



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

August 31, 2009

J.H. Ewards Company
P.O. Box 6070
Los Osos, CA 93412

County Of San Luis Obispo
Department Of Public Works
Attn: John Waddell
INTEROFFICE

SUBJECT: APPEAL OF DRC2008-00103 – COUNTY OF SLO - LOWWP
HEARING DATE: August 13, 2009 / PLANNING COMMISSION

We have received your request on the above referenced matter. In accordance with County Real Property Division Ordinance Section 21.04.020, Land Use Ordinance Section 22.70.050, and the County Coastal Zone Land Use Ordinance 23.01.043, the matter has been scheduled for public hearing before the Board of Supervisors. A copy of the appeal is attached.

The public hearing will be held in the Board of Supervisors' Chambers, County Government Center, 1055 Monterey Street, Room D170, San Luis Obispo. The project has a hearing date of **Tuesday, September 29, 2009**. All items are advertised for 9:00 a.m. If you have any questions, you may contact your Project Manager, **Murry Wilson**. A public notice will be sent out and you will receive a copy of the notice.

Please feel free to telephone me at 781- 5718 if you have any questions.

Sincerely,

Nicole Retana,
County Planning and Building Department

CC: Murry Wilson, Project Manager
Jim Orton, County Counsel

#1786

SLO CNTY
PLANNING/BUILDING
DEPT
7/01/09

COASTAL appeal form

San Luis Obispo County Department of Planning and Building

2009 AUG 27 PM 3:36

Please Note: An appeal should be filed by an aggrieved person or the applicant at each stage in the process if they are still unsatisfied by the last action.

PROJECT INFORMATION Name: Los Osos Waste Water File Number: DRC 2008-00103
SLO County - Public Works

Type of permit being appealed:
 Plot Plan Site Plan Minor Use Permit Development Plan/Conditional Use Permit
 Variance Land Division Lot Line Adjustment Other: _____

The decision was made by:
 Planning Director (Staff) Building Official Planning Department Hearing
 Subdivision Review Board Planning Commission Other _____

Date the application was acted on: August 13, 2009

The decision is appealed to:
 Board of Construction Appeals Board of Handicapped Access
 Planning Commission Board of Supervisors

BASIS FOR APPEAL

State the basis of the appeal. Clearly state the reasons for the appeal. In the case of a Construction Code Appeal, note specific code name and sections disputed). (Attach additional sheets if necessary)

see attached
Raising inconsistencies with certified LCP and Coastal Act.

List any conditions that are being appealed and give reasons why you think it should be modified or removed.

Condition Number _____ Reason for appeal (attach additional sheets if necessary)

APPELLANT INFORMATION

Print name: J.H. Edwards Company
Address: P.O. Box 6070, Los Osos, CA 93412
Phone Number (daytime): 805-235-0873

We have completed this form accurately and declare all statements made here are true.

Signature: _____ Date: 8/27/09

OFFICE USE ONLY
Date Received: 8/27/09
Amount Paid: \$

By: Chris Macan
Receipt No. (if applicable): N/A

Coastal appealable form

San Luis Obispo County Department of Planning and Building

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PLANNING/BUILDING
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2009 AUG 27 11:35

Please Note: An appeal should be filed by an aggrieved person or the applicant at each stage in the process if they are still unsatisfied by the last action.

PROJECT INFORMATION Name: Los Osos Waste Water File Number: DR C 2008-00103
Type of permit being appealed: SLO County Public Works
 Plot Plan Site Plan Minor Use Permit Development Plan
 Variance Land Division Lot Line Adjustment Other: _____

The decision was made by:
 Planning Director (Staff) Building Official Planning Department Hearing
 Subdivision Review Board Planning Commission Other _____
Date the application was acted on: August 13, 2009

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 Planning Commission Board of Supervisors

BASIS FOR APPEAL
 INCOMPATIBLE WITH THE LCP. The development does not conform to the standards set forth in the Certified Local Coastal Program of the county for the following reasons (attach additional sheets if necessary).
Explain: _____

INCOMPATIBLE WITH PUBLIC ACCESS POLICIES. The development does not conform to the public access policies of the California Coastal Act - Section 30210 et seq of the Public Resource Code (attach additional sheets if necessary).
Explain: _____

List any conditions that are being appealed and give reasons why you think it should be modified or removed.

Condition Number see attached Reason for appeal (attach additional sheets if necessary)
Raising inconsistencies with Certified LCP and Coastal Act.

APPELLANT INFORMATION
Print name: J. H. Edwards Company
Address: P.O. Box 6070, Los Osos CA 93412 Phone Number (daytime): 805.235-0713

I/We are the applicant or an aggrieved person pursuant to the Coastal Zone Land Use Ordinance (CZLUO) and are appealing the project based on either one or both of the grounds specified in this form, as set forth in the CZLUO and State Public Resource Code Section 30603 and have completed this form accurately and declare all statements made here are true.
Signature: _____ Date: 8/27/09

OFFICE USE ONLY
Date Received: _____ By: _____
Amount Paid: _____ Receipt No. (if applicable): _____

Appeals - COASTAL guide

San Luis Obispo County Department of Planning and Building

7/01/09

Many actions taken by the Department of Planning and Building staff, Building Official may be appealed. Actions by the Planning Department Hearing Officer, Subdivision Review Board, or Planning Commission, to approve or deny a permit application, may be appealed by the applicant or member of the public. In the Coastal Zone, many actions can also be appealed to the California Coastal Commission.

