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STAFF REPORT:**PERMIT REVOCATION REQUEST**

Application Number ...R-A-3-SLO-03-113

Applicant.....Los Osos Community Services District (LOCSD)

Project DescriptionConstruct and operate a wastewater treatment system to serve areas of Los Osos, Baywood Park, and Cuesta-by-the-Sea.

Project LocationTreatment facility at Ravenna Avenue and Los Osos Valley Road (11-acre "Tri-W" site); collection and disposal facilities, and harvest wells to manage groundwater levels, distributed throughout the South Bay Urban area.

Party RequestingConcerned Citizens Of Los Osos (CCLO) And Los Osos Technical RevocationTask Force (LOTTF)

Reason For Request.....CCLO and LOTTF are requesting that Coastal Development Permit A-3-SLO-03-113 be revoked on the basis that the LOCSD and the State and Regional Water Quality Boards intentionally provided inaccurate, erroneous or incomplete information to the Commission regarding: the environmental and financial urgency of the project; the true cost, extent, and impact of the project; and, community sentiments regarding the project. Additional contentions include a failure to comply with noticing requirements, circumventions of public process, and other procedural deficiencies.

File DocumentsCoastal Development Permit File No. A-3-SLO-03-113; San Luis Obispo County Certified Local Coastal Program (LCP); San Luis Obispo County Development Plan Application File No. D020283D; correspondence and materials submitted to the Commission by project applicants, appellants, the Central Coast Regional Water Quality Control Board, and other interested parties; San Luis Obispo County Local Coastal Program Amendment File 3-01; Periodic Review of the San Luis Obispo County Local Coastal Program, adopted by the Coastal



California Coastal Commission

April 14, 2005 Meeting in Santa Barbara

Staff: S. Monowitz Approved by:

Commission on July 12, 2001; Coastal Commission staff comments on the Draft Estero Area Plan Update dated November 24, 2003 and February 25, 2000; Appeal File A-3-SLO-97-040 (San Luis Obispo County's former application for a Wastewater Treatment Facility to serve the Los Osos area).

SUMMARY OF STAFF RECOMMENDATION

Section 13105 of the Commission's regulations limits the grounds for the revocation of a coastal development permit to the following:

- (a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;
- (b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application.

Staff recommends **denial** of the request to revoke Coastal Development Permit (CDP) A-3-SLO-03-113, attached as Exhibit 1, because there is no evidence of intentional misrepresentations or noticing deficiencies that had an influence on the Commission's decision to conditionally approve the project, as summarized below and detailed in the findings of this report.

Water Quality Contentions: *The revocation request asserts that the Commission was intentionally misled about the public health, environmental, and fiscal urgency of the project, and thereby rushed into approving the project despite its inconsistencies with the San Luis Obispo County Local Coastal Program (LCP). The request further accuses the applicant of intentionally providing inaccurate information regarding the discharge of harvested groundwater to Morro Bay.*

Water quality determinations made by the State Water Quality Control Board (SWRCB) and the Central Coast Regional Water Quality Control Board (RWQCB) have indeed been important factors in the decision-making process. Pursuant to Coastal Act Section 30412, the Commission must take such determinations into consideration when it reviews applications for treatment works. In this case, the State and Regional Water Quality Control Boards were not the applicant. Nonetheless, to the extent that information presented by these agencies was relevant to the Commission's decision, the exactitude of these water quality determinations or precise degree of the documented problem is not an issue directly subject to the Commission's jurisdiction.¹ More fundamentally, the SWRCB and RWQCB record speaks for itself in documenting ongoing impacts to coastal water quality and groundwater resources associated with the continued use of septic system. Once this need was established, the question of degree became immaterial. In this

¹ Coastal Act Section 30412 prohibits the Commission from taking actions that conflict with the water quality determinations of the SWRCB and RWQCB.



case, the Commission adopted findings regarding the critical need for timely implementation of a wastewater treatment system when it approved LCP Amendment 3-01 in August 2002. Thus, the alleged misrepresentations of water quality problems made in reference to the CDP application could not have influenced the Commission's decision on the application, because the determination of project urgency had already been made.

Allegations that such misrepresentations have caused the Commission to overlook the requirements of the LCP and Coastal Act are also without merit. The record shows that the Commission has carefully considered and applied all relevant provisions of the LCP and Coastal Act, and has conditioned the project as necessary to achieve LCP and Coastal Act compliance.

With respect to the discharge of harvested groundwater to Morro Bay, Special Condition 35 of the permit specifically prohibits such discharges. To the degree that such discharges may be proposed in the future, Special Condition 35 requires an amendment to the permit, the application for which must be accompanied by evidence that other options for disposal, such as agricultural storage and use, have been exhausted. This condition effectively responds to the alleged misrepresentations, and there is therefore no reason to believe that *if* such allegations were true, they had any influence on the Commission's decision.

Contentions Regarding Environmentally Sensitive Habitat Areas: *The revocation request accuses the applicant of intentionally providing inaccurate information regarding the status of the Habitat Conservation Plan (HCP) and project impacts to environmentally sensitive habitat areas (ESHA). The request also contends that the LOCSD intentionally misled the Commission regarding the feasibility of less damaging alternatives.*

Project compliance with LCP standards requiring the preparation of a Habitat Conservation Plan was a significant issue considered by the Commission. The Commission conducted a thorough analysis of this issue, and established conditions of approval that carry out LCP requirements. There is no evidence to support the assertion that the applicant's characterizations of the HCP had any influence on the Commission's decision regarding this matter.

The feasibility of alternatives that would avoid or minimize impacts to environmentally sensitive habitats has also received significant attention throughout the history of the Commission's review. The Commission found, both in 2002 and 2004, that it was more protective of coastal resources (e.g., water quality, marine habitats, water oriented recreation opportunities) to allow construction of the treatment plant at the proposed location than to cause the delays that would be associated with further consideration of an alternative sites.² The fact that an 8-acre parcel adjacent to the Andre site provides a technically feasible alternative was acknowledged during the De Novo hearing, but not pursued based on the same reasoning.³ There is no evidence to support the theory that the Commission was misled to believe that there were not feasible alternatives.

The extent of ESHA impacts resulting from the project have been accurately presented to the Commission and openly debated in public hearings. These impacts include, but are not limited

² Findings for approval of LCP Amendment 3-01 and CDP A-3-SLO-03-113

³ Transcript of August 11, 1004 De Novo Hearing, pages 18 – 19, 60, and 176-177



to, the removal of all habitat currently supported by the 11.5 acre Tri-W site (considered to be environmentally sensitive in its entirety), and the removal of 8 acres of coastal scrub habitat at the Broderson disposal site. Additional impacts from pipeline installation have been acknowledged and addressed, such as by Special Condition 65, which requires pre-construction surveys to assess and minimize impacts to biological resources on all vacant lots. Other conditions of CDP approval ensure that ESHA impacts will be contained within or below reported amounts. For example, Special Conditions 26, 27, 68, 69, and 73 ensure that disposal field construction and maintenance will not disturb more than 8 acres of habitat at the Broderson site. There is no evidence that the applicant intentionally withheld or misrepresented the extent of habitat impacts, or that such representations would have affected the Commission's decision given the permit conditions described above as well as the significant environmental benefits of the project enumerated in previous findings.

