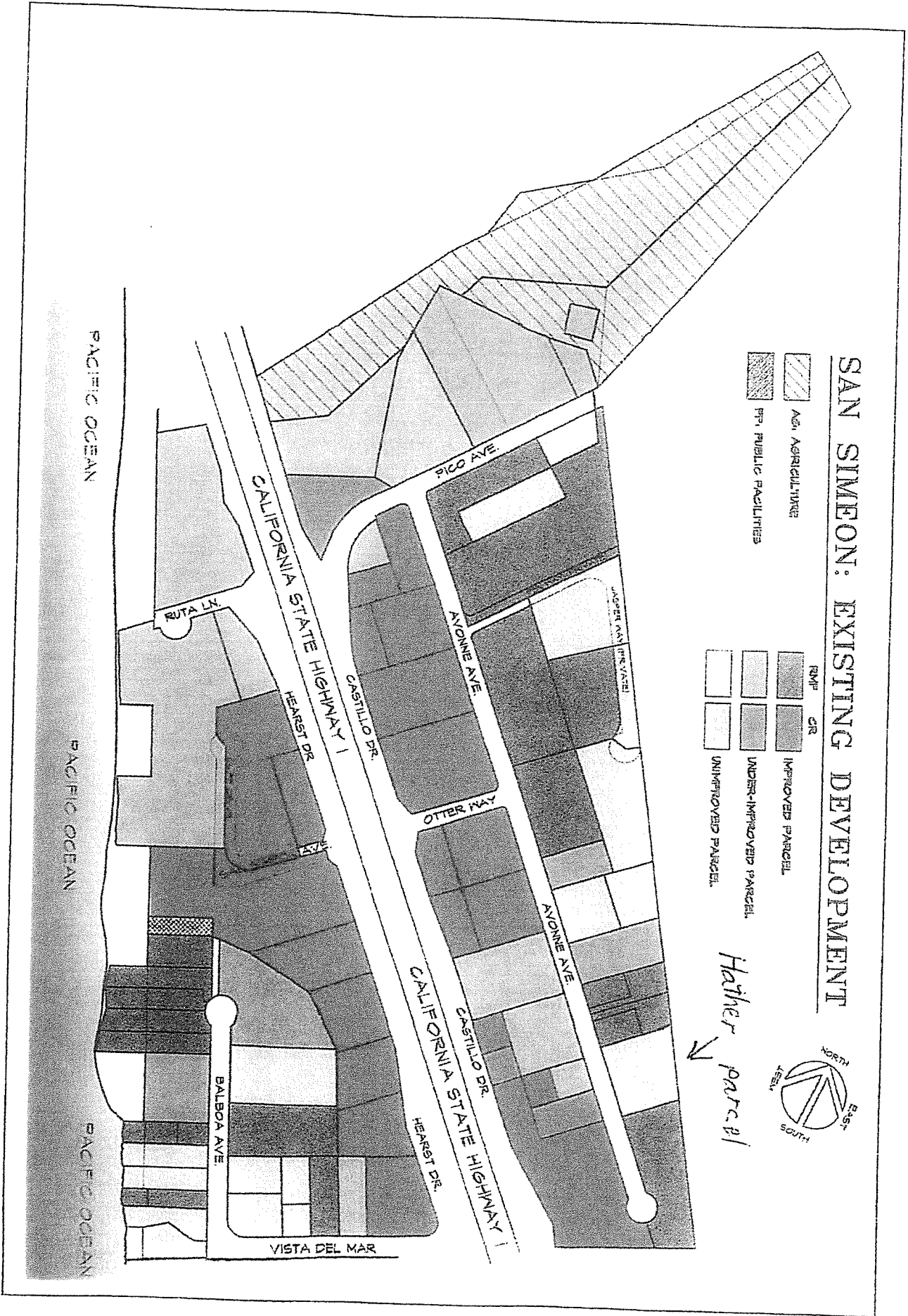
# SAN SIMEON: EXISTING DEVELOPMENT

-  AGRI. AGRICULTURES
-  P.P. PUBLIC FACILITIES

- |   |   |
|---|---|
|  RMP               |  GR                    |
|  IMPROVED PARCEL   |  UNDER-IMPROVED PARCEL |
|  UNIMPROVED PARCEL |   |