If you wish to appeal a decision, an appeal form must be completed and received by the Records Management Division accompanied by the required fee no later than 14 calendar days after the action, or 7 calendar days after the approval of a "Site Plan" type of land use permit.

Please state the reasons for your appeal as clearly as possible, setting out all of the facts, conditions, and considerations concerning your case under the section entitled "Basis for Appeal" on the form. You may, if you wish, submit a more detailed letter in addition to the required form.

After an appeal has been filed, staff will prepare a response and schedule an appeal hearing. The hearing will be held by the Planning Commission, Board of Supervisors or other Review Authority whichever is so specified under the appropriate Ordinance. You will be notified by mail of the date, time and place of the hearing. It is best that you attend the scheduled appeal hearing so that you may answer any questions that may arise concerning the application and the appeal.

If you are filing an appeal in the Coastal Zone on development not appealable to the California Coastal Commission or on appealable development that is not based upon specific Coastal Act grounds please use the Coastal Form. If however you wish to appeal an appealable coastal project based upon Coastal Zone grounds then you must use the form entitled Coastal Appealable Form.

FEES

When an appeal is requested the following fees apply, depending on which Review Authority you are before, and what type of application you are processing. The fees cover the cost of advertising and mailing, as well as staff evaluation of the appeal and staff report preparation.

APPEALED FROM	APPEALED TO	FEE
Staff Curb, Gutter & Sidewalk Waiver- \$ If waiver is denied	Board of Supervisors	\$ 312.00
Planning Director Interpretation	Planning Commission	\$ 616.00
Planning Director Public Facilities Fees	Board of Supervisors	\$ 616.00
Planning Director Growth Management Ordinance	Planning Commission	\$ 691.00 + RTB
Building Official	Board of Construction Appeals Board of Handicapped Access	\$ 616.00
Subdivision Review Board	Board of Supervisors	\$ 616.00
Hearing Officer	Board of Supervisors	\$ 616.00
Planning Commission	Board of Supervisors	\$ 616.00

* RTB means the applicant will be billed for costs in excess of fees collected

If you have any questions, please contact the Records Management Division at (805) 781-5718.

2009 AUG 27 PM 3:36

County of San Luis Obispo
Planning and Building Department
County Government Center
San Luis Obispo, CA 93408

August 27, 2009

County File No. DRC2008-00103 Assessors Parcel Number(s): treatment plant site:
067-031-001 (proposed), 067-011-022, 067-031-008, 067-031-011, 067-031-037, and
067-031-038 (alternatives)

Supervisory District 2

Attention: Project Manager, Murray Wilson

The J. H. Edwards Company respectfully requests an appeal of the San Luis Obispo County Planning Commission's approval of the above referenced project to the County of San Luis Obispo Board of Supervisors. This appeal text is attached to the official appeal forms for approved development within the Coastal Zone. The proposed project requests approval of a Development Plan/Coastal Development Permit to allow construction and operation of a sewer system to serve the community of Los Osos, which includes a collection system, a sewer treatment facility plant, effluent disposal system and all appurtenant infrastructure in multiple land use categories. The proposed treatment plant site is located at 3515 Turri Road, approximately 3 miles east of the community of Los Osos (known as the Tonini site) and is located in the Agricultural land use category. The Planning Commission relocated the treatment plant to 2198 Los Osos Valley Road (APN 067-011-022; Giacomazzi) and a portion of the effluent disposal system to 2350 and 2780 Los Osos Valley Road (APN's 067-031-008 Andre; 067-031-011, Andre; 067-031-037, Robbins; and 067-031-038, Robbins). The infrastructure for the project is located in the County throughout the community of Los Osos and 3 miles east of the community of Los Osos, in the Estero Planning Area. Said project may include an application for USDA Rural Development Funding. Also approved at the hearing was the Environmental Document prepared for the item. The Environmental Coordinator, after completion of the initial study, found that there was evidence that the project may have significant effects on the environment, and therefore a Final Environmental Impact Report (FEIR) was prepared (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) for this project. The FEIR addressed potential impacts on: Land Use and Planning; Groundwater Resources; Drainage and Surface Water Quality; Geology; Biological Resources; Cultural Resources; Public Health and Safety; Traffic and Circulation; Air Quality; Noise; Visual Resources and Environmental Justice. Mitigation measures were proposed to address these impacts and are included in the conditions of approval. Overriding considerations were determined necessary based on significant and unavoidable impacts associated with agricultural resources.

Throughout this appeal document, the J. H. Edwards Company, herein referred to as “Appellant” will bring attention to shortfalls in the approved project, demonstrate discrepancies in the Final Environmental Impact Report (FEIR) relative to the approved project and inconsistencies with the County of San Luis Obispo’s Certified Local Coastal Plan. The approved project is that project approved by the Planning Commission on July 24, 2009 including the Findings and Conditions.

