

# **Public Comment on the Draft Environmental Impact Report, County of San Luis Obispo, Los Osos Wastewater Project (LOWWP)**

## **Summary**

It is universally acknowledged that approximately 50-60% of the population of the Los Osos Prohibition Zone (PZ) cannot afford the cost of the proposed Wastewater Treatment Project and may be displaced from their homes by the Project.

This economic-cleansing of the lower- and middle-income residents of the PZ is in contradiction to the Core Values expressed by the Board of Supervisors, (“an agency with jurisdiction over the project”), the County’s Technical Advisory Committee (TAC), the LOCSD Board of Directors, and the Catholic Church.

The Environmental Justice section of the DEIR disregards the importance of economic factors and consistently presents a faulty interpretation and misapplication of the meaning and scope of the concept of Environmental Justice with statements such as the assertion that there are no “disproportionate share of environmental effects” on low-income residents, and, therefore, no impact in regard to Environmental Justice issues.

The present public comment discussion argues that CEQA Statutes and Guidelines, EPA Guidelines and related regulations and policies require a more thorough-going analysis and examination of economic and social factors than is currently offered in the DEIR.

## **Agreement About the Unaffordability of the Proposed LOWWP**

There are many official statements regarding the unaffordability of the LOWWP:

---“County Brochure #3: AFFORDABILITY” states: “There are no project options that combine to create an affordable project under guidelines established by the Environmental Protection Agency.” (p.2)

---1987 EIR by SLO County, Section 8, pp. 11-14, discusses the great economic hardship to be faced by both lower- and middle-income residents of Los Osos.

---John Waddell, Project Engineer, said in a public forum that we are no longer looking for “what is affordable, but what is **least unaffordable.**”

---“Los Osos Affordability: EPA Affordability by 2000 Census, Household Age Category,” the County’s own graph which was presented to both the RWQCB and the SLO Board of Supervisors, clearly illustrates that the “estimated monthly financial burden” of up to \$250/month cannot be afforded by any age group in Los Osos (the most that can be afforded is \$100/month).

---The TAC's "Adopted Core Values and Criteria" Brochure was changed from the draft to the final version. Both versions began: "Affordability of any project is one of the major concerns (and probably the most important) to the community." The draft version gave the real import of the introductory statement: "The Prohibition Zone residents who will be paying for the project are predominantly middle and lower income people, and a sizable monthly payment could become a major burden for them. **For some, any increase in their monthly cash outflow will be disastrous.**"

---Letter from Gordon Hensley and Stan Gustafson (both later elected LOCSD Board members) to Governor Pete Wilson of California, June 11, 1997. The letter states, "The economic impact of this sewer will devastate our community. 50% if not more of this community may be forced to sell their homes and move because of the high cost of the sewer ["\$145-200monthly]...Older residents will be at risk of having inadequate resources for daily living."

### Core Values

Both the lead agency, other agencies, and the Catholic Church have expressed the Core Value of Affordability.:

#### The County of San Luis Obispo

As the lead agency in the LOWWP, the County seems to be acting inconsistently with its own mandate as stated in the DEIR, Appendix O, p5.13-8

"Other Thresholds

.....

"Would the Project

"(a) Conflict with any applicable environmental justice goals or policies of an agency with jurisdiction over the project?"

The answer appears to be Yes. The "Los Osos Wastewater Project Studies Update (April 24, 2007) to the SLO Board of Supervisors stated:

"Financial Working Group Core Values

"—Community socio-economic well-being and diversity. **Nobody should have to leave their home to pay for a sewer.**" (p28)

Additionally, the Board of Supervisors' Mission Statement (from their website) states:

"The San Luis Obispo Board of Supervisors, the legislative arm of the County Government, is committed to the implementation of such policies and the provision of such services that will enhance the economic, environmental and social quality of life in San Luis Obispo County."

These goals and policies are not reflected in the DEIR.

## **The Los Osos Board of Directors**

LOCSD Resolution 2007-26 states:

“(3) The County of San Luis Obispo is hereby urged to support the development of financial options for the impacted Prohibition Zone homeowners of Los Osos for the purpose of maintaining the existing social and economic stability currently found within the community of Los Osos by precluding the need for residents to sell their homes because of an inability to play the admittedly high cost of the Los Osos Wastewater Project.