*Hather parcel* ↙



## **EXHIBIT C**

Notice of Completion & Environmental Document Transmittal

2019099003

Mail to: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (916) 445-0613
For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

SCH #

Project Title: San Simeon CSD Community Water Tank Project

Lead Agency: San Simeon CSD Contact Person: Charlie Grace, General Manager
Mailing Address: 111 Pico Avenue Phone: 805-927-4778
City: San Simeon Zip: 93452 County: San Luis Obispo County

Project Location: County: San Luis Obispo City/Nearest Community: San Simeon
Cross Streets: Pico Avenue Zip Code: 93452
Longitude/Latitude (degrees, minutes and seconds): 35 03 11.64 N 121 08 29.04 W Total Acres: 3.6 acre parcel
Assessor's Parcel No.: 013-011-024 Section: Twp.: Range: Base:
Within 2 Miles: State Hwy #: State Highway 1 Waterways: Pico Creek, Pacific Ocean
Airports: NA Railways: NA Schools: NA

Document Type:
CEQA: [ ] NOP [ ] Draft EIR NEPA: [ ] NOI Other: [ ] Joint Document
[ ] Early Cons [ ] Supplement/Subsequent EIR [ ] EA [ ] Final Document
[ ] Neg Dec (Prior SCH No.) [ ] Draft EIS [ ] Other:
[ ] Mit Neg Dec Other:

Local Action Type:
[ ] General Plan Update [ ] Specific Plan [ ] Rezone [ ] Annexation
[ ] General Plan Amendment [ ] Master Plan [ ] Prezone [ ] Redevelopment
[ ] General Plan Element [ ] Planned Unit Development [ ] Use Permit [ ] Coastal Permit
[ ] Community Plan [ ] Site Plan [ ] Land Division (Subdivision, etc.) [ ] Other:

Development Type:
[ ] Residential: Units \_\_\_\_\_ Acres \_\_\_\_\_
[ ] Office: Sq.ft. \_\_\_\_\_ Acres \_\_\_\_\_ Employees \_\_\_\_\_
[ ] Commercial: Sq.ft. \_\_\_\_\_ Acres \_\_\_\_\_ Employees \_\_\_\_\_
[ ] Industrial: Sq.ft. \_\_\_\_\_ Acres \_\_\_\_\_ Employees \_\_\_\_\_
[ ] Educational: \_\_\_\_\_
[ ] Recreational: \_\_\_\_\_
[ ] Water Facilities: Type \_\_\_\_\_ MGD \_\_\_\_\_
[ ] Transportation: Type \_\_\_\_\_
[ ] Mining: Mineral \_\_\_\_\_
[ ] Power: Type \_\_\_\_\_ MW
[ ] Waste Treatment: Type \_\_\_\_\_ MGD
[ ] Hazardous Waste: Type \_\_\_\_\_
[ ] Other: Public Facility/Community Water Tank

Project Issues Discussed in Document:
[ ] Aesthetic/Visual [ ] Fiscal [ ] Recreation/Parks [ ] Vegetation
[ ] Agricultural Land [ ] Flood Plain/Flooding [ ] Schools/Universities [ ] Water Quality
[ ] Air Quality [ ] Forest Land/Fire Hazard [ ] Septic Systems [ ] Water Supply/Groundwater
[ ] Archeological/Historical [ ] Geologic/Seismic [ ] Sewer Capacity [ ] Wetland/Riparian
[ ] Biological Resources [ ] Minerals [ ] Soil Erosion/Compaction/Grading [ ] Growth Inducement
[ ] Coastal Zone [ ] Noise [ ] Solid Waste [ ] Land Use
[ ] Drainage/Absorption [ ] Population/Housing Balance [ ] Toxic/Hazardous [ ] Cumulative Effects
[ ] Economic/Jobs [ ] Public Services/Facilities [ ] Traffic/Circulation [ ] Other:

