

SAN LUIS OBISPO COUNTY  
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP  
DIRECTOR

August 31, 2009

Surfrider Foundation, San Luis Bay Chapter  
Attn: Marry Fullwood – Los Osos Rep  
P.O. Box 13222  
San Luis Obispo, CA 93406

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

#793

SLO CNTY  
PLANNING/BUILDING  
DEPT

2009 AUG 27 PM 4:21

# COASTAL APPEALABLE FORM

San Luis Obispo County Department of Planning and Building

7/25/08

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 Wastewater Project File Number: DRC2008-00103

Type of permit being appealed:

- 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: \_\_\_\_\_

The decision is appealed to:

- Board of Construction Appeals
- Board of Handicapped Access
- 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: Please refer to the attachment

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 1(i) Reason for appeal (attach additional sheets if necessary)

This condition allows an impermissible variance that reduces the minimum 100 foot wetland buffer required in CZLUO 23.07.172(4) to 75 feet.

Correspondence: Mary Fullwood  
Los Osos Rep. SLB Surfrider  
(805) 528-7640 eco.shifte@att.net

### APPELLANT INFORMATION

Print name: Surfrider Foundation, San Luis Bay Chapter

Address: P.O. Box 13222 San Luis Obispo, CA 93406 Phone Number (daytime): 805 801 6205

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: Jeff Pienak Date: August 27, 2009  
Jeff Pienak, Chair SLB Surfrider

### OFFICE USE ONLY

Date Received: 8/27/09  
Amount Paid: 0

By: Chris Mace, Sec.  
Receipt No. (if applicable): \_\_\_\_\_

(Submitted by MARY FULLWOOD, REP)  
(CHAIR JEFF PIENAK)

2009 AUG 27 PM 4:21

# COASTAL APPEAL FORM

San Luis Obispo County Department of Planning and Building

7/25/08

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 Wastewater Project File Number: DRC2008-00103

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)  
Please refer to the attachment

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

Condition Number 1(i) Reason for appeal (attach additional sheets if necessary)  
This condition allows an impermissible variance that reduces the minimum 100 foot wetland buffer required in CZLUO 23.07.172(4) to 75 feet.

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Print name: Surfrider Foundation, San Luis Bay Chapter  
Address: P.O. Box 13222 San Luis Obispo, CA 93406  
Phone Number (daytime): 805 801 6205

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

Signature: [Signature] Date: August 27, 2009  
Jeff Pranak, Chair, SLB Surfrider

OFFICE USE ONLY  
Date Received: 8/27/09  
Amount Paid: 0

By: [Signature]  
Receipt No. (if applicable): \_\_\_\_\_

2009 AUG 27 PM 4: 21



**Surfrider  
Foundation.**

**San Luis Bay Chapter**

August 27, 2009

Bruce Gibson, Chair  
San Luis Obispo County Board of Supervisors

Cc: Sarah Christie, Chair, San Luis Obispo County Planning Commission  
Jonathan Bishop, California Coastal Commission

**RE: Appeal of Los Osos Wastewater Project (LOWWP), Coastal Development Permit /  
Development Plan DRC2008-00103 / County of San Luis Obispo**

*Via Electronic Mail*

Dear Chair Gibson and fellow Supervisors,

The Surfrider Foundation, San Luis Bay Chapter ("Surfrider") submits this document as substantiation for its appeal of the County Planning Commission's August 13 decision regarding the Development Plan DRC2008-00103 for the Los Osos Wastewater Project ("LOWWP"). The Surfrider Foundation is a non-profit environmental organization dedicated to the protection and enjoyment of the world's oceans, waves and beaches, for all people, through conservation, activism, research and education.