Wetland Contentions: *Wetland evaluations are incomplete and were conducted at the wrong time of year. The LOCSD deliberately omitted an analysis of project impacts on wetlands.*

Analysis: The project record reflects numerous instances in which the Commission and other interested parties have expressed dissatisfaction with the project's wetland impact analysis. While the request for revocation is critical of the way in which this analysis was conducted, it does not provide evidence that inaccurate or incomplete information was intentionally provided. The request does identify one area of potential wetland impacts from pipeline installation at the corner of 4th Street and Pismo Avenue that was not identified or analyzed by the LOCSD, but does not prove that this potential impact was known and then intentionally withheld from the Commission. Potential wetland impacts at this location were first identified during the review of condition compliance materials evaluating alternative alignments for the Ravenna Avenue force main pursuant to Special Condition 18g. Since that time, the applicant has proposed to revise the project to avoid impacts to the identified willows by boring rather than trenching the alignment for the pipeline (see amendment request attached as Exhibit 4). With this amendment, the new information is unlikely to have resulted in a different Commission decision. Staff notes that "new information" does not provide a basis for revocation.

Contentions that project impacts to other wetland areas were not properly evaluated reflect differences of opinion and do not establish a basis for revocation. The wetland delineations submitted by the applicant have been reviewed and approved by the Commission's staff in accordance with the terms of the permit and standard protocols. There is no evidence that the applicant provided false information to the Commission or its staff in association with these delineations.

Capacity and Service Area Contentions: *The Commission was intentionally misled about the size and capacity of the treatment plant. Rather than the reported capacity of 1.4 MGD, project specifications show the plant's capacity is 5.4 MGD, with an allowance for an additional 33% growth.*

Analysis: The project engineer has responded to this contention in correspondence attached on pages _ - _ of Exhibit _, which explains the difference between the project's average annual treatment capacity of 1.4 mgd, and the need to account for maximum in-flow volumes and



instantaneous flow rates that demand a peak capacity of 5.4 mgd. The ability to add 33 percent more treatment membranes is needed to ensure effective treatment over time rather than to accommodate additional growth. Irrespective of technical design, concerns regarding the growth inducing impacts of the project are addressed by Special Conditions 34, 76, 82, and 83, as well as the County and Commission's ongoing role in planning for and regulating new development.

Visual Resource Contentions: *The revocation request asserts that the applicant intentionally misled the Commission regarding the visual impacts of the project by providing incomplete information regarding building heights, improperly installing story poles, and failing to analyze the visual impacts of the Broderson leachfield, stand-by power stations, and pump stations. The request also challenges the accuracy of the visual resource findings adopted by the Commission.*

Analysis: As noted by the request, adjustments to the allowable height of the treatment plant buildings requested by the applicant were reported to the Commission in a staff report addendum. The asserted basis for revocation rests with the assertion that, despite the addendum, the applicant falsely indicated that there had been no changes to the project since the County's approval, and failed to inform the Commission of the adjusted heights at the de novo hearing. The fact that the height adjustments were reported to the Commission in the staff report addendum, however, dispels any accusation that the change of height was withheld from the Commission. Moreover, the minor changes in building heights (4 feet increase in the most extreme instance) are unlikely to have been influential factors in the Commission's decision, because they are still within the LCP's allowable limits and will result in an insignificant change to the visual impacts presented by the County approved project.

Likewise, the request for revocation lacks any evidence that story poles were incorrectly installed at the treatment plant site, let alone intentionally, and fails to document any additional damage to scenic resources that will actually result from the project. Without such evidence, these contentions represent continued debate regarding the merits of the project and findings of approval, which are inappropriate grounds for revocation. Such is the case with allegations that the visual impacts of leachfields, pump stations, and power generators have not been adequately addressed. There is no evidence that the applicant intentionally provided incomplete or inaccurate information regarding the visual impacts of such facilities.

Contentions Regarding Hazards and Public Safety: *The revocation request contends that the applicant provided inconsistent information regarding the effect of the project on groundwater mounding, and whether such impacts, including increased risk of liquefaction, will be addressed through the use of harvest wells. The request also states that the Commission was misled to believe that the use of hazardous chemicals has been eliminated.*

Analysis: Issues related to groundwater mounding and liquefaction referenced by the request have also been openly debated during public review, and reflect another example of continued disagreement rather than intentional deception. There is no evidence that the Commission was misled to believe there would be no use of hazardous materials. Rather, the record shows that the Commission was aware of this potential, and conditioned the project accordingly (e.g., p. 81 of the adopted findings for permit approval and Special Condition 54).



Odor Contentions: *The Commission was misinformed that the treatment facilities would be "odor free". Collection system manholes, septic hauling, and sludge hauling will emit odors. Park amenities will not be usable.*

Analysis: There is no evidence to support the theory that the Commission believed the project would be odor free. As noted by the revocation request, the testimony of at least one Commissioner reflected a concern regarding odors and sludge hauling. In addition, Conditions 47 and 48 of the permit require actions to minimize and respond to odor impacts, demonstrating that there was no misconception regarding the possibility of odor problems.

Procedural and Noticing Contentions: *The request for revocation cites the following reasons why the permit should be revoked on procedural and noticing grounds: the project was illegally revised during the time that the County approval was stayed by the appeals to the Coastal Commission; the project was not processed in accordance with the Commission's Administrative Regulations regarding Treatment Works; the environmental review has been segmented in violation of the California Environmental Quality Act; and, the LCP Amendments required to allow project facilities on residential lands have not been noticed or processed.*

Analysis: Section 13105 of the Commission's administrative regulations provide very narrow grounds for revoking a permit based on noticing deficiencies. First, the applicable noticing requirements are limited to those established by Section 13110 et seq. of the Regulations for Coastal Development Permits issued by the Coastal Commission on appeal. Second, the views of the person(s) not notified must have not otherwise been made known to the Commission, and must have had the potential to result in a different action by the Commission.

The request does not identify individuals that were required to be sent notice of the pending coastal development permit application but were not sent such notice. Nor does the request identify a particular viewpoint that may have influenced the Commission's decision that was not presented as a result of noticing deficiencies. The noticing and procedural allegations included in the request do not provide appropriate grounds for revocation pursuant to Section 13105 of the regulations.

Other Contentions: *Additional reasons for revocation identified by the request include the intentional misrepresentation of project costs and community sentiments.*

Analysis: Project costs and community sentiments are not applicable standards of review for the coastal development permit. To the degree that cost may factor into the feasibility of alternatives, it should be noted that the rejection of alternative sites was not made on a financial basis. As a result, the alleged misrepresentations of project costs were immaterial to the Commission's decision. Allegations that the applicant provided inaccurate information regarding community sentiments are also irrelevant. Nevertheless, it is worth noting that the public hearings conducted as part of the CDP review has provided an opportunity for all opinions to be voiced.