Present Land Use/Zoning/General Plan Designation:
Site is zoned "Agriculture" and "Residential Multi Family"

Project Description: (please use a separate page if necessary)
The proposed project includes the installation of two new water storage tanks (400,000 gallons each), located approximately 530 feet northeast of the existing community reservoir, in order to meet community fire flow demands. Each new tank would be approximately 25.5 feet tall, with a diameter of 50 feet. Total disturbance includes 0.6 acres of earth disturbance for the proposed tank pad and access road. The project includes proposed infrastructure improvements for water pipelines to increase flow capacity per CalFire requirements. With the exception of approximately 300 feet of pipeline connecting the new tanks to the existing reservoir, all pipeline improvements will be installed within existing utility easements, utility conduits and otherwise previously disturbed areas.

State Clearinghouse Contact: (916) 445-0613
State Review Began: 9 - 6 - 2019
SCH COMPLIANCE 10 - 7 - 2019

Project Sent to the following State Agencies

- X Resources
Boating & Waterways
Central Valley Flood Prot.
X Coastal Comm
Colorado Rvr Bd
X Conservation
X CDFW # 4
Cal Fire
X Historic Preservation
X Parks & Rec
Bay Cons & Dev Comm.
DWR
Cal EPA
ARB: Airport & Freight
ARB: Transportation Projects
ARB: Major Industrial/Energy Resources, Recycl. & Recovery
SWRCB: Div. of Drinking Water
X SWRCB: Div. Drinking Wtr # 6
SWRCB: Div. Financial Assist.
X SWRCB: Wtr Quality
SWRCB: Wtr Rights
X Reg. WQCB # 3
Toxic Sub Ctrl-CTC
Yth/Adlt Corrections
Corrections
Independent Comm
Delta Protection Comm
Delta Stewardship Council
Energy Commission
X NAHC
Public Utilities Comm
Santa Monica Bay Restoration
X State Lands Comm
Tahoe Rgl Plan Agency
Conservancy
Other:

Please note State Clearinghouse Number (SCH#) on all Comments
SCH#: 2019099003
Please forward late comments directly to the Lead Agency

AQMD/APCD 29
(Resources: 9 : 7)

## **EXHIBIT D**

# **EXHIBIT E**



**Reviewing Agencies Checklist**

Lead Agencies may recommend State Clearinghouse distribution by marking agencies below with and "X". If you have already sent your document to the agency please denote that with an "S".

