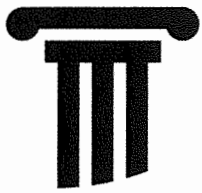


Stulberg Correspondence November 24, 2020



Jeffrey D. Stulberg
A LAW CORPORATION

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.”¹ Their LDT 360 Cable Tool Drill Rig was recognized at the March 2014 World Water Day event in Washington, D.C.²

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.³

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

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

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

³ 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.”⁴ 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

⁴ <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.⁵

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.

⁵ 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.⁶

California’s housing crisis is ongoing. San Luis Obispo County completed its latest Regional Housing Needs Assessment (“RHNA”) in 2019.⁷ 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

⁶ 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.

⁷ 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

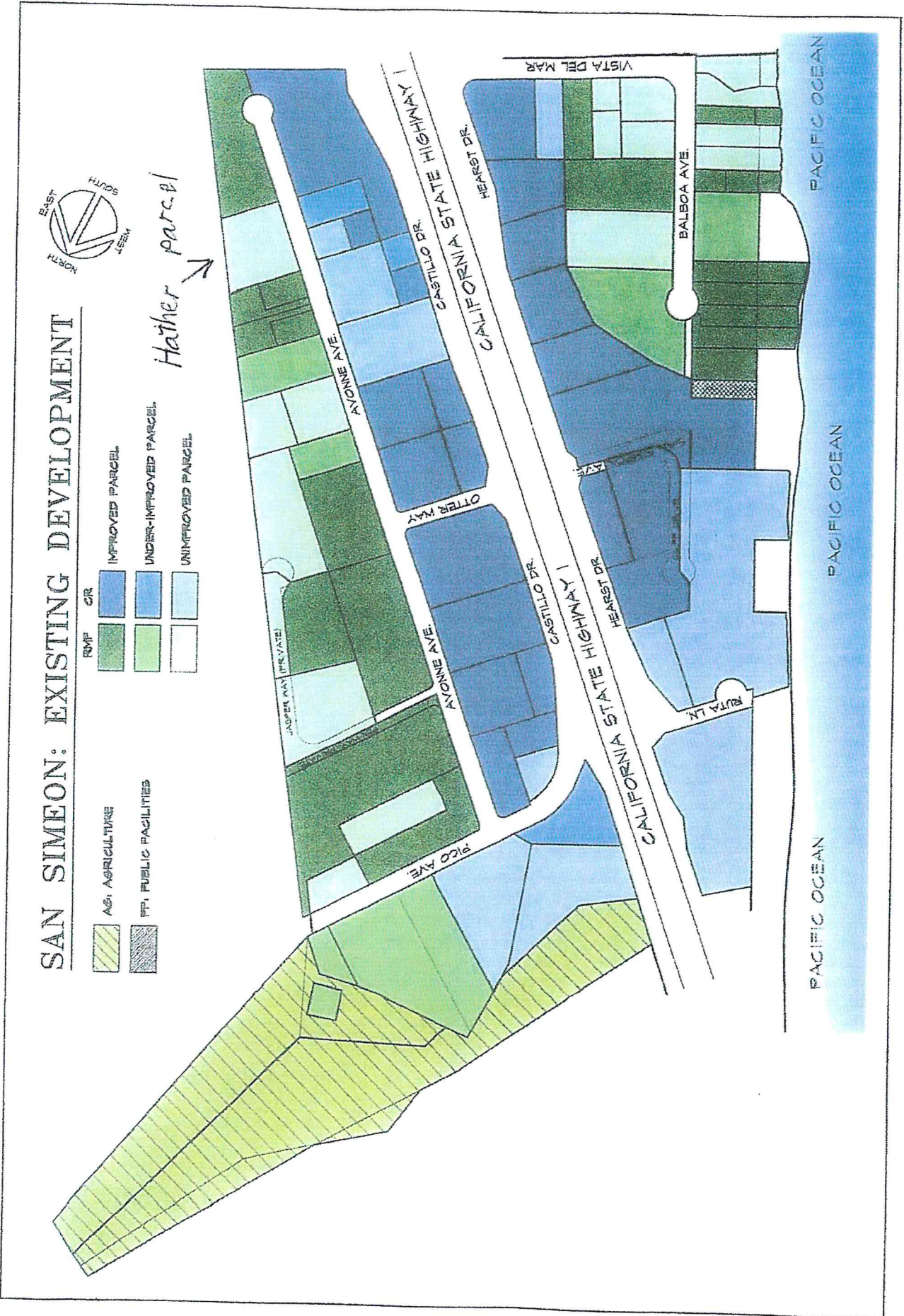


EXHIBIT C

2019099003

Notice of Completion & Environmental Document Transmittal

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 ° 37 ' 11.64 " N / 121 ° 8 ' 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