While supportive of the adjustments made to the Los Osos Wastewater Project by the Planning Commission on July 24, 2009, specifically removing all aspects for use of the 3515 Turri Road aka “Tonini” property from the project, the Commission’s effort does not go far enough to bring a comprehensive wastewater project to the community of Los Osos. The project falls short in a number of areas including the treatment site location, location of dry weather options for disposal of treated effluent, disposal methodology at Broderson site, and various other appeal contentions. The standard for review for the proposed LOWWP is conformity with and adequacy to carry out the provisions of the County’s Certified LUP.

Appeal Contention No. 1:

Inadequate Notice

Formal “Notice” of the above referenced project was sent by postcard to all Los Osos residences as a general notice of the permit process. The notice does not specify the impacts associated with project impacts as they differ from neighborhood to neighborhood. While some neighborhoods will be impacted temporarily by installation of the collection system and others will endure several years of impacts associated with the large staging area at *Pismo Avenue and 18th Street. In contrast, residence living near pump stations will realize impacts in perpetuity and they may be unaware of the changing design components. If the recipient of the postcard is not keenly aware of the details of the project by reading the voluminous FEIR and following project changes they are unaware of the direct impacts to their property and quality of life. Persons living within 300 feet of pump stations and project appurtenances should receive notice specific to project component.

*Condition of Approval, Air Quality, 35. j. and Condition of Approval, Aesthetics, 54 are inconsistent with proposed staging area at Pismo and 18th Street.

Appeal Contention No. 2:

Construction of AB2701

The bill passed by the Assembly in 2006 gives the County of San Luis Obispo specific authority to best meet the needs of Los Osos and its water *and* wastewater issues.

(c) The county may undertake any efforts necessary to construct and operate a community wastewater collection and treatment system to meet the wastewater collection and treatment needs within the district. These efforts may include programs and projects for recharging aquifers, preventing saltwater intrusion, and managing groundwater resources to the extent that they are related to the

construction and operation of the community wastewater collection and treatment system. These efforts shall include any services that the county deems necessary, including, but not be limited to, any planning, design, engineering, financial analysis, pursuit of grants to mitigate affordability issues, administrative support, project management, and environmental review and compliance services. The county shall not exercise any powers authorized by this section outside the district.

The project as presented by the applicant fails to address the serious threat of sea water intrusion to the Los Osos Groundwater Basin. This has resulted in the Certification of a Level III Severity for supply in the lower basin under the Resource Management System. It appears the rate of intrusion is increasing rapidly in a manner that threatens the continued use of the lower basin for domestic supplies. A goal of this appeal is to ask the Board of Supervisors to further address the water supply issues for Los Osos by implementing programs and projects for recharging aquifers, preventing saltwater intrusion, and managing groundwater resources to the extent that they are related to the construction and operation of the community wastewater collection and treatment system. These efforts shall include any services that the county deems necessary, including, but not be limited to, any planning, design, engineering, financial analysis, pursuit of grants to mitigate affordability issues, administrative support, project management, and environmental review and compliance services, as enabled by the special legislation.

The appellant objects to the general approach the project takes assuming the water purveyors (Interlocutory Stipulated Judgment, ISJ) will beneficially use treated effluent to the extent the project does not. This will include necessary planning, design, permitting, funding and construction of necessary measures to manage the Los Osos Groundwater Basin. In light of the sensitive project area, the appellant requests that the Board of Supervisors recognize and modify their project to obviate the need for water purveyors to plan, design, permit and finance water infrastructure development. The current project enjoys treatment under Section 7 under the Federal Endangered Species Act, while future purveyor projects would likely be delayed by the onerous and costly pursuit of a permit under Section 10 of the Act.

If beneficial use of the treated effluent isn't made part of the LOWWP it will be deferred into the future with an uncertain outcome and at an unknown cost. The ISJ is coercive, not compulsory and future projects to be performed by purveyors identified in the ISJ Work Program may or may not ever be accomplished.

Appeal Contention No. 3:

Two Proposition 218 Ballots

Vacant properties have been omitted from the service area. This includes both infill lots and larger tracts of land.

While development is never guaranteed, these properties were assessed in all previous projects including the most recent (Tri-W) project and will/have been paying on

that 20 year assessment with no apparent benefit. The funds spent in pursuit of the former (Tri-W) project (engineering, easements, studies, property, etc.) are being rolled into the current project and leaving the vacant properties without access to sanitary sewer service which would enable the beneficial use of individual properties.

There are approximately 500 infill lots left within the Prohibition Zone and their contribution to the wastewater project is expected to offset the cost of the \$165 million project by no less than \$27 million. It makes little to no sense that the wastewater conveyance lines will be going right by these properties with no ability to connect. The deferral of service to vacant properties into the future with an uncertain outcome and at a cost that is unknown as well does not afford these properties an equal opportunity.

Condition of Approval, 5 and 92; currently, developed properties will incur costs of the project above and beyond the current assessment of approximately \$25,000 per home. Without infill development there is a project wide loss of 'economies of scale' and the burden of cost will ultimately fall on existing development. Furthermore, without service availability for new or underdeveloped properties the community will continue to stagnate with little to no economic development and no Strategic Growth to assist with regard to AB32 or SB375.