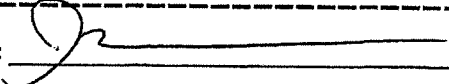
- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Air Resources Board                 | <input checked="" type="checkbox"/> Office of Historic Preservation          |
| <input type="checkbox"/> Boating & Waterways, Department of             | <input type="checkbox"/> Office of Public School Construction                |
| <input type="checkbox"/> California Emergency Management Agency         | <input type="checkbox"/> Parks & Recreation, Department of                   |
| <input type="checkbox"/> California Highway Patrol                      | <input type="checkbox"/> Pesticide Regulation, Department of                 |
| <input checked="" type="checkbox"/> Caltrans District # <u>5</u>        | <input type="checkbox"/> Public Utilities Commission                         |
| <input type="checkbox"/> Caltrans Division of Aeronautics               | <input checked="" type="checkbox"/> Regional WQCB # <u>3</u>                 |
| <input type="checkbox"/> Caltrans Planning                              | <input type="checkbox"/> Resources Agency                                    |
| <input type="checkbox"/> Central Valley Flood Protection Board          | <input type="checkbox"/> Resources Recycling and Recovery, Department of     |
| <input type="checkbox"/> Coachella Valley Mtns. Conservancy             | <input type="checkbox"/> S.F. Bay Conservation & Development Comm.           |
| <input checked="" type="checkbox"/> Coastal Commission                  | <input type="checkbox"/> San Gabriel & Lower L.A. Rivers & Mtns. Conservancy |
| <input type="checkbox"/> Colorado River Board                           | <input type="checkbox"/> San Joaquin River Conservancy                       |
| <input type="checkbox"/> Conservation, Department of                    | <input type="checkbox"/> Santa Monica Mtns. Conservancy                      |
| <input type="checkbox"/> Corrections, Department of                     | <input type="checkbox"/> State Lands Commission                              |
| <input type="checkbox"/> Delta Protection Commission                    | <input type="checkbox"/> SWRCB: Clean Water Grants                           |
| <input type="checkbox"/> Education, Department of                       | <input checked="" type="checkbox"/> SWRCB: Water Quality                     |
| <input type="checkbox"/> Energy Commission                              | <input type="checkbox"/> SWRCB: Water Rights                                 |
| <input checked="" type="checkbox"/> Fish & Game Region # <u>4</u>       | <input type="checkbox"/> Tahoe Regional Planning Agency                      |
| <input type="checkbox"/> Food & Agriculture, Department of              | <input type="checkbox"/> Toxic Substances Control, Department of             |
| <input type="checkbox"/> Forestry and Fire Protection, Department of    | <input checked="" type="checkbox"/> Water Resources, Department of           |
| <input type="checkbox"/> General Services, Department of                | Other: _____   |
| <input type="checkbox"/> Health Services, Department of                 | Other: _____   |
| <input type="checkbox"/> Housing & Community Development                |  |
| <input checked="" type="checkbox"/> Native American Heritage Commission |  |

**Local Public Review Period (to be filled in by lead agency)**

Starting Date September 9, 2019 Ending Date October 9, 2019

**Lead Agency (Complete if applicable):**

Consulting Firm: <u>Oliveira Environmental Consulting, LLC</u>	Applicant: <u>San Simeon Community Services District</u>
Address: <u>3155 Rose Avenue</u>	Address: <u>111 Pico Avenue</u>
City/State/Zip: <u>San Luis Obispo, CA 93401</u>	City/State/Zip: <u>San Simeon, CA 93452</u>
Contact: <u>Jeff Oliveira, Principal Environmental Planner</u>	Phone: <u>805-927-4778</u>
Phone: <u>805-234-7393</u>	

Signature of Lead Agency Representative:  Date: 9/4/2019

Authority cited: Section 21083, Public Resources Code. Reference: Section 21161, Public Resources Code.



COUNTY OF SAN LUIS OBISPO  
DEPARTMENT OF PLANNING & BUILDING  
Trevor Keith *Director of Planning & Building*

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Tuesday, October 15, 2019

HATHER ROBERT K TRE ETAL  
3675 SEQUOIA DR  
SAN LUIS OBISPO, CA 93401

**SUBJECT:** Pre-Application PRE2019-00111

Dear Sir/Madam,

A pre-application meeting was held on Tuesday, September 10, 2019 to discuss the following proposed project:

15-unit multi-family residences

Please note that the pre-application fee can be credited to any discretionary permit application if one is applied for within six months of the meeting date.

Sincerely,

Donna Hernandez  
Administrative Assistant

**Meeting Date:** Tuesday, September 10, 2019

**Meeting Attendees:**

Don Moore (Staff)

Kerry Brown (Staff)

Mike Stoker (Staff)

Rene Brill (Staff)

Young Choi (Staff)

**Meeting Notes:**

Project Description: 15-unit multi-family subdivision

Building:

"Carriage Units" CBC Chapter 11 may get you out of ADA requirement.

