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Prepared May 31, 2012 (for June 15, 2012 hearing)

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Subject: Coastal Development Permit Revocation Request Number R-A-3-SLO-09-055/069.
 Request by the Los Osos Sustainability Group to revoke the coastal development permit granted to the San Luis Obispo County Department of Public Works for the Los Osos Wastewater Project (including treatment plant, collection and disposal system, and related infrastructure and development) in the community of Los Osos in San Luis Obispo County.

Staff Recommendation

Summary

On June 11, 2010 the Coastal Commission approved a coastal development permit (CDP) for the Los Osos Wastewater Project (LOWWP). This CDP approval came after multiple public hearings and review and consideration of a great deal of information and input, including significant input and participation by the Los Osos Sustainability Group (LOSG), the party now seeking revocation. The project was controversial and contentious for all of the time leading up to and including the Commission's approval, a time period spanning several decades of project development, including several prior Commission hearings, and previous iterations of a project. Ultimately, in its 2010 decision the Commission considered the range of issues and varied viewpoints, and determined that the approved project was "a much needed and well-conceived beneficial coastal resource project that is essential to protect ground and surface waters in and near Los Osos, including the Morro Bay National Estuary and related habitats and resources, and to provide essential public services to the Los Osos area". Not all parties agreed with the Commission's decision, including some who said it did not go far enough to address issues in Los Osos and others who said it went too far or should have been done differently.

In submittals between February and May of 2012,¹ LOSG requested that the Commission revoke the approved CDP, claiming that San Luis Obispo County and the Central Coast Regional Water Quality Control Board (RWQCB) intentionally misled the Commission by intentionally providing inaccurate, erroneous, and incomplete information prior to the Commission's approval. In general, LOSG alleges that the degree of water quality threat that formed the primary basis of the project was overstated, as was the degree of resource benefit attributed to the project. LOSG also alleges that the project will do more

¹ LOSG submitted its original revocation request on February 21, 2012, and added and modified it in subsequent submittals up to and including documents submitted on May 7, 2012.



California Coastal Commission

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resource harm than good, that it includes inadequate mitigation for impacts, that there are more impacts than were disclosed, that the CEQA process was inadequate and flawed, and that the Commission's findings to approve the project are inappropriate. LOSG argues that there are better alternatives to the approved project that will better protect the long-term sustainability of the Los Osos groundwater basin, the Morro Bay National Estuary, and public health and safety at lesser cost and with fewer impacts (including by reducing groundwater pumping, initiating better salt/nutrient/nitrate management measures, aggressively applying low impact development (or LID) measures, developing a better stormwater management system, initiating more severe conservation, using a septic system management system to reduce and address septic failures, etc.). LOSG is requesting that the Commission revoke its June 2010 CDP approval.

The grounds for CDP revocation are narrow, are confined to information in existence at the time of the Commission's action, and are identified in Title 14 of the California Code of Regulations (14 CCR) Sections 13105(a) and (b). The three elements of Section 13105(a) that must be satisfied before a CDP can be revoked are:

- 1) That the applicant provided incomplete, inaccurate or erroneous information; AND
- 2) That inaccurate, erroneous or incomplete information was supplied intentionally; AND
- 3) That if the Commission had known of the information, it would have denied the permit or imposed additional or different conditions.

Section 13105(b) specifies that revocation can also be based on a finding that parties required to be noticed of the hearing by the Commission's regulations weren't, that their views were not otherwise made known to the Commission, and that, if those views were known, the Commission could have denied the permit or imposed different conditions.

If the revocation criteria are met, then the Commission retains the discretion to either revoke the permit or deny the revocation request (i.e., if revocation grounds are met, a CDP is not required to be revoked). In addition, if the Commission determines that a revocation request was not filed with due diligence, then the Commission must deny the request (per 14 CCR Section 13108).²

In this case, Staff has reviewed the revocation request and can find no basis for a finding that the County or the RWQCB intentionally misled the Commission. LOSG has a significant difference of opinion regarding the degree and type of resource threat, and how to go about addressing that threat, than does the County or the RWQCB (or the Commission in its approved CDP), but LOSG has not submitted evidence of the type of purposeful misrepresentation (or hiding) of information that is required to revoke a permit. The bulk of LOSG's revocation request consists of arguments regarding the merits of the project and the inadequacy of the required mitigation. A revocation request is not the appropriate

² Due diligence is not defined in the Coastal Act or the Commission's regulations. The CDP approval was in June of 2010, or nearly two years ago, and the revocation request was received between February 21, 2012 and May 7, 2012.

procedure for challenging the merits of the Commission's decision, however, and the time for LOSG to have challenged the decision has passed. Based on the information before it, staff concludes that the County and the RWQCB provided information in good faith identifying the problem and their proposed solution. Such information was developed over the course of many years, including many public hearings (over 100 for just the most recent LOWWP iteration of the project), resulting in a voluminous record of debate and deliberation.

The Commission reviewed the project, including problem definition and solution, and found the LOWWP to be consistent, as conditioned, with the County's certified local coastal program (LCP) and the public access and recreation policies of the Coastal Act. The Commission's written findings (excluding exhibits) totaled some 100 pages, explicitly addressing the relevant issues in nine issues areas (ESHA, agriculture, groundwater, public services, water quality, public views, archaeology, hazards, and public recreational access), and included some ten pages of conditions designed to appropriately modify and mitigate for the project, including through a comprehensive habitat management plan (defining restoration, enhancement, management, and protection over some 100 acres of habitat) as well as a recycled water management plan (designed to ensure that wastewater disposal maximizes long-term ground and surface water and related resource health and sustainability). The approval was explicitly premised on an adaptive management approach, one that would allow for the project to be modified over time in response to project monitoring so as to best protect and enhance coastal resources.