“(4) The County of San Luis Obispo is hereby urged to create, enable and support a Los Osos Financial Task Force or similar entity to assist low income residents within Los Osos.”

Such a Financial Task force has not been instituted by the County.

## **Catholic Church**

“Joint Statement Concerning the Los Osos Sewer Issue—Issued by the Diocese of Monterey and St. Elizabeth Parish Council (2/6/05)

“But, our greatest concern is with the social justice issue based on the proposed cost. We oppose the expense of such a project because we feel it places an unfair financial burden on the people of Los Osos living within its assessment district, owners and renters alike. We understand the current project will cost each household approximately \$200 per month to finance the building of the plant and operate it.”

## **CEQA Statutes and Guidelines**

The following CEQA Statutes and Guidelines refer to the importance and legal necessity for the EIR to consider economic and social issues as part of it’s environmental review.

CEQA Statute 21083 (b)(3):

"21083. OFFICE OF PLANNING AND RESEARCH; preparation, development and review of Guidelines.

(a) The guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a "significant effect on the environment." The criteria shall require a finding that a project may have a "significant effect on the environment" if one or more of the following conditions exist:

.....

"(3) The environmental effects of a project will cause SUBSTANTIAL ADVERSE EFFECTS ON HUMAN BEINGS, EITHER DIRECTLY OR INDIRECTLY." [emphasis is mine]

CEQA Guideline 15131:

(b) Economic or social effects of a project may be used to determine the significance of physical changes caused by the project. For example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant. As an additional example, if the construction of a road and the resulting increase in noise in an area disturbed existing religious practices in the area, the disturbance of the religious practices could be used to determine that the construction and use of the road and the resulting noise would be significant effects on the environment. The religious practices would need to be analyzed only to the extent to show that the increase in traffic and noise would conflict with the religious practices. Where an EIR uses economic or social effects to determine that a physical change is significant, the EIR shall explain the reason for determining that the effect is significant.

"(c) Economic, social, AND PARTICULARLY HOUSING FACTORS [emphasis mine] shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR."

"Discussion: ....

"Despite the implication of these sections, CEQA does not focus exclusively on physical changes, and is not exclusively physical in concern. For example, in Section 21083 (c), CEQA requires an agency to determine that a project may have a significant effect on the environment if it will cause substantial adverse effects on human beings, either directly or indirectly. This section was added to CEQA by the same bill in 1972 (AB889, Chapter 1154 of the Statutes of 1972) that added the definition of the term 'environmental' and the term 'project'"

.....

"In *Citizens Association for Sensible Development of Bishop Area v. Inyo* (1985) 172 Cal. App.3d 151, the court held that "economic or social change may be used to determine that a physical change shall be regarded as a significant effect of the environment...(Economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment." In this case, the Court held that an EIR for a proposed shopping center located away from the downtown shopping area must discuss the potential economic and social consequences of the project, if the proposed center would take

business away from the downtown and thereby cause business closures and eventual physical deterioration of the downtown."

#### CEQA Statute 21061.1

##### "21061.1 Feasibility

"'Feasibility' means capable of being accomplished in a successful manner within a reasonable period of time taking into account economic, environmental, social and technological factors."

#### CEQA Guideline 15126.6

##### "15126.6

"(f)(1) 'Feasibility'. Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability..."

#### CEQA Guideline 15382

##### "15382 Significant Effect on Environment

"...An economic or social change by itself shall not be considered a significant effect on the environment. A SOCIAL AND ECONOMIC CHANGE RELATD TO A PHYSICAL CHANGE MAY BE CONSIDERED IN DETERMINING WHETHER THE PHYSICAL CHANGE IS SIGNIFICANT [emphasis mine]"

#### CEQA Guideline 15358

##### ""15358 Effects

"Effects include:

.....

"(2)...Indirect or secondary effects may include growth inducing effects or other effects related to induced changes in the pattern of land use, population density, or growth rate..."