TABLE OF CONTENTS

I. STAFF RECOMMENDATION.....	7
II. FINDINGS AND DECLARATIONS	8
A. Project Description , Location, and History	8
B. Specific Revocation Contentions And Commission Response	8
1. Water Quality.....	8
2. Environmentally Sensitive Habitat Areas.....	13
3. Wetlands	16
4. Capacity and Service Area.....	17
5. Visual Resources	18
6. Hazards	20
7. Odors	20
8. Extent of Project Costs and Impacts.....	21
9. Procedures and Noticing Requirements.....	22
10. Other Allegations.....	24

Exhibits

1. Revocation Request
2. Adopted Staff Report (A-3-SLO-03-113)
3. Uncertified Draft Copy of August 11, 2004 Hearing Transcript
4. Request for Amendment
5. Correspondence

I. STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

MOTION: *I move that the Commission grant revocation of Coastal Development Permit No. A-3-SLO-03-1133.*

STAFF RECOMMENDATION OF DENIAL: *Staff recommends a NO vote on the motion. Failure of this motion will result in denial of the request for revocation and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.*

RESOLUTION TO DENY REVOCATION: *The Commission hereby denies the request for revocation of the Commission's decision on coastal development permit No. A-3-SLO-03-113 on the grounds that there is no:*

- (a) *intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application; and*



- (b) *failure to comply with the notice provisions of § 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application.*

II. FINDINGS AND DECLARATIONS

A. Project Description , Location, and History

Coastal Development permit A-3-SLO-03-113, approved by the Coastal Commission on August 11, 2004, authorizes construction and operation of a wastewater collection, treatment, and disposal system, and associated facilities, to serve the communities of Cuesta-by-the-Sea, Baywood Park, and Los Osos. A detailed description of project elements, their location, and the project's history are provided on pages 34 – 37 of the adopted staff report and associated exhibits, attached to this report as Exhibit 2.

B. Specific Revocation Contentions And Commission Response

The remainder of this report cites and paraphrases the specific contentions included on the referenced pages of the revocation request, and provides the appropriate response to the various allegations pursuant to the requirements for revocation proceedings found in CCR, Title 14, Section 13104 et seq.

1. Water Quality

Contention 1: *There was never a public health or environmental urgency nor was the SWRCB going to withdraw their loan (see pages iv, vii, and 29 of the revocation request). LOCSD withheld the fact that they petitioned for a change to the RWQCB's time schedule order (p. 23).*

Analysis: The request for revocation asserts that the LOCSD and the State and Central Coast Regional Water Quality Control Boards intentionally misrepresented the extent of groundwater pollution attributable to septic systems, and exaggerated the risks to public health and water quality associated with the continued use of septic systems. The request also alleges that the risks to project funding were also overstated.

The alleged misrepresentations were not a factor in to the Commission's decision to approve the coastal development permit, as evidenced by the fact that the Commission adopted findings regarding the urgent need for wastewater treatment system long before the alleged misrepresentations occurred.⁴ To the degree these contentions represent a broader challenge to the SWRCB and RWQCB's historical record documenting the extent of septic system pollution

⁴ Commission findings for approval of LCP Amendment 3-01, adopted August 11, 2001.



and need for a wastewater treatment system, such contentions fall outside of the jurisdiction of this Commission.⁵

First, the State and Regional Water Quality Control Boards were not the project applicants. Even still, the findings of project urgency adopted by the Commission in 2002 when the LCP was amended to allow for the project were based on the need to protect coastal resources, not project funding. The fact that the Commission acknowledged the urgency of the project in 2002 disproves the theory that alleged misrepresentations of current funding risks caused the Commission to act prematurely in August 2004. Moreover, there is no evidence that risk of losing the state loan was either fabricated or overstated. The revocation request points to the loan extension/increase obtained by the LOCSD after the de novo hearing as evidence that funding risks were exaggerated. The action by the SWRCB to extend and increase the loan does not in anyway indicate that the loan extension may have been denied if the Coastal Development permit was not approved.

Contention 2: *RWQCB slide show misrepresented extent of nitrate contamination both in terms of geographic scale and levels of contamination. The spread of nitrate contamination was falsely represented through the use of slides with different scales. Bright red colors were used to show levels of nitrate contamination that do not exceed drinking water standards. The RWQCB was aware of concerns regarding these misrepresentations, and acknowledged that the revised scale was due to a computer error, but proceeded to deceive the Commission by showing the slideshow at the De Novo hearing (p. iv – v, 26, 30).*

Analysis: As noted above, the Regional Board is not the applicant in this case. Even still, the Commission found that there was an urgent need to construct a wastewater treatment system in August 2002. Thus, even if a valid claim, there is therefore no basis to support the assertion that the slide shows presented by the RWQCB at the 2004 Substantial Issue and De Novo Hearing influenced the Commission's decision on the permit application. Moreover, as noted above, broad challenges to the exactitude of SWRCB and RWQCB determinations regarding water quality are not directly within the jurisdiction of the Coastal Commission. Thus, even if the slide show may have given the wrong impression concerning the precise extent and degree of pollution from nitrates, there is no basis to conclude that the overall need for, and urgency of, the project was misrepresented. In sum, there is no potential that the alleged misrepresentations could have had an influence on the Commission's decision.

Contention 3: *Information submitted regarding nitrogen contamination was incomplete and intentionally misleading because it did not acknowledge that nitrate levels have been dropping in some locations, and that, on average, nitrate concentrations are only slightly higher than the drinking water standard. Samples taken as part the construction dewatering plan indicate a representative level of nitrogen that is more than 25 times below the drinking water standard. RWQCB is not requiring monitoring of construction dewatering activities (p. v, 26, 31-32).*

Analysis: see analysis of Contentions 1 and 2, above.

⁵ Coastal Act Section 30412 prohibits the Commission from taking actions that conflict with the water quality determinations of the SWRCB and RWQCB.



Contention 4: *18" Overflow pipe to unlined open air retention basin for raw sewage on the Tri-W site is within 500 feet of a drinking water well and was not reported to the Commission (p. viii).*

Analysis: The retention basin will be used for retaining overflows from the treatment plant, and was shown in the project plans submitted to the Commission and attached to the staff report (e.g., pages 5 and 6 of Exhibit 2 to the staff report prepared for the De Novo hearing). Environmental impacts associated with the retention basin, and the possibility of sewer plant overflows, were acknowledged on page 7 of the adopted staff report, contrary to the assertion that the retention basin was not reported to the Commission. While the proximity of this basin to existing wells may not have been specifically discussed, there is no reason to believe that such information was either intentionally withheld, or would have been a factor in the Commission's decision, since the overall purpose of avoiding groundwater contamination by septic systems clearly outweighs the potential impacts of the project on a single well.

Contention 5: *Despite statements that harvest water will not be disposed into Morro Bay, project specifications show that the project will be built with such capabilities (p. ix).*

Analysis: Special Condition 35 of the CDP expressly prohibits the discharge of water harvested from the upper aquifer to Morro Bay or the Pacific Ocean, and requires the pursuit of alternatives in the event this is proposed in the future. Even if the LOCSO intentionally misled the Commission regarding its need or intent to discharge harvested groundwater to the Bay or Ocean, it would not have made a difference in the Commission's decision, because the Commission recognized and addressed the potential need for such discharges.