Appeal Contention No. 4:

Inadequate Review of Alternatives

The Final Environmental Impact Report fails to adequately analyze feasible alternatives: Specifically, Conditions of Approval, Approved Development 1.a and 1.d.

Alternative Sites analysis:

The applicant claims to have performed a co-equal analysis of project treatment site alternatives. Arguably, the most viable site, Gorby, was not analyzed as a treatment plant location. The Planning Commission efforts to relocate the treatment facility from the Tonini site to the Giacomazzi site are appreciated, yet the constraints identified in the DEIR render their decision infeasible, when potentially feasible alternatives exist.

Agricultural Policy 24 discourages conversion of agricultural lands to non agricultural uses through the following policy:
AGP a. (4). *Avoid location new public facilities outside urban and village reserve lines unless they serve a rural function or there is no feasible alternative location within the urban village reserve lines.*

We would agree that there are no feasible alternatives within the Urban Reserve Line (URL), but there is a feasible location **adjacent to** the URL with Gorby on the urban fringe. A project at Gorby would likely be consistent with AGP 24, would also reduce environmental effects and it would provide the broadest options for beneficial use of treated effluent via its strategic location as a distribution hub. Condition of Approval, 95, Mitigation 5.11-A1, requires procurement of an ag easement related to the conversion of ag resources which is not applicable to the Gorby site.

The Giacomazzi site is considered "Farmland of Statewide Importance", once used for irrigated pasture, dryland farming, confined livestock, or dairy facilities, aquiculture poultry facilities, or dry grazing that has since become idle. See Exhibit 5.11-2, Farmland Designations map. In contrast, the Gorby site holds no distinction due to the fact that the parcel currently houses an equestrian facility.

Physical characteristics of the Cemetery, Branin and Gacomazzi sites only differ slightly. The similarities of these parcels hardly provide alternatives for an exhaustive treatment site analysis. An adequate alternatives analysis would have included all potential sites adjacent to or near the URL with varied geography. In essence there were only two treatment sites reviewed by the FEIR, the Cemetery Complex and Tonini.

The Giacomazzi site raises significant growth inducing questions, as it is located approximately one half mile from the Los Osos Urban Reserve Line (URL). AGP 24 a. (4) requires avoid locating new public facilities outside urban and village reserve lines unless they serve a rural function or there is no feasible alternative location within the urban village reserve lines.

In the DEIR the Giacomazzi site is mapped as having "Very High Potential" for liquefaction. Conversely, the CEQA Findings (page 15) characterize the Giacomazzi site as having "low potential for liquefaction"; the latter statement appears to be in error. The record shows that the Gorby site is in an area of "Moderate Potential" for liquefaction.

The Giacomazzi site is considered a Visual Resource under Section 23.04.210 of the CZLUO, the parcel is in the foreground of the Morro's Scenic Corridor, this open space is a scenic, visual resource that could be protected if the Gorby site were considered as a feasible alternative.

California Public Resources Code Section 30251:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The Giacomazzi treatment plant layout as presented at the Planning Commission hearing of August 13, 2009 (Page 3-168 Site Layout Plan, Attachment 2) clearly ignores impacts to wetlands. Considerable testing was done onsite, with pits dug at W-1 and W-2 drainage fingers that form a funnel criss-crossing the Giacomazzi site at the project location.. These pits identified wetland characteristics of the land. Specifically, W-1 Pits 4-6 identified hydrophytic vegetation; hydric soils and wetland hydrology were encountered during the study. Due to agricultural practices much of the vegetation

(hydrophytic) that would otherwise be present in these areas has been disked under apparently reducing overall area of project impacts. The Sensitive Biological Resources Map (FEIR Exhibit 6) clearly demarcates wetland fingers bisecting the Giacomazzi parcel. These wetland fingers represent environmentally sensitive habitat areas (ESHA) and are afforded protections under the LCP.

The FEIR further identifies Special Status Wildlife in the vicinity of the Giacomazzi drainage features specifically;

California Tiger Salamander
Southwestern Pond Turtle
Coast Range Newt
Two Stripe Garder Snake
Northern Harrier
Yellow Warbler
*Southwestern Willow Flycatcher

*Federal and State listed endangered species.

These species are all associated with the Warden Lake and Warden Wetlands which are adjacent to the Giacomazzi site. There are no mitigation measures proposed for impacts to wetlands on the Giacomazzi site.

It is consistent with planning policies to avoid impacts wherever possible, the constraints of the Giacomazzi site are such that feasible alternatives should be explored in an effort to reduce impacts to wetlands and ESHA's. CZLUO Section 23.07.172 e. (1) Wetlands Site Development Standards and Section 23.08.288(d) Public Utilities Facilities Development Standards. The LUP requires that only resource dependant uses be allowed within ESHA; that is new development must completely avoid ESHA if it is not dependant on the ESHA.

CZLUO, 23.05.034 (c), Grading Standards, will be violated by grading within 100 feet of ESHA as part of a project at the Giacomazzi site, due to alterations necessary to drainage finger W-1 into Warden Wetland and Warden Lake and on to Morro Bay.