Applicant should decide how the units would be sold and check with Building department for Building Requirement. Different units may trigger different building requirements. (commonly owned vs. individually owned)

Public Works:

North Coast Road Improvement Fees, Traffic Engineer Report required. Depending on how the units are being sold, RIF fee may be calculated differently.

Curb Gutter and Sidewalk required

Drainage Plan required

Planning:

Different sets of ordinances apply whether the applicant is requesting Planned Dev, or townhome-style development.

LUO 23.04.092 (Affordable Housing Requirement) - 15% of the units shall be provided as affordable housing for persons and families of low or moderate income. For questions regarding Affordable Housing Requirements, please contact Ted Bench [tbench@co.slo.ca.us](mailto:tbench@co.slo.ca.us)

805 781 5701

(15) 2-Bedroom units

Parking required: Resident - 1.5 per 2-bedroom unit; Guest - 1 space plus 1 for each 4 units

27 parking spaces needed

Maximum Floor Area 48%

Minimum Open Area 45%

A Will-serve for water and sewer from SSCSD will be required in order to apply for the permits.



COUNTY OF SAN LUIS OBISPO  
DEPARTMENT OF PLANNING & BUILDING  
Trevor Keith *Director of Planning & Building*

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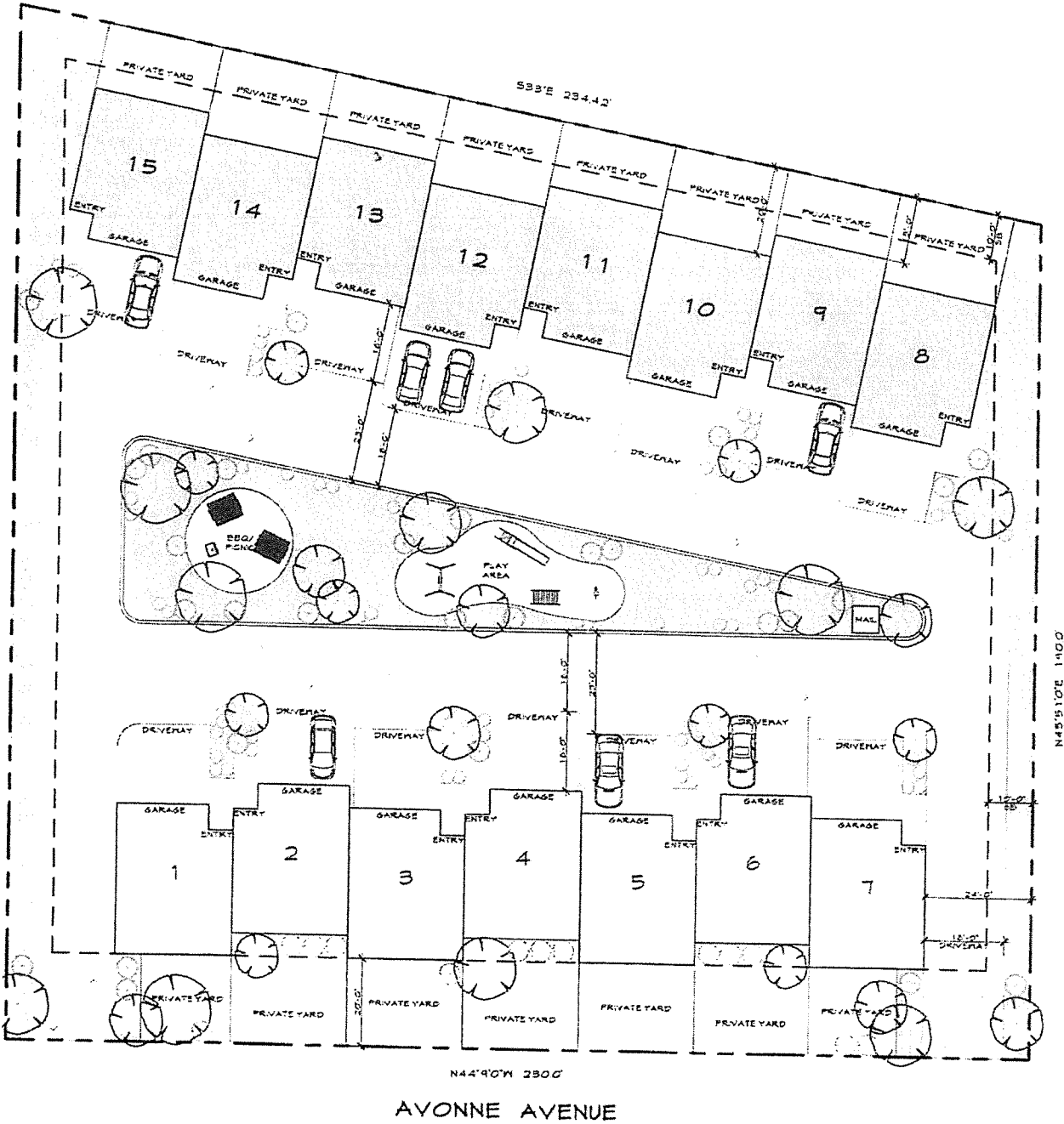
Maximum Floor Area 48%