Contention 6: *SWRCB, RWQCB, promoted a false sense of urgency through the State Revolving Fund Loan by prioritizing the project in a manner that was not truly based on a Public Health problem, but on the internal scheduling and agency performance goals of SWRCB staffers (p. 24). The project has been falsely represented as a solution to the fabricated public health emergency because it will take 30 years to affect groundwater nitrogen levels, and does not address other emerging contaminants (p. 25).*

Analysis: As discussed above, neither the State or Regional Board are the applicants. Moreover, challenges to the accuracy of SWRCB and RWQCB determinations regarding water quality are outside the direct jurisdiction of the Coastal Commission. Contentions that the project has been misrepresented as providing an immediate and complete solution to groundwater pollution problems are neither supported by evidence, nor material to the Commission's action, because they do not in anyway lessen the documented need for the project.

Contention 7: *RWQCB doesn't have evidence to support the reported surface ponding of contaminated groundwater, or that such contamination is the result of septic systems (p. 27).*

Analysis: See analysis of Contentions 1, 2, and 6, above.

Contention 8: *Evidence that the RWQCB has overstated health risks and project urgency is demonstrated by their failure to enforce resolution 83-12 requiring formation of a Septic Tank*



Maintenance District (p. 29); by their allowance of new septic system discharges based on a credit system, in conflict with CWA guidance (p. 29-30); and, by allowing LOCSD to illegally discharge [surfacing groundwater] without a permit and not informing the Commission or its staff of this fact (p. 30).

Analysis: The RWQCB's use of a credit system to allow new discharges, and its alleged failure to establish a septic tank maintenance district or require permits for existing discharges of high groundwater, do not equate to a misrepresentation of the need for and urgency of the project. Allegations of unpermitted discharges by the LOCSD were brought to the attention of the Commission at the De Novo hearing⁶, and represent a distinct enforcement issue that has no direct bearing on the application to construct a wastewater treatment system. Furthermore, alleged violations do not provide a basis for revocation.

Contention 9: *LOCSD and RWQCB have falsely claimed that tests show nitrate contamination is a result of septic tanks; no such tests have been conducted (p. vi). LOCSD/RWQCB references to a Cal Poly DNA study is a blatant misuse of this scientific research; the Professor that completed this study has stated that the study is not to be used to justify wastewater projects, nor does it indicate clearly where human DNA is coming from (p. 24-25).*

Analysis: See analysis of Contention 1, 2, and 6, above.

Contention 10: *Monitoring wells used to evaluate nitrate concentrations were not properly constructed to accurately perform such studies. In particular, the wells lack the sanitary seal necessary to exclude sources of nitrates emanating from surface contaminants and the shallow aquifer. LOCSD and the RWQCB did nothing to correct or clarify the faulty data, despite the fact that a more recent study of properly constructed wells showed much lower levels of nitrate contamination, and that increased nitrate contaminations occurred in localized areas of shallow groundwater and near the golf course (average concentration 11.1 mg/L nitrogen as nitrate, in comparison to drinking water standard of 10 mg/L). The older wells also provide a pathway for contamination to enter the groundwater, and nothing has been done to address this problem (p. 25, 32).*

Analysis: See analysis of Contention 1, 2, and 6, above.

Contention 11: *The Commission was misled that no additional levels of treatment would be required. Buildup of TDS in groundwater will necessitate reverse osmosis (p. 44-45). The Commission was also misled to believe that, if needed, additional treatment facilities could be accommodated on the 11.5 acre Tri-W site (p. 51)*

Analysis: Contentions that the project would require additional levels of treatment were considered during the review of the CDP application (e.g., page 23 of the staff report prepared for the April 15, 2004 Coastal Commission Substantial Issue hearing). There is no evidence that the applicant intentionally withheld or misrepresented the facts regarding the anticipated need for

⁶ See pages 124 –125 of the August 11, 2004 transcript.



additional levels of treatment, or the ability to locate the additional treatment facilities on the tri-W site.

Contention 12: *The disposal of treated effluent to the bay was not disclosed to the Commission or the public (p. 53, 55).*

Analysis: See analysis of Contention 5, above

Contention 13: *Discharge of contaminants to the bay prohibited by LCP at 8.66.010 (p. 55).*

Analysis: See analysis of Contention 5, above

Contention 14: *The inevitable need to discharge harvest water to the bay is a violation of CZLUO Section 23.08.288(d) (p. 56).*

Analysis: See analysis of Contention 5, above

Contention 15: *The LOCSD misrepresented its ability to dispose of up to 100,000 gallons per day (gpd) of harvest water at the Sea Pines golf course. Previous documentation indicated a range of 30,000 – 67,000 gpd. The March 2004 Geotechnical Report was the only report based on percolation rates, and identified a disposal capacity of 30,000 GPD at Sea Pines. Irrigation is usually not applied during the rainy season (p. 85).*

Analysis: CCLO and LOTTF continue to disagree with the applicant's reported ability to dispose 100,000 gpd of harvested groundwater at the Sea Pines golf course, but have not provided evidence that the applicant intentionally provided inaccurate information in this regard. Even if such allegations were true, it is unlikely that an accurate description of harvest water disposal capacities at Sea Pines would have resulted in a different action, because the concern that inadequate upland disposal capacities will result in discharges to the Bay is effectively addressed by the terms of the CDP prohibiting such discharges (see analysis of Contention 5).

Contention 16: *Potential agricultural use of harvest water was incorrectly described as a new option by the LOCSD in 2004, when, in fact, it was considered by the March 2001 Final Project Report (p. 85). The 2001 report indicated that ag use would not help maintain the viability of the groundwater basin, while the 2004 memo indicates that it could benefit the groundwater basin (p. 86).*

Analysis: Whether the potential for agricultural use of harvested water is a new or old concept had no consequence on the Commission's decision, which includes a condition requiring such disposal options to be pursued before discharges to the Bay may be considered. To the degree that alleged discrepancies between the 2001 and 2004 analyses of the extent to which agricultural use would recharge the basin represents a claim that the applicant had provided inaccurate information, there is no evidence that either analysis was intentionally incomplete or inaccurate.

Contention 17: *Inadequate planning for the disposal of treated effluent has been intentionally misleading (p. 53- 54).*



Analysis: The contentions contained on pages 53 – 54 intermix concerns regarding the disposal of treated effluent with concerns regarding the disposal of harvested groundwater, and are essentially restatements of concerns and opinions expressed during the Commission's review of the appeal. As discussed above, there is no evidence that the district intentionally submitted inaccurate information regarding disposal needs and capabilities.

Contention 18: *The LOCSD provided misinformation regarding groundwater recharge and remediation (p. 89-91). "The current design for the wastewater facilities only serves the immediate needs of the community, it is expected that there will be additional capital costs coming in the very near future as development occurs, along with other 'if needed' improvements and modifications" (p. 91).*

Analysis: Allegations of misrepresentations contained on pages 89-91 of the revocation request also restate and supplement the same challenges to the technical analyses completed as part of the CDP review. There is no evidence of intentional misrepresentations, or basis to conclude that such misrepresentations influenced the Commissions decision.