The appellant has provided a Pro-Con Analysis of the Gorby site for the benefit of the Board. While this property was identified in the FEIR it was not analyzed fully.

Gorby Pro-Con Analysis

Advantages of Gorby Property

(Los Osos Valley Equine Farm, 1869 Los Osos Valley Rd.)

Gorby is 50 acres in total area with approximately 20 acres of usable flat land presently occupied by an equestrian facility in the box canyon at the South west corner of the valley. Site is accessible from Los Osos Valley Road approximately six-tenths of a

mile to the South. The conversion of the horse ranch to a wastewater treatment facility and distribution hub for the beneficial use of treated effluent represents an adaptive reuse of the site and optimizes water resource management. Please note that the Gorby site is already developed, impacts to biology, archeology, and prime ag (6 acres identified in the DEIR) are impacts already realized. The use of the Gorby site in a redevelopment/Brownfield scenario for a wastewater treatment facility and treated effluent distribution hub is the highest and best use of the site all things considered. Please see Treated Effluent Distribution map attached, the Gorby site represents a "small footprint" project with associated cost savings.

** Gorby currently boards dozens of horses with their associated waste stream; which would be removed, further protecting Los Osos Creek and Morro Bay from these point and non-point pollution sources. Ideal Brownfield redevelopment site.*

** Nearest receptors (homes) are upwind and across the creek from the site. This is low density Residential Suburban zoning with parcels ranging from 1-10 acres in size.*

** Adjacent to the Los Osos Urban Reserve Line and LOCSD boundary. This location addresses potential "growth inducing" arguments that plague sites further removed from the urban reserve line.*

** Gorby overlies the Los Osos Groundwater Basin and is proximate to Los Osos Creek for potential summertime creek discharge. The Paso Robles Formation (lower aquifer) surfaces at Los Osos Creek in this vicinity. Also, the site strategically overlies the creek valley alluvial aquifer, also known as Creek Compartment. This concept of a surface water discharge has been endorsed by the Coastal San Luis Resource Conservation District. The primary test in considering an NPDES permit for a surface water discharge from the CCRWQCB is whether, or not an entirely land disposal project is feasible. A cursory review of the history of LOWWP's and the current proposed project would indicate that it is not feasible. SLO County has considered a surface water discharge during the summer time in the vicinity of the Gorby site. See Morro Group August 1987 FEIR and Appendices; and Morro Group September 1989, SEIR.*

** Proximate to the Broderson winter time disposal site (approximately 1.5 miles from Gorby). Please see the Treated Effluent Map for treated effluent disposal distribution from Gorby. With adequate disposal options for treated effluent, limited to no storage of treated effluent would be necessary.*

** Nearby agricultural interests overlying the Los Osos Groundwater Basin have been willing to consider participation in an ag in-lieu program. Treated effluent would be conveyed to agricultural properties overlying the basin in exchange for reduced groundwater extractions by agriculture. Please see Treated Effluent Disposal map.*

** The wastewater facilities would be out of site, hidden in the canyon and out of the scenic view corridors.*

** The site has excellent solar access for installation of solar panel arrays.*

** Limited to no impact to prime Ag soils and not under Williamson Act contract.*

** Construction of the collection system can begin and the treatment facility may be phased subsequently to allow the horse ranch business(s) time to discontinue operations over a 1-year period before treatment facilities begin construction.*

** In combination with the various disposal options outlined here the overall wastewater project with Gorby as a treatment site location is contained within a small "footprint" and optimizes the length of collection system and transmission of treated wastewater pipelines ultimately reducing costs. Please see Treated Effluent Disposal map.*

** With effective seasonal disposal options (winter and summertime discharge strategies) a balance between supply and foreseeable demand for water within the basin may be achieved without the need for imported water.*

** The development of a wastewater project at this location is consistent with the Certified Local Coastal Plan and Coastal Act.*

The FEIR diminishes the potential for Gorby site for a number of reasons. Most notable is the statement of unwillingness to sell on the part of the property owners. Other misplaced reasons include the potential presence of the Los Osos Fault (Strand A), Los Osos Creek is subject to flooding, sensitive receptors nearby, potential impacts to archaeological resources, potential biological impacts (Red Legged frog and Steelhead trout), Los Osos Creek setbacks and impacts to prime soils.

Strand A of the Los Osos Fault is shown to bisect the property in the DEIR. In fact, this an inferred fault because the fault line as shown is not located accurately and is based upon questionable fault traces. At the Gorby site a break-in-slope (bis) is of uncertain origin, this bis may have seismic implications; however it may also be an erosional feature. The only way to verify the origin of the bis and the potential presence of a fault is to conduct field testing. This field testing has not been done to date. The Gorby site has a moderate potential for liquefaction in contrast to the very high potential at the Giacomazzi site for example. Ground movement during a seismic event would have comparable effects on all of the treatment sites considered in the Los Osos Valley. (See Treated Effluent Distribution Plan). The most important seismic consideration is that related to a ground rupture which may be fully assessed by field testing as referenced above. The source document for the depiction of faults in the DEIR is the PG&E report of July 1988 (portion of plate 16). Maps of Faults, Scarps and Lineaments

along the Los Osos Fault Zone, South-Central California, Morro Group, September 1989, SEIR.