Based on the information presented in this is appeal, Surfrider is requesting review of the Planning Commission's decision by the San Luis Obispo County Board of Supervisors ("BOS"). Specifically, Surfrider requests the BOS to review the proposed project's impacts to Environmentally Sensitive Habitat Area ("ESHA") and wetlands, and to approve a project that appropriately complies with existing law and County policies protecting ESHA and wetlands. Additionally, given the Planning Commission's approval of a project that relies on a significant increase in water conservation, the increase of which Surfrider is supportive, and the absence of additional significant information and analysis as enumerated below, Surfrider finds that the FEIR is deficient and must be revised and recirculated for comment, pursuant with 14 CCR § 15088.5(a)(1). Surfrider therefore appeals the Planning Commission's certification of the FEIR and requests reconsideration of this decision by the BOS, pursuant with 14 CCR § 15090(b).

Surfrider requests that fees associated with this appeal be waived since legitimate issues relating to inconsistencies with County LCP and General Plan policies, as well as Coastal Act policies, are raised in this appeal.

### **Impermissible Development of ESHA**

*Impact 5.5-A: The project will have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plan, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.*

*Impact 5.5-C: The project will have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.*

*Impact 5.5-E: The project will conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.*

Surfrider concurs with the above findings in the Environmental Impact Report ("EIR") that the project will have potentially significant impacts in the areas identified; however, Surfrider asserts that these impacts have not been appropriately mitigated or avoided, and that failure to do so requires a change in the project so that these impacts.

### Wetlands

The Coastal Act expressly prohibits siting coastal-dependent development in wetlands (Coastal Act Section 30255). LCP Coastal Plan Policy Chapter 6, Section 7 recognizes coastal wetlands as environmentally sensitive habitat area (ESHA), and states that the "natural ecological functioning [...] of wetlands [...] shall be protected, preserved and where feasible restored" (emphasis added). LCP Coastal Plan Policy Chapter 6, Policy 13 requires that diking, dredging and filling activities for wetlands shall conform to provisions set forth in the Coastal Act. Section 30233 of the Coastal Act only allows diking, filling or dredging of wetlands where there is no feasible less environmentally damaging alternative, and *only* in specific instances, such as incidental public services (Section 30233(a)(4)). This policy further limits disturbance of wetlands to specific instances, including incidental public service purposes, and in the case of Morro Bay wetlands (which, according to the Wetlands Policy in the LCP Coastal Plan Policies, includes Los Osos Estuary), only "very minor" incidental public facilities (per Section 30233(c)).

Based on the above policies, it is clear that permissible development on wetlands is very limited, and that the LOWWP does not meet the limited criteria for such development. Therefore, development on wetlands must be avoided. In the case of the proposed project, there is a feasible alternative in the STEP/STEG collection system, which has onsite pumps and would avoid disturbance of wetlands; to this end, STEP/STEG or another feasible collection alternative that avoids filling or dredging these wetlands must be considered.

Additionally, development adjacent to wetlands must not significantly disrupt the resource, per LCP Coastal Plan Policy Chapter 6, Policy 1. CZLUO 23.07.172 (4)(A) provides that the buffer distance to avoid significant disruption to the resource is 100 feet, and can only be less than 100 feet (but no less than 25 feet) in limited circumstances described in CZLUO 23.07.172 (4)(B). The pump station located at 3<sup>rd</sup> Street and Paso Robles Avenue has not met these limited criteria and is therefore held to the 100 foot buffer. For this reason, Surfrider requests the repeal of Condition 1(i) from the Planning Commission's Conditions of Approval.

## ESHA

The Planning Commission applies a low threshold for development on ESHA, citing that there will be no significant impact on the identified habitats and, therefore, the threshold for protecting ESHA has been met. However, Section 30240(a) of the Coastal Act takes a two-pronged approach, and states that "Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, *and* only uses dependent on those resources shall be allowed within those areas"(emphasis added). Given that the wastewater project does not depend on use of ESHA, disturbing ESHA and more specifically placing pump stations on ESHA is not permissible by the Coastal Act. Further, destruction of ESHA cannot be justified through mitigation when destruction can be avoided. "The Coastal Act does not permit destruction of an environmentally sensitive habitat area [ESHA] simply because the destruction is mitigated offsite. At the very least, there must be some showing the destruction is needed to serve some other environmental or economic interest recognized by the act"(Bolsa Chica Land Trust v. Superior Court, 71 Cal. App. 4th 493, 508 (1999)).