2. Environmentally Sensitive Habitat Areas

Contention 19: *January 2004 Biological Assessment states that there will be 12 acres of ESHA impacted at Broderson, and 13 acres at Tri-W, rather than the 8 and 11.5 acre figures provided to the Commission (p. vii, 34). BA also states that fields will be completely redone every five years (p. 36).*

Analysis: The 4-acre discrepancy in the Broderson impact area calculated by CDP application materials and the Biological Assessment (BA) is a result of the fact that the BA addresses the potential for habitat restoration activities required by the CDP to result in the take of the threatened Morro shoulderband snail. The CDP application materials accurately estimated the loss of 8 acres of sensitive coastal scrub habitat associated with the construction and operation of the disposal field, and proposed mitigation for these impacts, including the restoration of degraded habitat along the degraded northern portion the Broderson site. The subsequent analysis prepared to address Endangered Species Act requirements approximated a 12-acre construction site "including access roads and buffer zones". The applicant and the USFWS recently clarified that the additional 4 acres included in this estimate is intended to address the potential for habitat restoration measures required by the CDP to result in the take of listed species (see correspondence attached as Exhibit 5). CDP permit conditions ensure that disposal field construction will not disturb more than 8 acres of habitat, as further discussed below.

A similar discrepancy regarding the extent of habitat impacts at the treatment site is attributable to the fact that the 13 acres of clearing, excavation and grading estimated by the BA includes the impacts associated with pipeline installation on vacant parcels adjacent to the 11.5 acre Tri-W site. As recognized in the Commission's approval of LCP Amendment 3-01, the entire 11.5 acre Tri-W site is considered to be ESHA, and all of the existing habitat contained on the site will be removed as a result of treatment plant construction. Additional impacts to ESHA from pipeline installation, reflected by the 13-acre estimation contained in the BA, have been addressed, among other ways, by conducting pre-construction surveys to assess and minimize impacts to biological



resources from infrastructure construction on vacant lots (see Special Condition 65). The accuracy of the ESHA impact analysis applied to the CDP, as well as the adequacy of project mitigation measures have been debated at public hearings, and there is no evidence that the applicant intentionally withheld or misrepresented the full extent of anticipated habitat impacts.

Contention 20: *Project specifications show that in addition to the 8 acres of leach fields, there will be habitat loss attributable to a 500 ft x 20 ft access road and a 30-foot firebreak running the length and breadth of the property. (p. vii, 34)*

Analysis: The applicant has refined final plans in accordance with Special Conditions 27 and 69 to ensure that all elements of construction will be contained well within an 8-acre envelope. In order to minimize impacts of future maintenance activities and prevent such activities from disrupting habitat areas surrounding the leachfield, Special Conditions 27 and 28 require that rehabilitation of percolation fields occur one field at a time, and accompanied by prompt revegetation of disturbed areas. Different opinions regarding the maintenance needs and land area needed for the disposal field to function properly have been considered during the permit review, and there is no evidence that the applicant has attempted to deceive the Commission.

Contention 21: *Project specifications note that there will be future connections to the leach field, indicating that the size of the leach fields (and associated habitat loss) will grow over time. This is also reflected by the proposed rezoning of 40 acres of Broderson to Public Facilities as part of the Estero Area Update (p. vii, 34).*

Analysis: According to the project engineer, the "future connection" identified on the plans for the leachfield is "provided for the potential future installation of a small balancing tank to attenuate pumped flow and assist effluent flow distribution. The size and geometry of the balancing tank, if needed, would be dependent upon actual operating experience. However, the tank would be expected to be less than 600 to 1200 gallons and would be partially buried to provide a low profile that would not project above the top of the perimeter fencing". This tank, if needed, could be accommodated within the 8-acre disposal facility envelope reported to the Commission, and subject to future coastal development permit review and approval. Thus, the referenced plan notation does not provide evidence that the applicant has intentionally misrepresented the extent of land required to operate the leachfield, or basis to conclude that such misrepresentations had an influence on the Commission's decision.

Assertions that the re-zoning of 40 acres of the Broderson site from Residential Single Family to Public Facilities proposed by the Estero Area Plan Update is intended to accommodate future expansion of the leachfield are also without merit. According to the County, the proposal to rezone the entire 40 acres of the lower Broderson parcel to Public Facilities was developed before the exact location of the leachfield was known, and intended to provide flexibility in determining the best location for the leachfield within the larger 40 acre parcel. Under the terms of the Commission's approval, all of the habitat outside of the permitted leachfield area will be preserved and maintained as native habitat. Moreover, the proposed rezoning has no standing, and the Commission will have the opportunity to address the concern when it reviews the Estero Area Plan Update as an LCP amendment.



Contention 22: *LOCSD provided incomplete and inaccurate information regarding leach field capabilities (p. viii). Leachfields are undersized according to EPA manuals and AB 885 OSWT requirements (p. 33, 37). Design corrections to the conceptual plans presented to the Commission will be needed, and will include discharge to the Morro Bay, which is allowed by the CDP. Project review has been segmented (p. 34). ESHA damage will increase as a result of leachfield maintenance and expansion, a fact that was intentionally withheld from the Commission (p. 37, 41). Technical basis for claims contained on pages 38 – 40.*

Analysis: The theory that the applicant has intentionally underreported the amount of land that will be needed at the Broderson in order to effectively dispose of treated wastewater is not supported by evidence of deception, but is based on CCLO's and LOTTF's continued concerns regarding the technical design, maintenance needs, and lifespan of the leachfield. This is an issue that was fairly debated during the review of the coastal development permit. As discussed above, the terms of the Commission's approval limit construction and maintenance activities to an area that will not exceed 8 acres.

Contention 23: *Intentional inaccurate information regarding CZLUO Section 23.08.288(D) prohibiting development of a public utility in a sensitive resource area or ESHA if there is a feasible alternative site (p. 73, 79).*

Analysis: The feasibility of alternatives that would avoid or minimize impacts to environmentally sensitive habitats has received significant attention throughout the history of the Commission's review. The Commission found, both in 2002 and 2004, that it was more protective of coastal resources (e.g., water quality, marine habitats, water oriented recreation opportunities) to allow construction of the treatment plant at the proposed location than to cause the delays that would be associated with further consideration of an alternative sites.⁷ The fact that an 8-acre parcel adjacent to the Andre site provides a technically feasible alternative has been acknowledged by the materials submitted by the applicant as well as staff testimony during the De Novo hearing, but not pursued based on the same reasoning. There is no evidence to support the theory that the Commission was misled to believe that there were not feasible alternatives.

Contention 24: *Staff contention that the Andre site could not be further studied because it was not in the EIR is incorrect (p. 74, 78). Feasibility of Andre warrants revocation (p. 75)*

Analysis: Commission staff contentions, whether accurate or inaccurate, do not provide a basis for revocation of the permit pursuant to the Commission's regulations. Allegations regarding the feasibility of the Andre alternative are addressed above and do not provide a basis for revocation.

Contention 25: *2002 LCP Amendment balancing finding is invalid, as it was based under false assumptions that there were no alternatives (p. 77).*

Analysis: This statement is not a basis for revocation. The LCP amendment in question was certified over two years ago, and associated legal challenges dismissed.

⁷ Findings for approval of LCP Amendment 3-01 and CDP A-3-SLO-03-113



Contention 26: *CCC received intentionally inaccurate information regarding the completeness of the HCP and Biological Opinion (p. 79-82).*

Analysis: Project compliance with LCP standards requiring the preparation of a Habitat Conservation Plan was a significant issue considered by the Commission. The Commission conducted a thorough analysis of this issue, and established conditions of approval that carry out LCP requirements. There is no evidence to support the assertion that the applicant's characterizations of the HCP, and associated Biological Assessment had any influence on the Commission's decision regarding this matter.