- | | |
|---|--|
| <input checked="" type="checkbox"/> Resources | <input type="checkbox"/> Cal EPA |
| <input type="checkbox"/> Boating & Waterways | <input type="checkbox"/> ARB: Airport & Freight |
| <input type="checkbox"/> Central Valley Flood Prot. | <input type="checkbox"/> ARB: Transportation Projects |
| <input checked="" type="checkbox"/> Coastal Comm | <input checked="" type="checkbox"/> ARB: Major Industrial/Energy |
| <input type="checkbox"/> Colorado Rvr Bd | <input type="checkbox"/> Resources, Recycl. & Recovery |
| <input checked="" type="checkbox"/> Conservation | <input type="checkbox"/> SWRCB: Div. of Drinking Water |
| <input checked="" type="checkbox"/> CDFW # 4 | <input checked="" type="checkbox"/> SWRCB: Div. Drinking Wtr # 6 |
| <input type="checkbox"/> Cal Fire | <input type="checkbox"/> SWRCB: Div. Financial Assist. |
| <input checked="" type="checkbox"/> Historic Preservation | <input checked="" type="checkbox"/> SWRCB: Wtr Quality |
| <input checked="" type="checkbox"/> Parks & Rec | <input type="checkbox"/> SWRCB: Wtr Rights |
| <input type="checkbox"/> Bay Cons & Dev Comm. | <input checked="" type="checkbox"/> Reg. WQCB # 3 |
| <input type="checkbox"/> DWR | <input type="checkbox"/> Toxic Sub Ctrl-CTC |
| | Yth/Adlt Corrections |
| | <input type="checkbox"/> Corrections |
| | Independent Comm |
| <input type="checkbox"/> CalSTA | <input type="checkbox"/> Delta Protection Comm |
| <input type="checkbox"/> Aeronautics | <input type="checkbox"/> Delta Stewardship Council |
| <input checked="" type="checkbox"/> CHP | <input type="checkbox"/> Energy Commission |
| <input checked="" type="checkbox"/> Caltrans# 5 | <input checked="" type="checkbox"/> NAHC |
| <input type="checkbox"/> Trans Planning | <input type="checkbox"/> Public Utilities Comm |
| Other | <input type="checkbox"/> Santa Monica Bay Restoration |
| <input type="checkbox"/> Education | <input checked="" type="checkbox"/> State Lands Comm |
| <input type="checkbox"/> Food & Agriculture | <input type="checkbox"/> Tahoe Rgl Plan Agency |
| <input type="checkbox"/> HCD | |
| <input type="checkbox"/> OES | |
| <input type="checkbox"/> State/Consumer Svcs | <input type="checkbox"/> Conservancy |
| <input type="checkbox"/> General Services | <input type="checkbox"/> Other: |

Please note State Clearinghouse Number (SCH#) on all Comments
 2019099003
 SCH#: _____
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 an "X". If you have already sent your document to the agency please denote that with an "S".

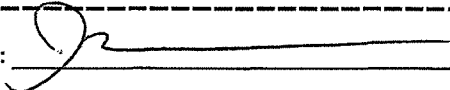
- | | |
|---|--|
| <input checked="" type="checkbox"/> Air Resources Board | <input checked="" type="checkbox"/> Office of Historic Preservation |
| <input type="checkbox"/> Boating & Waterways, Department of | <input type="checkbox"/> Office of Public School Construction |
| <input type="checkbox"/> 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*

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

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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PROJECT STATISTICS: SITE AMENITIES