Although a STEP/STEG collection system (as outlined in Project Alternative 1 in the DEIR) does not avoid impacts to ESHA, this system causes less impacts to ESHA than the gravity system in Project Alternative 4, which would include an additional crossing of Warden Creek and two additional crossings of an unnamed drainage feature (referred to as drainage T-1) to accommodate the raw wastewater pipeline to the treatment plant and the removal of the lines to the Giacomazzi property (DEIR, pp 5.5-7 through 5.5-19). Additionally, pump stations for a gravity system would be located on ESHA as described on page 5.5-36 of the DEIR:

Impacts resulting from pump station developments would be permanent. Terrestrial habitats within these areas contain suitable habitats for the Morro manzanita, Morro Bay blue butterfly, and Morro shoulderband snail.

Since the collection system in the Proposed Project impermissibly impacts ESHA, due to the fact that an alternative exists with less impacts to ESHA, Surfrider requests that the BOS consider alternative collection systems.

## **Deficiencies in the EIR**

### Biosolids Hauling

The CEQA document is overly conservative in its assumptions about the frequency that septic tanks would need to be pumped using a STEP collection system. In the April 30, 2008 Technical Memorandum on Septage Hauling, current septic tanks that are sized at 1500 gallons are only pumped every ten years (Table 2, page 5). The CEQA document relies on an estimated frequency of pumping of every two years, which is a five-fold increase from estimated 2008 levels. Even assuming that compliance with the waste discharge requirements requires pumping every five years, the CEQA document's assumption is 150% more frequent. This massive overestimation inordinately skews the impacts associated with septage pumping and hauling and does not allow for meaningful comparison to other collection system alternatives.

Additionally, if the Cold Canyon facility is not willing or able to accept biosolids as speculated in the DEIR, then impacts related to disposal of biosolids would need to be reevaluated. Increased distances for biosolids for proper disposal would result in increased impacts related to hauling. Given that implementation of a STEP collection system results in the creation of fewer biosolids to handle and dispose of than a gravity system (DEIR p 3-21), the overall increase in impacts resulting from biosolids disposal for a gravity system could be significantly greater than biosolids disposal for a STEP system if longer distances are traveled to reach a disposal site.

However, there is no baseline data provided in the EIR to illustrate the impacts of biosolids hauling, nor is there data that expressly quantifies the distance that biosolids will be hauled for disposal, nor has it been confirmed that a local landfill will accept biosolids. The absence of analysis of biosolid hauling and environmental impacts leaves a significant gap in information needed to adequately identify and mitigate impacts. Failure to consider these impacts is inconsistent with CEQA and the Estero Area Plan (Chapter 6, Section V (A)(5)).

#### Wetlands Delineation Criteria

Further, as was suggested in the comments Surfrider submitted in response to the Notice of Preparation, CEQA review needed to include an analysis of impacts to wetlands as interpreted under the Coastal Act, as opposed to limiting analysis to impacts on wetlands as defined by Section 404 of the Clean Water Act. The California Coastal Commission's regulations (14 CCR) establishes a one parameter definition for delineating wetlands, where only one of the three criteria needs to be met to establish wetland conditions:

Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. (14 CCR Section 13577)

As such, a qualified biologist needs to be retained to identify qualifying soils, plant species and hydrologic conditions so that wetlands can be appropriately delineated. In absence of such a delineation, impacts to wetlands can not be adequately analyzed or mitigated.

#### Inadequate analysis of impacts of water conservation on flows and collection system functionality

The generic response provided in the FEIR, which is in response to DEIR comment P36-10:

"In Los Osos, the high density of development essentially guarantees sufficient flows to operate a gravity system, even when water flows are reduced due to conservation."

does not address the concern, as it does not describe minimum flows needed to ensure proper function of the collection system.

Furthermore, the Planning Commission decision calls for significant increases in water conservation. In the Conditions of Approval, Item 1(k) sets a maximum water usage target of 50 gpc/d—roughly equivalent to a 25% conservation target based on current usage. The impacts of this level of increased water conservation have not been considered by the EIR

Additionally, in August 2009, the state of California adopted new standards for the construction, installation and alteration of graywater systems for indoor and outdoor uses. These new standards will make it easier for homeowners to get permits to install these technologies for their own homes. This may result in additional increased water conservation for outdoor water usage, in addition to the savings that the Planning Commission's condition would achieve.