3. Wetlands

Contention 27: *The most wetland delineation was conducted in August 2004, during one of the driest summers, in the driest month of the year. As a result, the results remain suspect and must be re-conducted during the wet season. Wetland evaluations prepared in November 9, 2004 LOCSD are incomplete and were conducted at the wrong time of year. (p. 83).*

Analysis: The Commission's staff biologist reviewed the submitted wetland delineations and determined that the reports were conducted using appropriate methodology, followed the definitions in the Coastal Act and Regulations. Although it can be difficult to detect wetland plants and saturation in summer and fall, abundant plants and soil features do not change; if there were extensive ponding, there would be field indicators left even during the dry times of year. Seasonal fluctuations pose less of a problem for delineating wetlands under the Coastal Commission's one-parameter requirement than under US Army Corps of Engineers standards, which requires evidence of all three parameters (water, plants, and soils).

Contention 28: *March 2001 FEIR identifies 25 acres of wetlands in Los Osos, while the HCP identifies 24 acres wetlands and 95 acres riparian. The applicant has not submitted consistent or accurate analysis of wetland impacts, and intentionally omitted wetland impacts from coastal permit documents. (p. 83).*

Analysis: Contentions that the applicant has intentionally omitted known wetland impacts is not supported by evidence. The referenced one acre difference in the amount of wetlands analyzed by the 2001 project EIR and the 2004 Draft HCP, and the reported distinction between wetland and riparian habitats made by the HCP, does not materially support the contention or represent new information that would have influenced the Commission's decision.

Contention 29: *Wetland areas not properly evaluated include, Lupine Pump Station Wetlands, Solano/Butte Street, Wetlands, Ravenna Force Main Wetlands, 4th St, Gravity Main Wetlands, Los Olivos Gravity Main Wetlands, all other gravity and lateral line installation impacts to wetlands, and Pocket Pump and Power standby wetlands.*

Analysis: All but one of the wetland areas identified by the revocation request have been specifically evaluated by the Commission, and the requestor's disagreement with the conclusions of these analyses do not provide a basis for revoking the permit.



There is no evidence that the applicant knew of, and intentionally failed to report, potential impacts to a group of willow trees in an undeveloped right-of way at the corner of 4th and Pismo associated with the installation of a force main. This issue arose in conjunction with the review of alternative alignments required by Special Condition 18g. After identifying the potential impacts and evaluating alternatives, the applicant has modified construction plans to install the pipeline using trenchless technologies (i.e., boring) at this location (see amendment request attached as Exhibit 4) which avoids impacts to the willows and renders the allegations immaterial.

4. Capacity and Service Area

Contention 30: *Rather than the reported capacity of 1.4 MGD, current project specs show the plants capacity is 5.4 MGD, with an allowance for an additional 33% growth. (p. ix, 42, 50) Peak wet weather flow is 1.6 MGD (p. 51)*

Analysis: The project engineer has responded to this contention in correspondence attached in Exhibit 5, which explains the difference between the project's average annual treatment capacity of 1.4 mgd, and the need to account for maximum in-flow volumes and instantaneous flow rates that demand a peak capacity of 5.4 mgd. The ability to add 33 percent more treatment membranes is needed to ensure effective treatment over time rather than to accommodate additional growth.

The project engineer has also explained the distinction between the 1.6 peak wet weather flow and the maximum instantaneous design flow of 5.4 mgd as follows:

The flow rate of 1.6 mgd refers to the peak wet weather flow predicted that the wastewater treatment facility (WWTF) will receive at buildout. This represents the amount of flow received over a 24 hour period and includes the normal dry weather wastewater flow of 1.3 mgd plus an allowance of 0.3 mgd for inflow and infiltration (I/I) from stormwater. [By the way, any reference you may see for 1.4 mgd represents the annual average daily flow (annual composite of 1.3 mgd dry weather flow and 1.6 mgd wet weather flow).] This I/I allowance of 0.3 mgd is conservative because we will have a new system with bell and spigot joints and new manholes with gasketed joints to minimize I/I.

The flow rate of 5.4 mgd refers to the peak instantaneous flow that the WWTF can theoretically receive. Remember that the generation of wastewater has diurnal variations, so the amount of flow received at any point in time will be greater than or less than the average daily flow. This peak flow rate would only last for say 5 to 10 minutes (worst case) and represents the potential flow rate that would occur if all pumps from the tributary pump stations (all flow delivered to the WWTF is pumped) happened to be operating at the same time. This circumstance is theoretically possible, but unlikely to happen, and if it did happen, could not be sustained for more than 5 to 10 minutes because sources of wastewater to the collection system could not maintain that rate. This flow rate of 5.4 mgd effects the hydraulic capacity of the channels and pipes that convey wastewater so that



we can physically contain the flow and prevent an overflow if such an event occurred, but it does not effect the sizing of any treatment processes. [What may cause confusion is that industry convention typically uses flow rate units of "million gallons per day (mgd)" for all flow rates, even those that would only occur for several minutes. Kind of like saying you went 70 mph to pass a car, even though you traveled at that speed for 1 minute.]

Irrespective of technical design, concerns regarding the growth inducing impacts of the project are addressed by Special Conditions 34, 76, 82, and 83, as well as the County and Commission's ongoing role in planning for and regulating new development. The alleged misrepresentations therefore have no material affect on the Commission's action.

Contention 31: *The LOCSD did not provide accurate or consistent information regarding its long term plans to expand service to all areas within the USL (as indicated by LOCSD Water Master Plan, p. 2-1) (p. 50- 52).*

Analysis: Irrespective of alleged inconsistencies and inaccuracies in the applicant's response to questions and concerns regarding potential expansions of the service area, the allowable service area is clearly established by the CDP. Asserted misrepresentations of the applicant's desire for future expansion of the service area within either the Urban Service Line (USL) or Urban Reserve Line (URL) are immaterial to the Commission's action on the CDP. Future expansions within the USL are allowable under the LCP and would require Coastal Commission approval of an amendment to CDP A-3-SLO-03-113, or separate CDP approval by the County. Expansions within the URL may be permitted, if accompanied by an LCP amendment approved by the Commission that incorporates the proposed expansion area within the USL, as well as an approved permit amendment of separate CDP.

Contention 32: *LOCSD did not provide complete information at the August 2004 hearing when responding to questions regarding capacity discrepancies. The response that the membrane manufacturers recommended additional capacity based on performance uncertainties does not explain the 33% capacity increase to the 5.4 MGD design (p. 51).*

Analysis: See analysis of Contention 30, above.

Contention 33: *LOCSD falsely stated that they relied on the RWQCB assurance that the plant is sized correctly (p. 52).*

Analysis: The degree to which the RWQCB participated in determining the appropriate size of the plant is immaterial to the Commission's consideration of the CDP application.