Minimum Open Area 45%

A Will-serve for water and sewer from SSCSD will be required in order to apply for the permits.

PROJECT STATISTICS: SITE AMENITIES

- BBQ AREA
- PLAY AREA
- 2 ACCESS DRIVEWAYS TO PROPERTY
- COMMUNITY MAILBOX



AVONNE AVENUE

SITE PLAN

SCALE: 1/16" = 1'-0"

DOOR PLAN

HATHER MULTI-FAMILY

Isaman design, Inc.

ARCHITECT  
 2420 Broad Street  
 San Luis Obispo, CA 93401  
 Phone: 805/544.5672  
 Fax: 805/544.5642  
 www.isamandesign.com



PROJECT STATISTICS: UNITS 8-15

1ST FLOOR CONDITIONED SF: 99 SF  
 2ND FLOOR CONDITIONED SF: 886 SF  
 TOTAL CONDITIONED SF: 985 SF

2-CAR GARAGE: 756 SF

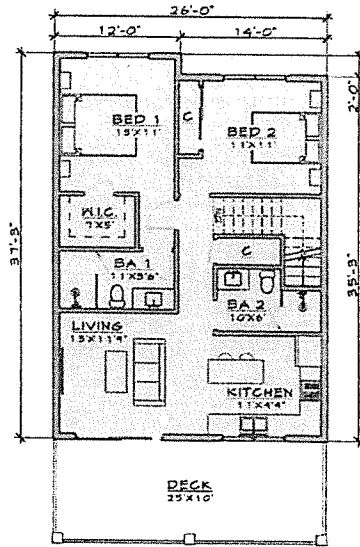
DECK: 250 SF  
 BACKYARD: 390 - 520 SF

PROJECT STATISTICS: UNITS 1-7

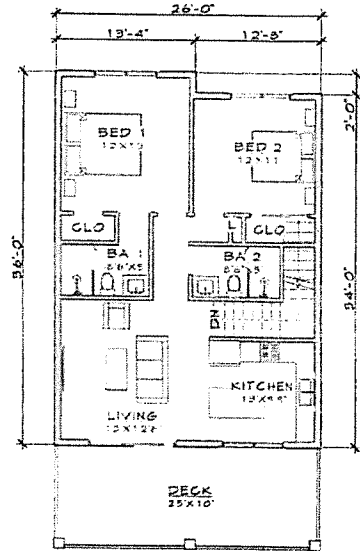
1ST FLOOR CONDITIONED SF: 99 SF  
 2ND FLOOR CONDITIONED SF: 871 SF  
 TOTAL CONDITIONED SF: 970 SF