Given this new information, the FEIR should be revised to include a range of water conservation scenarios so that the systems are designed to function effectively if water conservation targets are met or exceeded, with the Planning Commission's target as the minimum amount of water conservation considered. Further, the revised EIR must analyze resulting effects this would have on the proposed wastewater collection and treatment systems, and reevaluate environmental impacts and mitigation. With a gravity system, system functionality may be reduced and overall maintenance costs could increase appreciably due to reduced liquids/solids ratio and resulting reductions in transport velocities. Notably, since flushing volumes and transport velocities are irrelevant in STEP collection (solids are retained in interceptor tanks), increased water conservation and/or implementation of graywater systems will not increase STEP collection operational costs.

#### Space Needed for Facultative Ponds

The EIR incorrectly estimates the size footprint of the facultative ponds treatment alternative, and therefore surmises that there is not adequate land to construct facultative ponds for wastewater treatment. The ponds only need 10-20 acres to be constructed; therefore, there is adequate space for ponds on parcels within the basin.

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In conclusion, Surfrider requests that the FEIR be revised to address the deficiencies outlined in this appeal, and in conformity with CEQA.

Surfrider also requests that the following conditions of approval be added to adequately address project impacts:

1. Revise project components to appropriately minimize impacts to ESHA and wetlands by avoiding development of ESHA. Where ESHA and wetlands cannot be avoided, adequate mitigation must be implemented.
2. Project must implement collection and treatment system technology that can accommodate the proposed and projected increases in water conservation.



3. Project must minimize creation of biosolids, especially if local disposal is not a viable option.

Sincerely,



Jeff Pienak, Chair  
Surfrider Foundation  
San Luis Bay Chapter

Submitted by the San Luis Bay Chapter of the Surfrider Foundation

PO Box 13222, San Luis Obispo, CA 93406  
[slb@surfrider.org](mailto:slb@surfrider.org) / [www.slosurfrider.org](http://www.slosurfrider.org)

*Surfrider Foundation is a non-profit environmental organization dedicated to the protection and enjoyment of the world's waves, oceans, and beaches, for all people, through conservation, activism, research and education.*

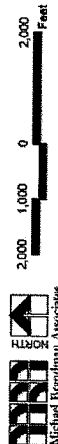
Exhibit 5.5.1: Special Status Species Habitat (DEIR Appendix G, page 5.5-79)



**Legend**

- Project Study Area
- Morro Bay Shoreland State Critical Habitat
- Morro Bay Airplane Rte Critical Habitat
- Baldie Central California Coast Non-Bird Critical Habitat

Source: AirPhoto USA and San Luis Obispo County GIS



ESRI  
 Michael B. ...  
 02240002 • 1/12/2008 15:5-1\_special\_status\_habitat.mxd

Exhibit 5.5.2: Jurisdictional Wetlands (DEIR Appendix G, page 5.5-119)



Source: AirPhoto USA and San Luis Obispo County GIS.

  
Michael Baker Corporation  
02240002 • 08/2008 | 5.5-2\_Jurisdictional\_waters\_wetlands.mxd

Legend  
Project Study Area  
Jurisdictional Waters and Wetlands

2,000 1,000 0 2,000 Feet

Exhibit 5.5-2  
Jurisdictional Waters and Wetlands  
COUNTY OF SAN LUIS OBISPO • LOS OSOS WASTEWATER PROJECT  
BIOLOGICAL RESOURCES EXPANDED ANALYSIS SECTION



Exhibit 5.5-3: SRA and ESHA Lands (DEIR Appendix G, page 5.5-145)



Source: AirPhoto USA and San Luis Obispo County GIS.