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



HATHER MULTI-FAMILY

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

LOOR PLAN

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

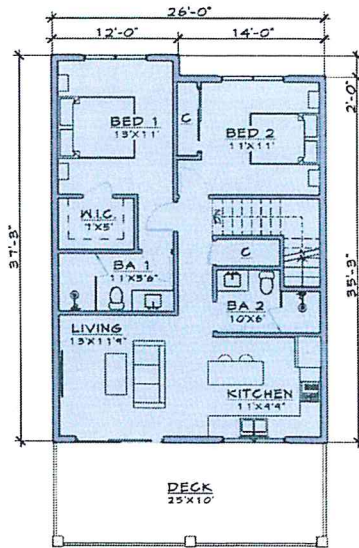
PROJECT STATISTICS: UNITS 1-7

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

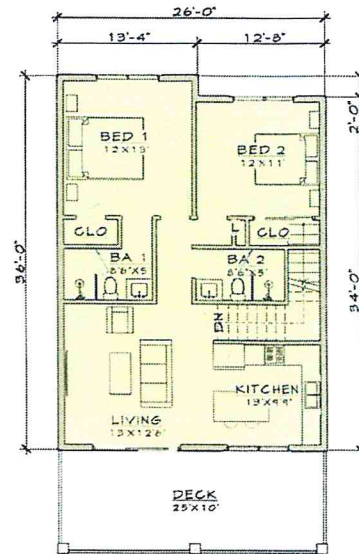
2-CAR GARAGE: 756 SF

DECK: 250 SF

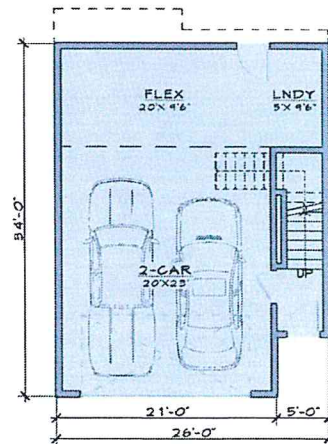
BACKYARD: 520 - 650 SF



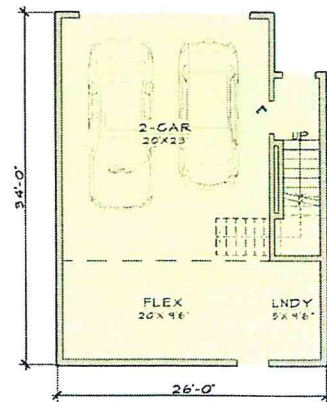
3B 8-15: SECOND FLOOR
 SCALE: 1/8" = 1'-0"



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



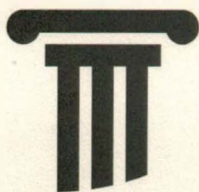
3A 8-15: FIRST FLOOR
 SCALE: 1/8" = 1'-0"



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



Stulberg Correspondence January 25, 2021



January 25, 2021

Via Email & Regular Mail

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

Re: Addendum to Robert Hather's Hardship Application

Dear Sirs and Madams:

Robert Hather's Hardship Application for relief from the water moratorium will come before you again at your February 11, 2021 meeting. Mr. Hather, founder of Lifewater Drilling¹, appreciates the complex water issues facing the CSD better than most. However, in order to comply with sections V and VI of CSD Ordinance No. 102, ***the Board must consider Mr. Hather's November 24, 2020 Hardship Application separately from any ongoing discussions regarding modifying or lifting the moratorium*** and without further delay. The Board must also consider separately from the Hardship Application whether Ordinance 102 has caused a regulatory taking of Mr. Hather's property.

**Consideration of Mr. Hather's Hardship Application Must
Be Based on His Individual Property and Circumstances**

By its own terms, section V of Ordinance No. 102 requires that Mr. Hather's application be considered solely based on his individual circumstances, regardless of the timeline for lifting the moratorium or the theoretical merits of others on the waiting list who have not indicated that they are facing hardship.

While the Board may consider factors not explicitly enumerated in section V, the ordinance limits that scope to "[s]uch other factors as may be significant ***relative to the individual property and circumstances.***" Any discussion of the Water Moratorium itself is irrelevant to Mr. Hather's Hardship Application. So too is any discussion of others on the waiting list, none of whom are currently seeking relief. The fact that seven other parties² have spent longer on the waiting list than Mr. Hather does not necessarily mean they are facing an equally urgent economic hardship under the Moratorium. Mr. Hather is an individual nearing retirement whose

¹ Lifewater Drilling was founded in 2008 to help developing countries access potable water.

² According to CSD Resolution No. 20-426 there are seven parties who have been on the waiting list longer than Mr. Hather, including two motel projects with 35 and 145 rooms respectively.

ability to access his investments is being severely impeded; at least three of the list members with greater seniority are corporations.