2-CAR GARAGE: 756 SF

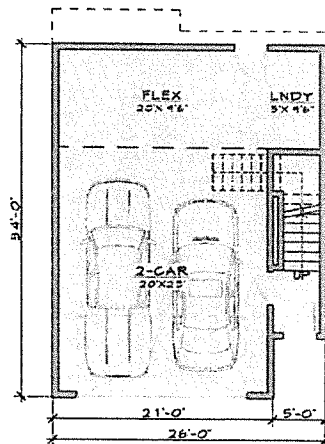
DECK: 250 SF  
 BACKYARD: 520 - 650 SF



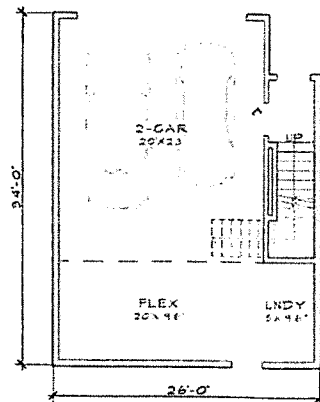
**3B** 8-15: SECOND FLOOR  
 SCALE: 1/8" = 1'-0"



**2B** 1-7: SECOND FLOOR  
 SCALE: 1/8" = 1'-0"

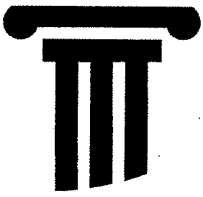


**3A** 8-15: FIRST FLOOR  
 SCALE: 1/8" = 1'-0"



**2A** 1-7: FIRST FLOOR  
 SCALE: 1/8" = 1'-0"





Jeffrey D. Stulberg  
A LAW CORPORATION

Greensheet 12/8/20

Via Email, Fax, Regular Mail

November 20, 2020

Jeffrey A. Minnery  
Adamski Moroski Madden Cumberland & Green LLP  
PO Box 3835  
San Luis Obispo, CA 93403-3835

Re: Robert Hather will-serve letter, San Simeon Community Services District

Dear Mr. Minnery:

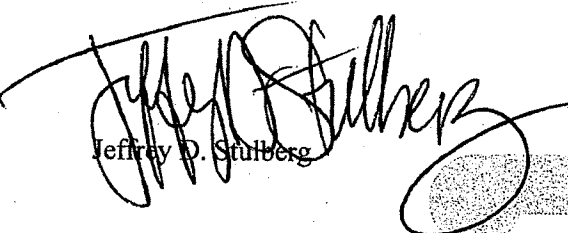
As a follow up to our phone conversation today regarding the San Simeon Community Services District and Robert Hather's Hardship Application, I have a few questions about the District's plans to lift the water moratorium in March 2021, under the guidance of Paavo Ogren.

- Does the District plan to do an initial study?
- If potentially significant impacts are found, will the District pursue a Mitigated Negative Declaration or undertake an EIR?
- Do they expect to rely on an exemption to CEQA? If so, which one?
- Does the District anticipate that an NOE or Mitigated Neg Dec would be challenged?
- If the moratorium is successfully lifted, when might the new ordinance go into effect?
- How quickly will the parties with a waiting list commitment be issued Will-Serve letters?
- What type of impact or overlap will groundwater management planning have on the lifting of the moratorium?

In the spirit of cooperation and efficiency, Mr. Hather will agree to defer his request for an up or down vote on his Hardship Application pursuant to section V (and in light of section VI) of Ordinance 102 at the December meeting; provided that the District's Board of Directors will agree now that if the moratorium is not lifted prior to March 31, 2021 that his Hardship Application for a Will-Serve Letter will be immediately acted upon for an up or down vote at the next regular meeting with a favorable recommendation from District Counsel. If the Board of Directors is unwilling or unable to make this assurance, Mr. Hather will proceed with his Hardship Application in December as currently planned.

I appreciate being kept in the loop on this.

Sincerely,

  
Jeffrey D. Stulberg

Cc: Robert Hather – via email