Michael Brundman Associates  
02240002 - 11/2008 [5.5-3\_SRA\_ESHA\_land.mxd]

Figure 3-2 (DEIR Appendix B)

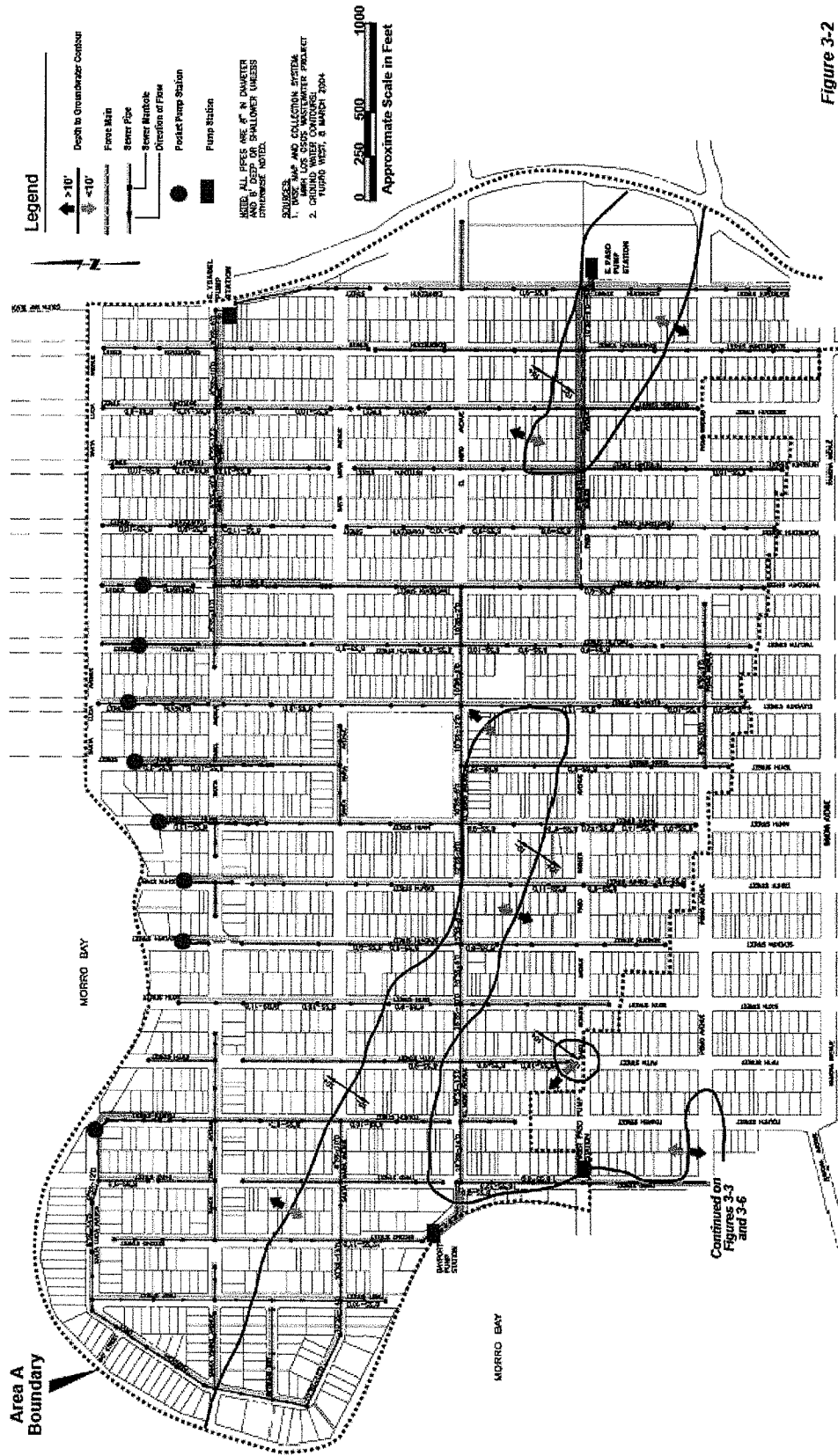


Figure 3-2  
Collection System Layout – Area A  
Los Osos Wastewater Project EIR

Figure 3-3 (DEIR Appendix B)

