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Mark Hutchinson
Environmental Programs Manager
San Luis Obispo County Dept. of Public Works
San Luis Obispo, CA 93408

RE: Los Osos Waste Water Project Draft Environmental Impact Report

Dear Mr. Hutchinson,

This office represents the Environmental Center of San Luis Obispo, on whose behalf these comments are submitted.

The Draft EIR is flawed because it does not contain relevant facts and analysis.

The Draft EIR (DEIR) violates CEQA because its conclusions rely on information and analysis that is not contained in the document itself. In chapter after chapter, the DEIR contains bare conclusions (e.g. land use planning, surface water quality, etc.) and refers the reader for more information and analysis to an appendix which is provided in electronic format on a disk. This practice has been rejected by California courts, which have recognized that the EIR must include at least a summary of the facts and analysis that is contained in more detailed appendixes. See, California Oak Foundation v. City of Santa Clarita, et al. ("information "scattered here and there in EIR appendices," or a report "buried in an appendix," is not a substitute for "a good faith reasoned analysis . . ." (2005) 133 Cal. App. 4th 1219, 1239 (internal citation omitted). Accordingly, the EIR must be revised to include at least a summary of the information and analysis that is contained in the appendixes on which the EIR's conclusions rely.

The Final EIR should re-evaluate the Tertiary Treatment Option.

Without adequate analysis, the DEIR rejects the option of designing a tertiary treatment waste water treatment facility. Tertiary treatment promotes public health and water quality and produces the cleanest feasible effluent by removing pathogens and dangerous pollutants from the wastewater. Although the DEIR claims the Regional Board has not required the tertiary treatment in Los Osos, tertiary treatment is required of wastewater treatment facilities that discharge into State waters. Accordingly, the contention that the Regional Board will not require

tertiary treatment in Los Osos must be verified and better explained. Moreover, the Final EIR should consider whether tertiary treatment is required under existing law, including the Porter-Colgne Act or the Federal Clean Water Act, and consider whether a decision to plan a secondary treatment facility in Los Osos would subject the County to litigation by advocacy groups with a track record of opposing secondary wastewater treatment, , such as the Natural Resources Defense Council.

It should be noted that other wastewater treatment facilities, such as the one operated by the City of San Luis Obispo, provide tertiary level treatment. This practice has enabled the City to reuse the treated effluent for landscaping and other municipal and urban needs, thereby significantly reducing the City's overall water demand.

As the County has recently acknowledged, as a component of a proposed economic stimulus plan, the federal government may contribute substantial sums to the construction of the LOWWP, thereby reducing the cost to the County and its residents. It would make little sense, therefore, to choose secondary treatment to save upfront capital costs when the County may legitimately ask the federal government for sufficient funding to construct a state of the art tertiary treatment facility.

The DEIR fails to adequately analyze the benefit of tertiary treatment. Although it admits that tertiary treatment would permit reuse of the treated effluent, the DEIR essentially rules out tertiary treatment because, it claims tertiary treatment is not required for the County to satisfy RWQCB requirements. Even if this were true, satisfying the Board should not be pursued as the only defining objective of this project. Providing tertiary treatment would be benefit the community by (1) better protecting the health and safety of the community by producing the cleanest possible output, (2) protect beneficial uses of local coastal streams and water quality in the Morro Bay estuary (3) protect agricultural resources and reduce the need for land application of secondary treated discharge, thereby reducing land use conflicts, and (4) address the community's potable water needs. The DEIR does not adequately analyze these potential benefits of tertiary treatment.

California State Water Resources Board and Regional Boards regulate domestic wastewater discharges under Federal Clean Water Act ("CWA") by issuing NPDES permits. CWA Section 101(a)(2), declares that "it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife, and for recreation in and on the water be achieved by July 1, 1983." Pursuant to Federal Regulations that implement the requirements of the CWA, all waters are presumptively designated as fishable and swimmable. Federal regulations require that all waters of the State must be regulated to protect the beneficial uses of public water supply, protection and propagation of fish, shell fish and wildlife, recreation in and on the water, agricultural, industrial and other purposes including navigation. 40 CFR §131.2 and 131.10. Discharging secondary treated effluent through land application in close proximity to ephemeral streams a short distant from a nationally recognized estuary is not protective of beneficial uses of waters of the State. To protect the beneficial uses of our waters and as well as public health, the County should require tertiary treatment.

The pathogens present in raw sewage consist of bacteria, parasites, and viruses. Total and/or fecal coliform organisms are used as the most common indicator of the presence of these pathogens. Tertiary treatment has been found to remove approximately 99.5% of viruses. Filtration is an effective means of reducing viruses and parasites from the waste stream.