5. Visual Resources

Contention 34: *Notwithstanding the staff report addendum identifying the proposed change in building heights, LOCSD continued to present old building heights and did not mention that an increase had occurred. Story poles were not properly installed. (p. ix, 64, 65)*



Analysis: As noted by the request, adjustments to the allowable height of the treatment plant buildings requested by the applicant were reported to the Commission in a staff report addendum. The asserted basis for revocation rests with the assertion that, despite the addendum, the applicant falsely indicated that there had been no changes to the project since the County's approval, and failed to inform the Commission of the adjusted heights at the de novo hearing. The fact that the height adjustments were reported to the Commission in the staff report addendum, however, dispels any accusation that the change of height was withheld from the Commission. Moreover, the minor changes in building heights (4 feet increase in the most extreme instance) are unlikely to have been influential factors in the Commission's decision, because they are still within the LCP's allowable limits and will result in an insignificant change to the visual impacts presented by the County approved project.

Likewise, the request for revocation lacks any evidence that story poles were incorrectly installed at the treatment plant site, let alone on purpose, and fails to document any additional damage to scenic resources that will actually result from the project. Without such evidence, these contentions represent continued debate regarding the merits of the project and findings of approval, which are inappropriate grounds for revocation.

Contention 35: *LOCSD attorney falsely testified that nothing of significance has changed with respect to project (p. 65)*

Analysis: See analysis of Contention 34, above. Changes to building heights, and other project adjustments made during the time in which the CDP application was pending on appeal, were accurately reported to the Commission. While CCLO and LOTTF continue to dispute the adequacy and conclusions of the Commission's visual analysis, the request for revocation does not provide any evidence of specific visual resource impacts that were known, and intentionally withheld or misrepresented, which could have resulted in a different action by the Commission.

Contention 36: *The applicant did not install story poles at the location of the "Harvest Well/Blending Station" on the site, or at other sites with potential visual impacts such as standby power stations and pump houses (p. 65)*

Analysis: There is no evidence that story poles were intentionally omitted from the visual analysis of the treatment facilities requested by the Commission, or that such omissions resulted in such a significant misrepresentation that it could have had a material affect on the Commission's action. The applicant was neither required nor requested to install story poles for the purpose of analyzing the visual impacts of stand-by power stations and pump houses. The location and design of these facilities were included in the Exhibits to the Commission staff report prepared for the De Novo hearing, and there was adequate opportunity to address the visual impacts of these facilities during the permit review process.

Contention 37: *Challenges to adopted findings on visual resources (p. 67 – 68)*

Analysis: The request for revocation challenges the accuracy and adequacy of the findings and conditions of approval adopted by the Commission. There is no basis for revocation contained within these statements.



Contention 38: *Visual impacts of Broderson leachfield not identified or addressed (p. 72)*

Analysis: CCLO and LOTTF's dissatisfaction with the adequacy of the visual analysis completed in conjunction with the CDP does not provide grounds for revocation under the relevant regulation (CCR, Title 14, Section 13104 et seq.).

6. Hazards

Contention 39: *Inconsistent information regarding the effect of the project on groundwater mounding, and whether such impacts will be addressed through the use of harvest wells (p. 86).*

Analysis: This contention asserts that the applicant has provided inconsistent information regarding the influence that effluent disposal and groundwater harvesting may have on localized flooding problems, implying that the applicant has either misled properties owners by indicating the project would relieve some of these problems, or misled the Commission by committing to maintaining existing groundwater levels to protect wetlands. The impact of the project on groundwater levels was thoroughly analyzed during CDP review, and the permit was conditioned to require long-term monitoring and management of the groundwater basin in a manner that maximizes opportunities to protect wetlands, recharge the groundwater basin, and avoid flooding on a sub-regional basis (e.g., Special Condition 20). There is no evidence that the applicant intentionally provided incomplete or inaccurate information to the Commission, or that an accurate representation of the facts would have resulted in a different decision.

Contention 40: *The Commission was misled that the use of hazardous chemicals has been eliminated (p. 43)*

Analysis: There is no evidence that the Commission was misled to believe there would be no use of hazardous materials. Rather, the record shows that the Commission was aware of this potential, and conditioned the project accordingly (e.g., p. 81 of the adopted findings for permit approval and Special Condition 54).

Contention 41: *The increased potential for liquefaction as a result of the disposal plan has not been effectively mitigated. The CZLUO requires preparation of a report on geologic hazards and appropriate mitigation measures. (p. 91-92)*

Analysis: Allegations that mitigation measures will be inadequate or ineffective, and assertions of inconsistencies with LCP standards for geologic hazard areas, do not provide grounds for revocation because they do not demonstrate that the applicant intentionally submitted inaccurate or incomplete information, in a manner that influenced the Commission's decision on the CDP application.

7. Odors

Contention 42: *The Commission was misinformed that the treatment facilities would be "odor free". Collection system manholes, septic hauling, and sludge hauling will emit odors.*



Commissioner Iseman stated odor scrubbers won't work and raised concerns about sludge hauling. Condition 47 and 48 demonstrate that the project will not be odor free. Park amenities will not be usable. Referenced Pacifica plant has odor problems (p. 48-49, 56-59)

Analysis: Allegations that the applicant provided inaccurate and incomplete information regarding project odors are irrelevant because there is no evidence to support the theory that the Commission was misled to believe the project would not have odor impacts. The Commissioner testimony cited by the request indicates that any statements regarding an "odor free" facility did not have much weight. Similarly, the permit conditions referenced by the request, requiring implementation of measures to minimize and respond to odor impacts, demonstrate that there was no misconception regarding the possibility of odor problems. The assertion that park facilities will not be usable is not a basis for revocation.

8. Extent of Project Costs and Impacts

Contention 43: *The applicant provided misleading information about project costs, as evidenced by Value Engineering reports that addressed only half the required size and cost of the project. The VE exercise deferred several processes in order to reduce the initial impacts of cost and environmental damage (e.g., aerobic sludge digestion and recycled water piping) (p. 42, 44, 53). Design and technical changes to the project, including treatment processes, handling of biosolids, and overflow pipe/basin w/in 500 feet of a drinking water well were not disclosed (p. 43).*

Analysis: Project costs are not applicable standards of review for the coastal development permit. To the degree that cost may factor into the feasibility of alternatives, it should be noted that the rejection of alternative sites was not made on a financial basis (see response to Contention 1). The alleged misrepresentations of project costs were therefore immaterial to the Commission's decision on the CDP application. Allegations that particular facts were not addressed in the course of the Commission's proceedings, such as the costs of processing sludge, or recycling treated effluent back through the treatment plant, also do not provide a basis for revocation of the permit, because they do not demonstrate an intent to deceive or present facts that were withheld from the Commission that, if known, may have resulted in a different action on the CDP application.

Contention 44: *The Commission was not apprised that the citizens had not been informed of the true costs of the project pursuant to a final facilities plan, in violation of permit requirements for treatment works established by the Commission's regulations (p. 55).*

Analysis: In addition to continuing the general allegation that the applicant misrepresented project costs (analyzed above), this contention asserts that the applicant failed to provide complete information regarding project costs in the form of a final facilities plan, required by Section 13650 et seq. of the Commission's administrative regulations. The alleged inconsistency with application filing requirements does not demonstrate an intent to deceive or provide evidence of withheld information that could have swayed the Commission's action.