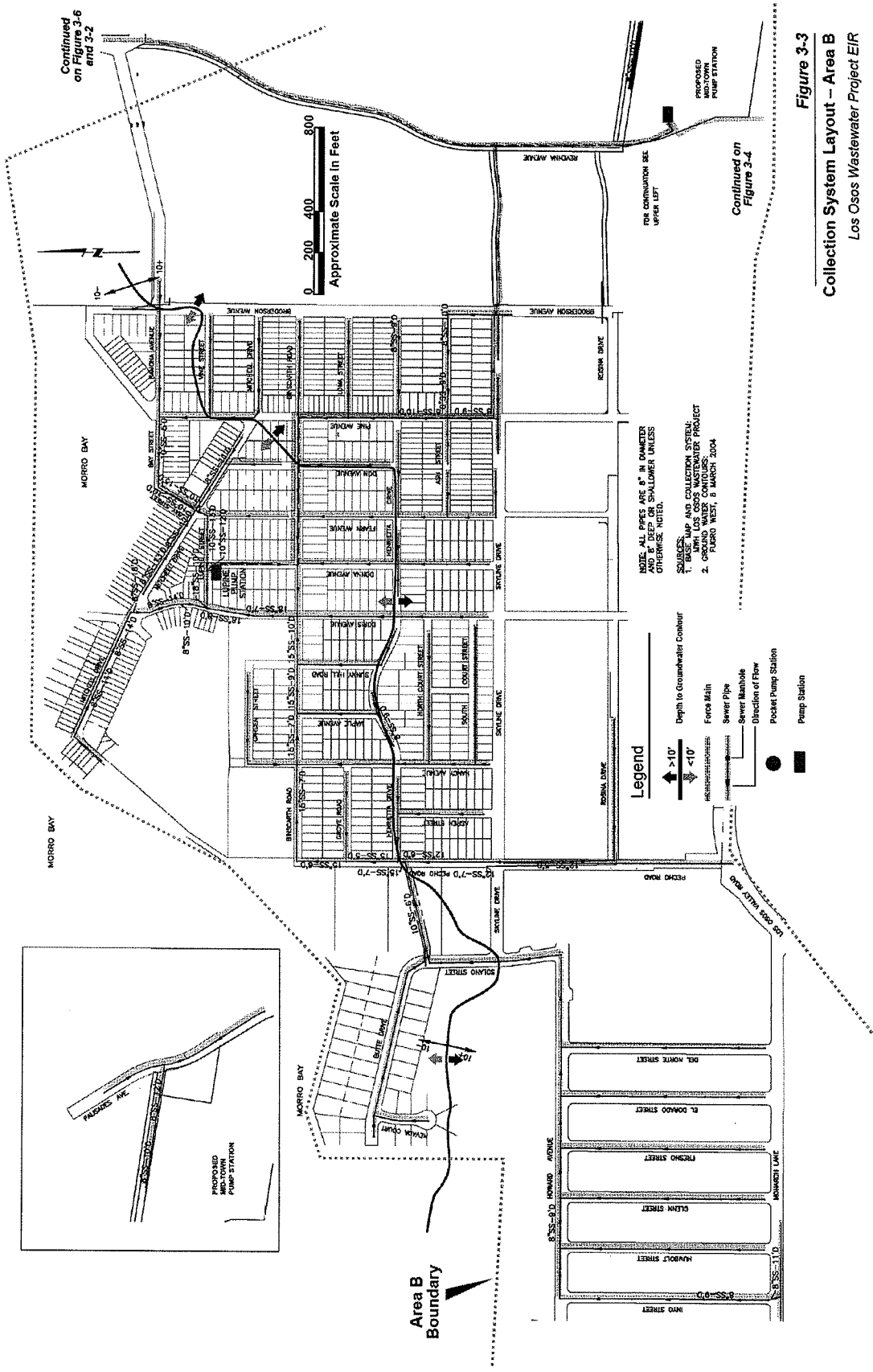


Figure 3-3  
Collection System Layout – Area B  
Los Osos Wastewater Project EIR