In California, reuse of wastewater is regulated under California Code of Regulations, Title 22, Division 4, Chapter 3 (Title 22). Pursuant to this regulation, for spray irrigation of food crops, parks, playgrounds, schoolyards, and other areas of similar public access, wastewater must be adequately disinfected, oxidized, coagulated, clarified, and filtered, and that the effluent total coliform levels not exceed 2.2 MPN/100 m*l* as a 7-day median. Although Title 22 is not directly applicable to surface waters, an equivalent level of treatment should be required if receiving waters are used for irrigation of food crops and for contact recreation.

As the EIR admits, the project is in the near vicinity of sensitive water resources, including the Morro Bay Estuary, Sweet Springs Marsh, and numerous coastal creeks including Los Osos Creek, Warden Creek, Eto Creek and several smaller unnamed tributaries. Appendix, Table 5.1-3 reveals that many of these local creeks are listed in the State's list of impaired water bodies due to the presence of fecal coliform. Although Total Maximum Daily Limits (TMDLs) have yet to be established for these creeks, it seems obvious that the County should not potentially exacerbate the contamination problem by allowing partially treated wastewater to be sprayed in areas where the contaminated water could reach these impaired water bodies.

Another factor that would recommend serious consideration of tertiary treatment is the possibility of contributing to the groundwater supplies and reducing salt water intrusion which the EIR admits poses a serious threat to Los Osos groundwater supplies. We question why the County has not identified reduction of seawater intrusion as a project objectives, and ask that this goal be included as a project objective. Moreover, we ask that the County explain its reluctance to involve the water supply purveyors in this planning process. As an informational document, the EIR must be more forthcoming in its explanation for why the water purveyors are not more actively involved.

Land Use Conflict

The Land Use Planning (Appendix C) discusses potential land use planning conflicts associated with each of the 4 alternative site locations. This analysis is flawed, however, because it assumes that each alternative under consideration is the only feasible alternative. In this regard, App. C claims that "there are no feasible locations for the proposed treatment plant and sprayfield facilities; therefore, Proposed Project 1 would be consistent with Sections 23.04.050 and 23.08.288 of the CZLUO." The EIR's discussion of alternative technologies reveals, however, that some of the feasible alternatives could avoid or reduce land use conflicts by reducing the size and foot print of the treatment facility. This is true of Alternative 2, for example, which would require a substantially smaller footprint. This alternative, therefore, would result in fewer or less intense land use conflict than the alternatives with larger footprints.

The EIR must acknowledge that the alternatives with a smaller footprint will result in the

conversion of fewer acres of designated prime agricultural lands and would therefore result in less intense land use conflicts. The Land Use Planning section of the EIR must then be revised to consider the relative compliance of each of the alternative with the applicable land use plans, goals and policies.

Likewise, the EIR must recognize that leachfields and sprayfields are not necessary components of a sewer treatment plant. The necessity for these facilities has been artificially created by the County's decision not to consider tertiary treatment. If the waste water is treated to tertiary standards, it can be disposed of by direct discharge into State waters or used for crop irrigation, landscaping or other beneficial uses. Tertiarity treatment, therefore, would eliminate or substantially reduce the need for conversion of prime agricultural lands to non-ag uses, thereby resolving a significant land use conflict.

Agricultural Resources

The DEIR concludes that all four alternatives would result in significant and unavoidable impacts on agricultural resources. Although the impact on agriculture is undoubtedly significant, the DEIR does not contain adequate analysis or substantial evidence to support a finding that this adverse impact cannot be substantially reduced or adequately mitigated.

Among the four proposed alternatives, alternative 2 would result in a smaller overall impact on agricultural resources. The County could therefore minimize the impact on agricultural resources by selecting this alternative, or a hybrid alternative that similarly reduces the project's footprint. Moreover, the County could likewise reduce the significance of the impact on agriculture by eliminating the need for land application of secondary treated effluent if it chooses to use tertiary treatment. Any finding of infeasibility must be supported by substantial evidence, including an economic feasibility analysis.

Visual Resources.

The visual resources analysis, found in Appendix N, is severely lacking in both qualitative and quantitative analysis; does not provide adequate review of potential impacts from more than a single viewing location (a single viewing location for project 1, 2, and 3 and a separate single viewing location for project 4); and does not evaluate the impact on public views from any relevant roads other than Los Osos Valley Road, and does not distinguish between the relative differences which project sites 1, 2, 3 and 4 have with regard to existing topography, vegetative screening, foreground views, or scenic character from various public viewing sites.