The Gorby site is shown to be affected by being partially within the 100-Year Flood Hazard map. Most, if not all facilities would be located outside the affected area given a minimum 50 foot setback/buffer from Los Osos Creek would be required.

The only homes in the vicinity are part of a low density neighborhood that lies upwind from the Gorby site. The Los Osos Creek also separates the Gorby site from the nearby receptors. Also, an additional buffer is achieved because of the elevational differences (i.e. Gorby is in the valley below most of the homes in the vicinity). The Giacomazzi site, for instance, has dozens of residential neighbors in the immediate area and they have formed an opposition group (Bear Valley Alliance) and retained legal counsel.

Potential impacts to archeological resources will be addressed with monitoring and creek setbacks following surface surveys that should be conducted.

Potential biological impacts may only be determined following appropriate surveys which have not been completed to date.

Effluent Disposal

The applicant claims to have done a co-equal analysis of effluent disposal alternatives. On the contrary, the applicant provides only one disposal scheme, a two pronged approach by which 2/3 of the effluent is sprayed on the Tonini site in an effort to "lose" the wastewater and 1/3 dedicated to the Broderson site for subsurface disposal. Coincidentally, the National Water Resource Institute did not analyze a surface water discharge disposal option into Los Osos Creek nor did they review the Gorby site as a potential treatment location and effluent distribution hub on a seasonal basis. The approved project as conditioned in 1.d. provides for distribution lines for urban and agricultural re-use and monitor wells as reflected on page 3-170, Attachment 4. Other approved conditions include 97 and 103 which further discuss priorities of disposal options. Inherent in the project description is a provision for sprayfields at the Andre and Robbins sites. The approved disposal options were not analyzed in the DEIR and appear to be infeasible in the case of urban re-use or have low to no sea water intrusion mitigation benefits.

Effluent disposal should be considered in a seasonal context. Summertime deployment of treated effluent in an Ag in-lieu disposal scenario would work in concert with disposal into Los Osos Creek where the lower basin is exposed during dry weather. A creek discharge of treated effluent would likely have a high seawater intrusion mitigation factor given the unique hydrogeologic characteristics of the lower groundwater basin. (Please see Technical Memo #3 prepared by Kenneth Schmidt, July 10, 2006). An NPDES permit for the surface water discharge would be required. This disposal

option was the dry weather disposal option for the LOWWP as discussed in the Morro Group August 1987 FEIR and Appendices; and Morro Group September 1989, SEIR.. Wintertime disposal is proposed at the Broderson site using leachfields for subsurface disposal. Gravity/dry wells should be considered for subsurface disposal instead of the leachfields because of superior performance with respect to groundwater mounding as discussed in the March 2004 geotechnical report prepared by Fugro West, Inc. It is anticipated Broderson will be used exclusively for treated effluent disposal during periods of wet weather.

A key distinction relates to the use of the words “Ag-Exchange and Ag In-lieu”. Ag-Exchange is a relationship where farmers receive treated effluent and they provide fresh water supplies from their wells in exchange. Given the uncertain water quality underlying agricultural uses an in-lieu program appears more desirable. An ag in-lieu program would provide treated effluent to farmers in consideration of farmers not pumping their wells overlying the Los Osos groundwater basin.

As for urban reuse, there are limited opportunities, if any, to utilize treated effluent for Urban Reuse. Locations, including schools, golf course and the cemetery are problematic for a number of reasons. The most notable constraint is the cost to convey treated effluent to any given location as compared to the economic benefits of receiving the effluent. There are also some social/political issues when it comes to using effluent on play fields at schools. As a practical matter there is limited turf area in the community available for use of treated effluent. With regard to individual residences, the exterior water use in Los Osos is only 30 percent of daily water use and with drought tolerant landscaping, exterior water use will likely be reduced further in the future. The cost benefit analysis of providing purple pipe to all homes in the community is cost prohibitive. The following table summarizes effluent disposal locations as proposed under the current Planning Commission approval as compared to alternatives.

Effluent Disposal Summary			
<u>Planning Commission Approved</u>		<u>Optimal</u>	
<u>Disposal Location</u>	<u>AFY</u>	<u>Disposal Location</u>	<u>AFY</u>
Broderson	448	Broderson	448
Ag In-Lieu	370	Creek Discharge	350
Urban Reuse	90	Ag In-Lieu	370
Sprayfields	<u>292</u>	Limited Urban Reuse (Habitat Mitigation)	32
		No Sprayfields	<u>0</u>
Total	1200AFY	Total	1200AFY

Appeal Contention No. 5: Underestimated ESHA Impacts
SECTIONS 23.07.170-178 OF THE CZLUO

The LUP requires that only resource dependant uses be allowed within ESHA; that is new development must completely avoid ESHA if it is not dependant on the ESHA.

Wetlands:

Pump Stations and pipelines located in or near wetlands have not been fully analyzed or adequately surveyed since the 2005 LOCSD project. Areas not affected by that project may be affected by this project.