Contention 45: *The FEIR alluded to the lower cost of a centralized facility, in spite of the fact that the Facilities Plan identified that the Andre site has a lower-annual life cycle cost. The LOCSD intentionally misled the community by not supplying all of the relevant cost data for project alternatives. The Commission was misled to believe that the Tri-W site was more affordable, both in the 2002 LCP Amendment and the April 2004 Substantial Issue staff report (p. 76).*

Analysis: See analysis of Contentions 1, 23, and 43.

9. Procedures and Noticing Requirements

Contention 46: *LCP Amendments and Special Studies for PF rezoning of Broderson incomplete and not legally posted (p. 36). LCP Amendments required to allow public facilities on residential suburban lands, and associated special studies required by Table O, not completed (p. 36). The lack of LCP Amendments to rezone all project public facility elements and the additional staff-to-staff approvals during the condition compliance review this fall represent a failure to comply with the notice provisions of Section 13054.*

Analysis: The request for revocation argues that LCP amendment requirements were not satisfied, resulting in a lack of noticing and other procedural violations, based on the theory that project elements such as the Broderson leachfield can only be located on property that has been designated for Public Facility land uses by the LCP. This contention reflects a misunderstanding of the LCP, which allows public utility facilities within all land use categories other than open space and recreation, unless otherwise restricted by area plan, as was the case with the Tri-W site but not with the Broderson site. More importantly, the contention fails to provide a basis for revocation due to a lack of noticing because it asserts a violation of LCP amendment (rather than CDP) noticing requirements, and because it fails to identify points of view that were not made available to the Commission that could have influenced the Commission's decision on the application. The Commission's Substantial Issue and De Novo hearings were noticed in accordance with the applicable regulations. There are no public notice requirements for staff to staff discussions of condition compliance issues.

Contention 47: *County use of Substantial Conformance Review was illegal and misrepresented to Commissioners (p. 64). County and Commission approved a project at 30% design with incomplete and innacurate information inconsistent with CZLUO Section 23.01.034(a) (p. 68).*

Analysis: This contention reiterates arguments presented as part of the appeals and during the De Novo review that challenge both the process and substance of project changes and supplemental information submitted while the CDP application was pending on appeal. The revocation requests expands on these arguments by suggesting that these alleged procedural violations were intentional, and intended to mislead decision makers about the full extent, cost, and impacts of the project. There is no evidence to support such a theory. The resource issues raised by this contention are primarily visual, and addressed in the above analyses.

Contention 48: *Circumvention of Public Process (p. 59-63). "If Coastal Commissioners were apprised of the lack of noticing the public concerning the options, costs and the selection*



process, as well as the growing vocal opposition in Los Osos, to the project, coupled with the autonomy to make the decision on approving the CDP outside of the threats and demands of other public agencies, who violated their own permitting requirements, they would have found adequate grounds to revoke this permit. The public has not been noticed of the full costs and ramifications or provided with a public process to address them." (p. 63)

Analysis: This statement is not a revocation contention. It does not effectively address any of the elements necessary for an adequate revocation contention pursuant to the regulations (i.e., misleading information, intentionally transmitted by the Applicant, would have affected the Commission's decision.) The Commission hearings were adequately noticed. The Commission is not required to provide notice of the costs of projects.

Contention 49: *The costs and impacts of aerobic sludge digestion, recycled water piping, acid washing facilities, and other chemical use associated with the MBR system, as well as project sustainability, were not addressed by the project EIR. Project segmentation is a violation of CEQA and the LCP (p.42- 47). Changes to the level of sludge treatment were not disclosed in the 2003 [EIR] addendum. (p. 48). Other CEQA violations (p. 72-74).*

Analysis: The alleged inadequacies of the EIR, and asserted violations of CEQA, do not provide grounds for revocation under the relevant regulation (CCR, Title 14, Section 13104 et seq.).

Contention 50: *The Commission received intentionally inaccurate information regarding CDP requirements for treatment works (p. 54-55). The permit was illegally issued because the Final Facilities Plan required by the Commission's regulations was not completed until 12/24/04 (p. 55).*

Analysis: see analyses of contentions 43 and 44.

Contention 51: *RWQCB WDR and ACOE Permit requirements intentionally ignored (p. 59).*

Analysis: This contention is unclear as to who is being accused of ignoring other agency permit requirements, or how such an action affected the Commission's decision, and therefore does not provide grounds for revocation under the relevant regulation (CCR, Title 14, Section 13104 et seq.).

Contention 52: *Conditioning the project, in an effort to bring it in conformity to the LCP, is a violation of Coastal Act Section 30623 (p.68-69). Substantial Conformance Review and other project changes that occurred after the filing of the appeal is a violation of Coastal Act Section 30623 (p. 69 – 71).*

Analysis: This contention reiterates alleged violations of the Coastal Act presented during the De Novo review and do not provide grounds for revocation under the relevant regulation (CCR, Title 14, Section 13104 et seq.). The Commission commonly places conditions on project approvals. Also see analysis of Contention 47.



10. Other Allegations

Contention 53: *LOCSD misrepresented public sentiments, as evidenced by the election of Shicker/Tacker (p. viii – ix, 63). The 1999 community selection of the in-town site was rendered moot in 2003, when it was determined, through the Value Engineering process, that the treatment plant would not longer be located underground. This was not disclosed to the public or the Commission. (p. 42)*

Analysis: Community support is not a standard of review for coastal development permit applications and therefore immaterial to the Commission's decision. Nevertheless, it is worth noting that the public hearings conducted as part of the CDP review has provided an opportunity for all opinions to be voiced. In light of this testimony, the Commission was clearly aware of local opposition to the project.

Contention 54: *Proposed use of Walker Ranch as Staging Area contradicts LOCSD Reports claiming a balanced cut and fill on the Tri-W site (p.67). Visual impacts of this proposal have not been identified or addressed (p. 72).*

Analysis: The proposed use of a site and the allegation that there may be visual impacts associated with the use of this site do not provide any grounds for revocation of the permit pursuant to CCR Title 14, Section 13104 et seq. Any such proposal would require separate coastal development review and approval.

Contention 55: *LOCSD's failure to follow prescribed competitive bidding procedures in its approval of contracts with consultants is evidence of a larger plot to deceive the public and decision makers (p. 73)*

Analysis: There are three components necessary to establish grounds for revocation: evidence of inaccurate, incomplete, or erroneous information; evidence that the misleading information was intentionally provided; and, a basis for concluding that had the true information been known, the Commission would have altered their position on the project. This contention fails to meet any of these requirements.

Contention 56: *"We believe that if the Coastal commissioners were apprised of the true vocal opposition in Los Osos, and if they were not being threatened to bow to the demands of other public agencies who are looking the other way on their own permits, that they would find adequate grounds to revoke this permit, based on the numerous allegations presented in this report." (p. 93)*

Analysis: Given the lengthy testimony by opponents of the project at the two Commission hearings, it is obvious that the Commission was aware of local opposition. The alleged "threats" by other agencies do not provide grounds for revocation pursuant to the Commission's regulations.



Staff Note: Exhibits to the Staff Report for Item TH12 of the Coastal Commission's April 14, 2005 Hearing (Request for Revocation of Coastal Development Permit A-3-SLO-03-113 for the Los Osos Wastewater Treatment Project) will be distributed separately on a CD-ROM. Hardcopies of the Exhibits are available upon request.