Intriguingly, the document spends time discussing the potential impacts on views from Highway 1 and 41, although the topography of the Morros provides a dramatic topographic separation of all the project sites from both Highways. At the same time, the document never mentions potential impacts to views from any public viewing location within site of the project alternatives except for Los Osos Valley Road (LOVR). When considering aesthetic impacts relating to the

treatment facility, the document appears to only evaluate two viewing locations, one location for alternatives 1, 2, and 3, and one location for alternative 4. By using only a single location, the document fails to identify the extent which each of the treatment plant facility options may be visible from LOVR or other public viewing points.

When considering the visibility of each project option, the document repeatedly defers to whether the project sites would be visible from private viewing locations, namely residences. Typically, CEQA analysis focuses on potential impacts to public rather than private views.

The result is that the visual resources section fails to provide reviewers with an understanding of the actual potential impacts to public views associated with each of the proposed alternatives. Repeatedly the document states that "Impacts would be the same for Proposed Projects" 1, 2, 3 and 4, even though the various treatment facility sites have distinct differences. This conclusion is reached even though most reasonable people would clearly reach a different conclusion simply viewing the two photo simulations included in Appendix N. While the treatment plant projects are visible in each simulation, the context and the impact is dramatically different. Relative to context, proposed project 1 is located north of cemetery at the edge of a residential rural visual setting, where structures and development begin to dominate the landscape. Views of the treatment plant in this simulation show the plant located in the distance and visible only between signs and landscaping. The impact of the proposed project at this site appears nominal in the photo simulation, as though the treatment plant might only be visible for a fraction of second. By way of comparison, proposed project site 4 is located in a large area that slopes toward LOVR and that is clearly visible from LOVR for a distance of approximately 1 linear mile. The view from LOVR when heading westbound is nearly in a direct line of site rather than perpendicular. In addition, project site 4 would be clearly visible for a distance of approximately 1 linear mile along Turri Road, a public road that currently offers essentially pristine views of the Morros, the Irish Hills, and the lowland agricultural fields and homesteads.

Thresholds and mitigation

5.12-C: The project would substantially degrade the existing visual character or quality of the site and its surroundings.

The draft EIR reaches the conclusion that project alternatives 1, 2, 3 and 4 would "would be noticeable and would change the visual character" and thus concludes that the impact based upon this threshold is significant. However, a change to the visual character in and of itself does not result in a significant impact. The changes need to degrade the existing visual character. If the existing visual character when viewed from public locations is already degraded, it is not clear if the project results in a further degradation that would be considered significant. Project sites 1, 2, and 3 are located in an area where the existing visual character is currently degraded by rural residential and other developed uses, while alternative 4 is located in an essentially pristine agricultural viewshed.

Mitigation 5.12-F-1

This proposed mitigation measure requires designing the industrial wastewater treatment facilities to conform to an agricultural landscape. Such a requirement is vague and may not be feasible. Wastewater treatment facilities are clearly industrial public works facilities bearing no relationship to an agricultural landscape. Further, such as requirement clearly does not mitigate for the identified threshold: "Does the project locate structures that would disrupt views of AG zoned parcels." Industrial structures designed to look like barns are still structures.

Mitigations 5.12-F-1 and 5-12-C-2

Using "sufficient planting to screen views" and "visually integrating the project into the rural landscape" does not appear clearly feasible based upon the size and scale of the facility. These proposed mitigations do not address whether such screening is in fact feasible and will result in noticeably reducing the aesthetic impacts of the proposed project, and nothing in the analysis provides evidence that views from public viewing locations can be preserved and enhanced as required by this measure. This would appear to be especially true for a facility located on proposed project site 4, as this site would be clearly visible from an extended portion of Turri Road, including portions of the road which are elevated well above the proposed industrial structures, offering clear views on these facilities.

DEIR Alternatives to Proposed Project

The rationale provided on page 7-68 relative to the environmentally superior alternative does not appear to relate to the technical review found in Appendix N. There is no evidence that supports the simplistic conclusion that because Proposed Project 4 is located further from LOVR it will have fewer visual impacts. As noted above, the Proposed Project 4 site is eminently visible from Turri Road, is also nearly near a direct line of site for westbound drivers on LOVR, and is in a essentially pristine area visually, consisting of agricultural crop production and open views of stunning hillsides. Conversely, proposed project sites 1, 2, and 3 are located downslope from LOVR, are screened by existing development and vegetation, and are located in a area where the existing visual character is impacted by existing development.