Furthermore, granting Mr. Hather's Hardship Application would actually increase equity by ensuring that the economic burden of the Moratorium does not fall more harshly on one waiting list member than another. We are not aware of any other list members who have submitted Hardship Applications. If they were to do so, the terms of section V would require each to be evaluated based on its own merits. While it is natural to think of cumulative impacts, that analysis is misplaced in the context of a Hardship Application which by its nature is focused only on the individual property for which relief is sought.³

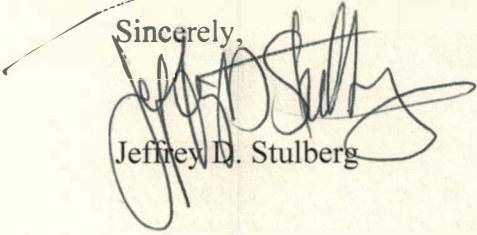
Further Delay is Contrary to the Intent of Ordinance No. 102

The CSD added the Hardship Application process to the Water Moratorium in 2006 when Ordinance No. 102 replaced Ordinance No. 66, likely anticipating that such situations as Mr. Hather's would inevitably arise under an indefinite moratorium. The process seems intended to serve as a release valve during the duration of the moratorium for in case any property owner is forced to bear an unfair and unsustainable—in light of the applicant's own particular financial situation—share of its economic burden. Postponing the consideration of Mr. Hather's Hardship Application until the moratorium is lifted frustrates this intent and renders the entire section moot.

Whether the Provisions of Ordinance 102 Effect a Regulatory Taking of Mr. Hather's Property Must Also Be Considered

In addition to considering the Hardship Application, the CSD Board must also still consider whether the provisions of Ordinance No. 102 are preventing Mr. Hather from economically viable use of his property. If they are, section VI requires that such provisions "be disregarded to the extent necessary to avoid such unconstitutional taking." As detailed in Mr. Hather's November 24, 2020 Hardship Application letter, the Moratorium is currently preventing all economically beneficial use of Mr. Hather's property. There is a strong case that a categorical regulatory taking of his property has occurred. Mr. Hather again requests that the CSD hold an "up or down" vote on the merits of his individual circumstances as set forth in the original petition, and as supplemented in communication with the Board and Legal Counsel.

Sincerely,



Jeffrey D. Stulberg

cc: Robert Hather – via email

³ Any future development project proposed on Mr. Hather's property will require a permit from the County of San Luis Obispo and be subject to appropriate environmental review throughout that permitting process. If the granting of the Hardship Application is not ministerial, it would still logically qualify for a Common-Sense CEQA exemption because the will-serve letter by itself can have no possible impact on the environment.

Hather Correspondence

March 8, 2021

Mar 8 2021

To Elected SSCSD Board,

I am requesting a Conditional Will Serve letter from the San Simeon Community Service District. My intent with the property is to build 15 residential units including two designated affordable housing units and one residence for myself and children and grandchildren on the Avonne property. I have made this request on multiple occasions under the hardship exemption provided in Ordinance 102 Section V. I will be 68 years old in May, still working, with a home mortgage on my San Luis Obispo residence. With my sole combined monthly Social Security and one rental property income without the use of use of my San Simeon property I will not be able to retire with an equal standard of living. I believe the exemption provided in Ordinance 102 Section V was created with the legislative intent of providing relief for tax paying property owners with such a circumstance as mine. This memo follows a request by district counsel Jeff Minery to my attorney Jeff Stulberg requesting that I provide clarification to the BOD establishing and immediate and continuous impact on my ability to fully retire. Please provide my request for a conditional will serve letter so that the land can proceed with a County application for development.

Robert Hather
3675 Sequoia Dr.
San Luis Obispo, CA 93401
805 459-1841
bobhather@gmail.com

Stulberg Correspondence May 3, 2021



May 3, 2021

VIA U.S. MAIL AND EMAIL

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

*Re: Notice of Intent by Robert Hather to Bring Suit Against San Simeon
Community Services District*

Honorable Directors:

As you are aware, this office represents Robert Hather, on whose behalf I provide you with this notice of Mr. Hather's intent to commence litigation against the San Simeon Community Services District (SSCSD) unless the District immediately acts on Mr. Hather's Hardship Application. My firm was retained by Mr. Hather in October 2020, in the hope that a resolution could be had without the necessity of litigation. It is now clear that those efforts were pointless, and litigation is the last and only option that makes sense.

As you know, SSCSD's Water Moratorium has prevented Robert Hather from fulfilling his dream of developing his 1.1 acre vacant lot (San Luis Obispo County Assessor's Parcel Number 013-071-009) on Avonne Avenue in San Simeon. Mr. Hather has exhausted every potential form of equitable relief and/or administrative remedy. Mr. Hather filed a Hardship Application for relief from the Water Moratorium pursuant to Section V of the District's Ordinance No. 102, which as set forth below, the District has refused to consider.

Mr. Hather has been actively seeking relief from the moratorium for six months. In October 2020 he requested a hearing at the November 10, 2020 meeting. He submitted a formal Hardship application on November 24, 2020 to be considered by the Board at its December 9, 2020 meeting. The Application was continued to the January 14, 2021 meeting, where, following a discussion that ignored the merits of the Application and instead focused on unrelated issues, the Board continued to a special meeting on February 9, 2021. The Board did not take any final action on the Application at that meeting, or at any other forum since.