1. Doris & Lupine is on (or very near) a saltwater marsh/wetland, within 75 ft. Public Works claims the placement of the pump station can be adjusted to set back the full 75 ft. This assertion can not include fencing surrounding the facility which is considered development.

2. Paso Robles Ave. and 18th Street, this pump station is near or in a wetland. This is a high groundwater area; sensitive plants have grown very near the pump station site. A drainage culvert is in the vicinity, wetland vegetation is prevalent.

3. Paso Robles Ave. and 3rd Street, (at the edge of the bay), the applicant has been given a variance for placement of this pump station within 75' of a coastal wetland. (Condition of Approval, Approved Development 1. i.)

It is our contention that use of alternative technology (i.e. vacuum, STEP/hybrid) would alleviate the need for placing these intensive facilities in sensitive areas. For example, the 1998 SLO County project Engineer George Gibson designed the Paso Robles and 3rd Street pump station a full block away on 4th Street, away from wetlands to accomplish the same desired effect. The appellant asks the Board of Supervisors to avoid impacts wherever possible and use technologies that would avoid sensitive resources.

The wetland at Los Olivos and Mountain View is missing from wetland mapping and the recently added Attachment "B"-- Pipes below existing groundwater (GW) levels (as much as 1/4 mile long) (Planning Commission Staff Report hearing of August 13, 2009, Page 3-169, Attachment 3).

Costs associated with Condition of Approval, Biological Resources, 61, revegetating the Broderon leachfield site at a tremendous cost to the community. The counter productive condition on this utility yard will invite endangered and threatened species back to inhabit the site, just for the "taking" in a maintenance scenario every five years. The appellant suggests a crushed granite base be placed over the site to detour species from returning to the work area.

Costs associated with wetland preservation i.e. Conditions of Approval, Post Construction, 87, monitoring wetland health. Certainly wetlands in the inland areas of Los Osos can be monitored and measures taken to mitigate losses, but mitigation along the bay fringe makes little sense, the devastating effects of sea level rise and project

effects will kill off the wetlands it will be nearly impossible and very costly to decipher which negative impact is worse.

Appeal Contention No. 6: Decommissioning Septic Systems

The contents of four thousand, seven hundred and seventy septic systems will need to be pumped out and hauled away. The FEIR fails to identify where the contents will go and at what interval. The Santa Maria Wastewater Treatment Facility is ill equipped to handle the volume Los Osos will generate of this material during the decommissioning period. This issue was brought to the attention of the DEIR comment letter P24 the FEIR response P24-33 is nonsensical, stating "*residences could hook up to the new sewer and then pump and abandon their tanks at a somewhat later date.*" The FEIR is riddled with this type of disrespectful response. This response reflects a limited understanding of how decommissioning and hook-up should take place at one time. This is an already daunting, and in many cases expensive task, homeowners will not be interested in digging up their yards twice to install sewer laterals and empty the contents of their septic tanks at some future date at double the cost and double the impact.

The project does not consider septic contents be delivered to the new LOWWP as an alternative to Santa Maria, nor does it address where septage from neighborhoods outside (some 750 homes) the prohibition zone will take their septage once the LOWWP goes on line.

There are no Conditions of Approval or Findings to address these concerns.

Appeal Contention No. 7: Unaddressed Growth Inducing Impacts

The Giacomazzi site raises significant growth inducing questions, as it is located approximately one half mile from the Los Osos Urban Reserve Line (URL). New public facilities outside of the URL, specifically sanitary sewer service is potentially available to serve development around the facility yet outside of the URL. On the other hand, the Gorby site being contiguous to the URL and LOCSD boundary raises no growth inducing impacts. The Gorby site represents a feasible alternative at the URL which is analogous to a feasible alternative location within the urban or village reserve lines.

Coastal Act policies require that the maximum amount of prime agricultural lands be maintained in production and that conflicts between agricultural and urban land uses be minimized. To carry out the goals of the Coastal Act, the Local Coastal Program delineates long-range urban/rural boundaries to support long-term agricultural use free from urban encroachment.

There are no Conditions of Approval or Findings to address this concern.

Appeal Contention No. 8:**Tertiary Treatment**

Modify Condition of Approval, 6, for disinfection to delete chlorination/dechlorination and substitute Ultraviolet (UV) disinfection. UV disinfection is a physical process rather than a chemical disinfectant, which eliminates the need to generate, handle, transport, or store toxic/hazardous or corrosive chemicals. Please see Wastewater Technology Fact Sheet Ultraviolet Disinfection, USEPA, September 1999, EPA-F-99-064.

Appeal Contention No. 9:**Inadequate Statement of Overriding Considerations**

The Planning Commission approved project finds project impacts are outweighed by the benefits of the project via a Statement of Overriding Considerations. In fact the applicant's project and the Planning Commission's alternative project neglected to analyze all feasible alternatives, specifically adjacent to or within the URL. To comply with CEQA, the LCP and Ag Policy 24 the project must exhaust all feasible alternatives as discussed in the above appeal.

Appeal Contention No. 10:**Further CEQA Analysis Necessary**

Under CEQA, there are viable alternatives to the proposed project that would likely reduce impacts to Land Use and Planning; Groundwater Resources; Drainage and Surface Water Quality; Geology; Biological Resources; Cultural Resources; Public Health and Safety; Traffic and Circulation; Air Quality; Noise; Visual Resources, Environmental Justice and Growth Inducing potential. We believe further environmental review be performed for inclusion in the project.