Biological Resources

The DEIR violates CEQA because it does not include adequate site surveys, which are deferred. Without adequate surveys, it is impossible to determine the significance of project impacts on sensitive species. The DEIR should be recirculated after adequate surveys have been conducted and the presence or absence of sensitive, protected or "rare" species has been established.

The DEIR does not contain an adequate analysis of the proposed mitigation measures that are intended to address the project's biological impacts. Even the expanded Biological Appendix does not contain a sufficient description of mitigation measures. Yet, the DEIR concludes that these mitigation measures will reduce the project's significant impacts to a less than significant level. It is difficult to understand how the County can reach this conclusion without any analysis.

While some of the proposed mitigation measures include specific performance standards as required by CEQA Guideline 15126.4, (e.g. replacement mitigation for Morro Manzanita proposed at a ratio of 5:1.), mitigation ratios have not been established for other proposed measures. Although the County has determined that it must consult with the appropriate resource agencies (US Fish and Wildife Service and California Department of Fish and Game, etc.) and obtain all necessary permits, it does not necessarily follow that all impacts on sensitive or protected species will be reduced to less than significant. Accordingly, the DEIR's speculation that all of the project's impacts on biological will be reduced to less than significant is unwarranted.

Appendix G, at page 50, provides that "Mitigation lands [for Morro Shoulderband Snail and Morro Bay Kangaroo Rat] will likely be required within existing lands designated as Critical Habitat for the species and/or shall be contiguous with existing preservation lands located in the vicinity of the community of Los Osos within areas studied for the Greenbelt Program by the Land Conservancy. To evaluate the effectiveness of this mitigation strategy, the DEIR should analyze whether lands matching this description are currently available for acquisition. Without this information, it would be impossible to know whether this proposed mitigation could feasibly be implemented.

Evaluation of Alternatives

CEQA requires that an EIR identify feasible alternatives that could avoid or substantially lessen the project's significant environmental impacts. Pub Res Code §§ 21002, 21002.1(a), 21100(b)(4), 21150; The EIR must compare the merits of each feasible alternative and explain in some detail how the alternatives were selected. CEQA Guideline 15126.6. The discussion of alternatives must include sufficient information about each alternative to allow evaluation and comparison of alternatives to the Project. CEQA Guideline 15126.6(d). Association of Irritated Residents v. County of Madera (2003) 107 Cal.App.4th 1383, 1400 (The EIR's alternatives analysis must contain "sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.' [Citation.]")

The DEIR here does not meet these standards. Because the DEIR fails to acknowledge potentially significant visual and land use (among other) adverse impacts, none of the considered alternatives are intended to reduce or at least address these significant impacts. In fact, it is difficult to discern which adverse environmental impacts the DEIR's proposed alternatives are intended to address. Moreover, the proposed alternatives do not discuss the problem of seawater intrusion and ways in which the proposed project could help the County address this issue. Rather than alternatives within the meaning of CEQA, the four scenarios considered in the DEIR should be considered alternative project descriptions.

Appendix N includes the following discussion of an alternative involving tertiary treatment:

Alternative B.3: This alternative allows for the evaluation of tertiary

> treatment and effluent reuse. Alternative B.3 involves constructing an oxidation ditch/Biolac with tertiary treatment and appurtenant facilities on the Giacomazzi site. In addition to conservation, leach fields (Broderson), and spray irrigation (Tonini), both agricultural reuse and urban reuse would be used for treated effluent disposal. Up to 160 AF of treated effluent would stored on the Tonini site to provide for seasonal reuse demands. Either STEP/STEG or gravity would be used for the collection system, and the collection/conveyance system would use Eto Lane as part of the alignment.

The DEIR fails to adequately analyze this potential alternative. The DEIR does not accurately describe the benefits of tertiary treatment, including the possible use of the highly treated effluent to meet the community's over all water demand or addressing salt water intrusion. Moreover, the DEIR does not disclose that the treated effluent can be discharged into the aquifer thereby reducing the impact on agricultural resources. The DEIR also fails to disclose that the highly treated effluent will contain considerably less pathogens and will therefore result in a smaller public health risk or potential to degrade surface water quality. The DEIR must be revised to include a more thorough analysis of the benefits of tertiary treatment and an evaluation of the feasibility of implementing this alternative.

Conclusion

It is clear that the County staff has worked tremendously hard to prepare this DEIR. They are to be commended for that effort. Some significant problems remain. We are confident that County staff and the County consultants can remedy these problems. We welcome the opportunity to be part of that effort

Sincerely

/s/
Babak Naficy for ECOSLO