The District's failure to act on the Hardship Application is apparently based on the District's decision to focus on the broader question of lifting or modifying the moratorium. The District's own regulations, however, do not give the Board the discretion to avoid acting on a Hardship Application pending a final decision to modify or lift the moratorium. The Board's decision not

May 3, 2021

Page 2

to adjudicate the Hardship Application, therefore, was unreasonable, unlawful and a clear abuse of discretion.

This Board's decision not to act on the Hardship Application is detrimental to the public health and welfare and against the public policy of the State of California because Mr. Hather has been pursuing plans to develop much needed multi-family residential units on his San Simeon property. The District's refusals to issue a will-serve letter have essentially stalled the development process because without the will-serve letter, the County will not deem the permit application complete. The County residents desperately need exactly the type of moderate and affordable-by-design residential units that Mr. Hather's project is intended to provide.

The District's refusal to act on Mr. Hather's Hardship Application is particularly egregious because as the District's own data clearly demonstrate that owing to the combined impact of increased conservation, the Water Reuse Project and a new Reverse Osmosis plant that has been operational since 2016, a water moratorium is patently no longer justified. The District's February 9, 2021 Staff Report admits that "objective evidence compels a conclusion that water is now available for new development." Accordingly, the District's failure to rescind the "emergency" moratorium is in violation of Water Code Section 355, according to which, an emergency moratorium can only remain in effect "until the supply of water available for distribution ... has been replenished or augmented."

The District's attempt to evade environmental review of a decision to lift or modify the moratorium by authorizing the preparation of an Urban Water Management Plan (UWMP) is a dubious legal gambit that does not justify the District's failure to act on the Hardship Application. The preparation of an UWMP does not provide the District with any legal cover to avoid acting on Mr. Hather's Hardship application, and will not, in any event, legally justify the District's apparent decision to evade environmental review as required by the California Environmental Quality Act (CEQA).

Mr. Hather continues to incur damages and suffer negative economic impacts as a direct result of the District's unlawful failure to lift the moratorium and to act on his Hardship application. Notwithstanding the District's unreasonable and unlawful failure to act, Mr. Hather has continued to maintain his property, abate fire danger, and pay property taxes. Mr. Hather also continues to suffer significant economic lost opportunity damages.

Ironically, as a founder of Lifewater Drilling Technology, Mr. Hather would have been able to dig his own well to obtain water necessary to support the development had it not been for the fact that the SSCSD had already secured the groundwater rights underlying the entire area. This means that while the District and its current customers benefit from Mr. Hather's groundwater rights, he is deprived of the same benefit.

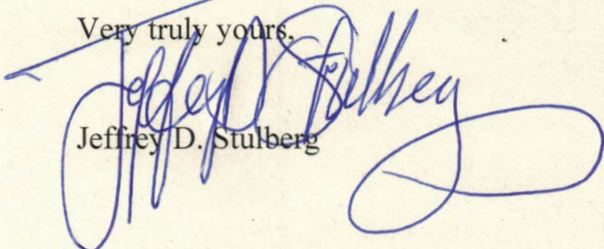
Unless the District provides immediate assurances that it will act on the Hardship Application forthwith, Mr. Hather will commence litigation in federal court seeking damages and injunctive relief. The lawsuit will seek damages for taking of his property because the District's

May 3, 2021
Page 3

unreasonable and unlawful refusal to provide water and sewer services to his property have indefinitely denied him all economically beneficial or productive use of his land. *Lucas v. S. C. Coastal Council*, 505 U.S. 1003, 112 S. Ct. 2886 (1992). Moreover, the fact that Mr. Hather has owned and maintained the property for more than 15 years, and that the majority of the people who enjoy beneficial effects of the Water Moratorium are not similarly burdened may also support a partial takings claim under the Penn Central factors. *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104 (1978). The fact that Mr. Hather acquired title after the moratorium went into effect is not a bar to his claim. *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001). Nor is the ostensibly temporary nature of the restraint. *First English Evangelical Lutheran Church v. Los Angeles County*, 482 U.S. 304 (1987)

If Mr. Hather is forced to commence litigation, he will also be seeking a writ of mandate directing the District to lift the moratorium, or at a minimum, to act on his Hardship Application.

Very truly yours,


Jeffrey D. Stulberg

JDS/al

cc: Robert Hather
Jeffrey A. Minnery, Esq.
Babak Naficy, Esq.