#### CEQA Guideline 15126.2

##### ""15126.2 Consideration and Discussion of Significant Environmental Impacts

"(a) ...The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to the ecological systems, AND CHANGES INDUCED N POPULATION DISTRIBUTION, POPULATION CONCENTRATION, THE HUMAN USE OF LAND ( INCLUDING

COMMERCIAL AND RESIDENTIAL DEVELOPMENT...)"

## **THE DRAFT ENVIRONMENTAL IMPACT REPORT**

The DEIR includes statements that confirm the redirection of the document from the purely physical towards more human-centered considerations:

Appendix O, p.5.13.2-3:

"An environmental injustice exists when 'members of disadvantaged, ethnic, minority or other groups suffer disproportionately at the local, regional sub-national), or national levels from environmental risks or hazards, and/or suffer disproportionately from violations of FUNDAMENTAL HUMAN RIGHTS [emphasis mine] as a result of environmental factors.'"

The disproportionate burden is borne by those in the Prohibition Zone (PZ), who are paying excessive costs in regard to cleaning up the aquifer that is shared by those in the Los Osos Community who live outside the PZ.

The proposed LOWWPis made unnecessarily unaffordable when the County adds General Benefit goals onto the financial backs of the property owners of the PZ, who agreed in a recent Proposition 218 vote to pay only for their special benefit. But in addition to the special benefit of "compliance with the Water Discharge Requirement of the RWQCB" (p.1-10 and 2-2), the residents of the PZ will also pay for the community-wide General Benefit goal "to solve the Level 3 water resource shortage and groundwater pollution" (Appendix O p.5.13-7) and "Alleviate groundwater contamination, primarily nitrates, which have occurred by the use of septic systems THROUGHOUT THE COMMUNITY OF LOS OSOS.(emphasis mine) (p.1-10 and 2-2)."

This is clearly an example of an "inequitable environmental burden borne by groups such as low income and minority populations (Appendix O, p.5.13-2)."

### **Internal Contradiction in the DEIR**

In Appendix O, there appears to be a contradiction between 5.13.4 (Thresholds of Significance) and a statement on page 5.13-3:

#### “5.13.4 Threshold of Significance

“This project will have a significant adverse environmental justice impact if it will:  
“Result in adverse effects of impacts that are appreciably more severe in magnitude or are predominately borne by any segment of the population, for example, household population with low income or a minority population in comparison with a population that is not low income or minority.”

But this Threshold of Significance seems to have been met by low income families on page a5.13-3:

“ The financial investment required by the various families within the Prohibition Zone will have different economic effects because there will be a greater effect on low-income families compared with moderate and high-income families”

This is immediately followed by the now contradictory concept that “Although there may be a disproportionate financial effort on low-income families, the financial effect is not considered an environmental effect and, thus, cannot be considered an economic justice issue.”

### **Miscellaneous Affordability Issues**

**The Porter-Cologne Act.** Section 13241, states:

“13241...

“Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily limited to, all of the following:

...

“(d)economic considerations.”

Economic considerations have not been adequately considered for the LOWWP by the RWQCB or the County.

**The Public Utilities Code** Section 12842 only allows 20 % of the assessed value of Los Osos, in the aggregate, to be spent on a public utility. With decreased values in the current market, some have placed this 20% maximum as low as \$194,000,000. If this is true, the LOWWP cannot cost more than this, perhaps including money already spent (land acquisition, Ripley’s design and consultation, etc.)

### **Lack of Affordable Project Options**

Also increasing the cost of the Project is the limited kinds of options considered in the DEIR. Certain reasonable and potentially less expensive options such as low pressure and vacuum collection systems have been dismissed without sufficient justification and with a lack of analysis. This is in contradiction to CEQA Guideline 15004 (b)(2) and 15126.6:

## **Conclusion**

It is essential both ethically and legally to consider the human factor in the EIR, and to analyze the economic and social effects that the LOWWP will have on the citizens of Los Osos. Lack of affordability is a fatal flaw in the entire Project, and both Environmental Justice and human decency demand a closer and clearer review of the issue.

Bo Barry Cooper  
1543 7<sup>th</sup> Street  
Los Osos, CA 93402

January 30, 2009

(805)458-0740