1. Treatment site locations including site specific project review of the Gorby site.
2. Effluent disposal options, summer time or dry weather approved by Planning Commission and shown on Attachment 4, page 3-170. Surface water discharge into Los Osos Creek via an NPDES permit at the AT&T crossing as per 1987 Final EIR, Morro Group.
3. Miscellaneous other refinements.

This document would be performed in either a Supplemental or Subsequent EIR as determined by the lead agency.

Throughout the course of the review of the applicant's proposal much was discussed about what is feasible, in terms of time and money, yet the applicant wasted \$7 million and one year on a fatally flawed "Preferred Alternative".

The Appellant reserves the right to raise additional issues regarding the project during the appeal consideration relative to the Conditions of Approval and Findings for Coastal Development Permit/Development Permit and CEQA.

Treated Effluent Distribution map

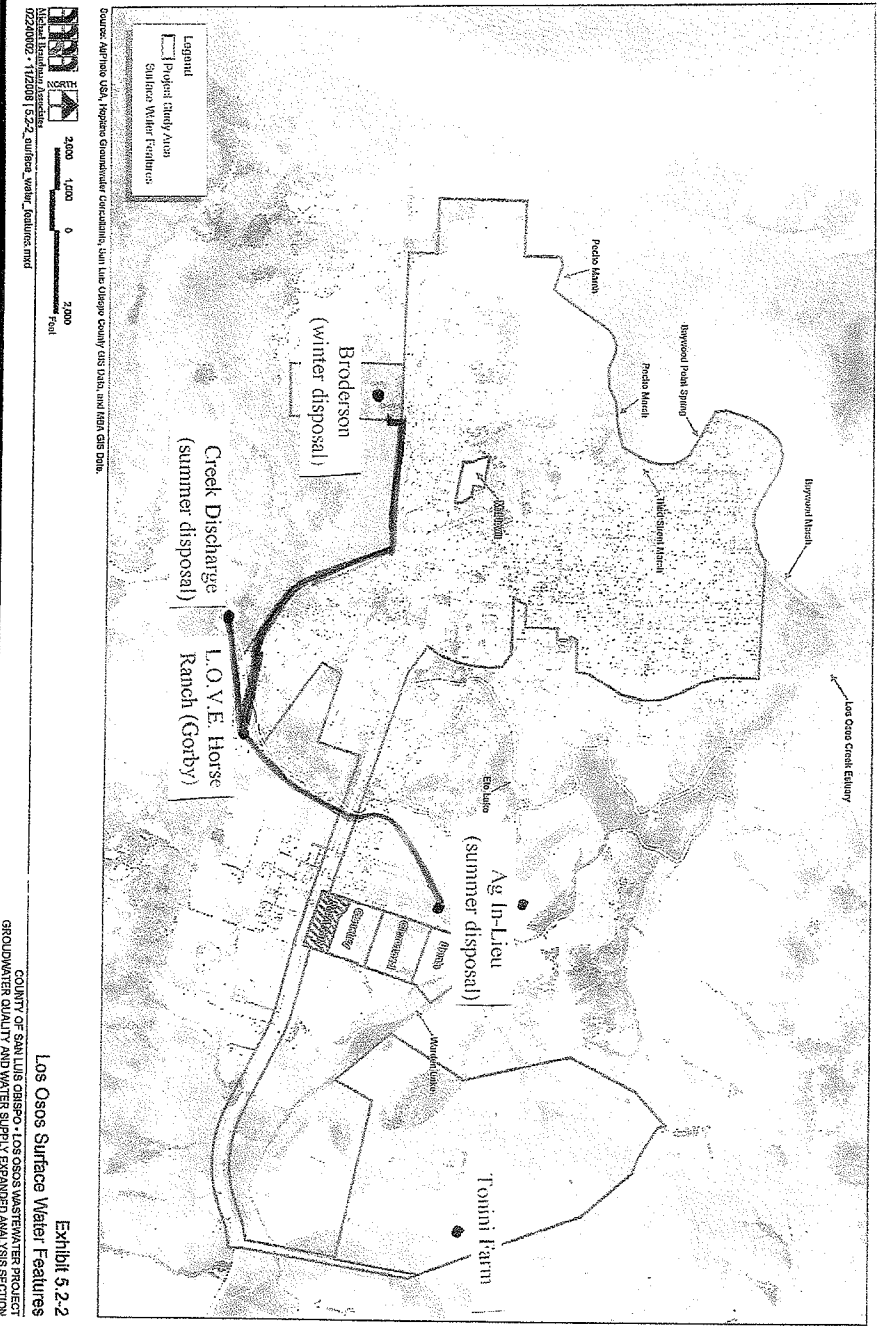


Exhibit 5.2-2
 Los Osos Surface Water Features
 COUNTY OF SAN LUIS OBISPO • LOS OSOS WASTEWATER PROJECT
 GROUNDWATER QUALITY AND WATER SUPPLY EXPANDED ANALYSIS SECTION