LOSG participated in the Commission's hearings leading up to CDP approval in June 2010, and presented similar observations as are presented now, particularly as it relates to its opposition to the LOWWP and its advocacy for pursuing different project alternatives. It is clear that LOSG would prefer a different project outcome, and has a different viewpoint of the relevant facts. However, the critical revocation criterion, that of intentionally misleading the Commission, is not met here. Likewise, there is no evidence that there was inadequate noticing, and that revocation criterion is not met either.

Staff recommends that the Commission deny the request for revocation on the basis that no grounds exist for revocation under the Commission's regulations. The required motion and resolution are found directly below.

Motion and Resolution to Deny Revocation Request

Staff recommends that the Commission, after public hearing, **deny the revocation request**. To implement this recommendation, **Staff recommends a no vote on the motion below**. Failure of this motion will result in denial of the revocation request and adoption of the resolution and findings that follow. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion: I move that the Commission grant revocation of CDP A-3-SLO-09-055/069. I recommend a no vote.

Resolution to Deny Revocation: The Commission hereby denies the request for revocation of



the Commission's decision on CDP A-3-SLO-09-055/069 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 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.

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Click on the link
at left to go to
Exhibit D. [77MB]

II. Findings and Declarations

The Commission finds and declares as follows:

A. Approved CDP

Background

Los Osos is an unincorporated coastal community of about 15,000 residents that is located in central San Luis Obispo County at the south end of Morro Bay, a designated State and National Estuary that is well known and recognized as one of the most important biologic and wetland resources in California's coastal zone (see project location map in Exhibit A). Since at least the early 1970s, the RWQCB and other agencies have raised environmental health and safety concerns regarding septic tank discharges communitywide adversely affecting ground and surface water, including Morro Bay. The RWQCB has



taken a series of steps since that time to address the problem, and most of Los Osos has been under a RWQCB discharge moratorium since the mid-1980s.³

In the time since, there have been a series of ultimately unsuccessful attempts to address the identified ground and surface water pollution issues in Los Osos through construction and operation of a wastewater project. Environmental work and CDPs (each preceded by Commission approval of project-driven LCP amendments) were approved by the County and appealed to the Commission for two different wastewater projects (including with different treatment plant sites) preceding the LOWWP. Both of these prior projects were contentious, and engendered significant differences of opinion regarding the best method to address wastewater issues in Los Osos, including where to site a treatment plant. Most recently in the early 2000s, the Commission approved a CDP for the Los Osos Community Services District (LOCSD) for a different wastewater treatment project in Los Osos in 2004. This CDP was also subject to a revocation request (on similar grounds, denied by the Commission in May of 2005). Ultimately, the LOCSD project CDP expired in 2005, and the project was never completed.⁴

Following the collapse of the LOCSD project in 2005, state legislation authorized the County to take over pursuit of a wastewater solution from the LOCSD, and the County embarked on a long and inclusive local process that included evaluation of treatment plant siting, collection system approaches (e.g., STEP versus gravity flow⁵), effluent disposal and reuse options, water supply, preservation of groundwater basins, protection of agriculture, and the protection of other sensitive coastal resources. The County polled Los Osos property owners subject to the discharge moratorium (with 80% in favor of the assessing themselves to pay for the proposed project at that time), and held over 100 public hearings on the project. The County's efforts culminated in 2009 with a series of ten County Planning Commission hearings (including two field trips) and multiple County Board of Supervisors' hearings leading to the Board's approval of the current LOWWP in late 2009. On appeal of the Board's CDP actions, the Commission took jurisdiction over the CDP for the project (following a public hearing in January 2010), and approved a CDP for the project on June 11, 2010.

The approved LOWWP includes construction and operation of a community sewer system, including a treatment plant, collection/disposal/reuse facilities, and all associated development and infrastructure. The treatment plant is to be sited on approximately 30 acres located about one-half mile inland of Morro Bay at 2198 Los Osos Valley Road just past and north of the Los Osos Mortuary and Memorial Park (at a site known locally as the Giacomazzi site). Collection, disposal, and reuse infrastructure is to be located throughout the community of Los Osos, with the primary effluent disposal leach field located on

³ See also the Commission's adopted CDP findings related to such background information, specifically beginning on page 9 of Exhibit B.

⁴ The LOCSD project featured a wastewater treatment plant sited in the middle of town at what is commonly referred to as the Tri-W or Midtown site.

⁵ STEP is an acronym that stands for septic tank effluent pump, and describes a type of collection system that includes a STEP tank at each site, where tank solids are pumped out of each such tank on a periodic basis and effluent is conveyed via gravity and pressure (i.e., the pipelines are sealed and pressurized) to a street collection system and ultimately to a treatment plant. A gravity collection system conveys both solids and effluent to a street collection system and ultimately to a treatment plant via gravity and pumping.



about eight acres at the top of Sea Horse Lane (known locally as the Broderson site). The project is to treat wastewater to a tertiary level, and to reuse as much of the treated effluent as possible for urban and agricultural irrigation with disposal prioritized to reduce seawater intrusion and otherwise improve the health and sustainability of the underlying Los Osos groundwater basin.

In its approval, the Commission imposed a series of conditions to refine and better implement the LOWWP. These conditions required: revised plans showing revised treatment plant and pump station layout to avoid and otherwise limit habitat impacts, a revised alignment for the treatment plant access road to avoid and otherwise limit agricultural impacts, and details on measures to be taken to ensure all project landscaping is limited to native and non-invasive species; a habitat management plan defining restoration, enhancement, management, and protection of the 80-acre Broderson site, the 12-acre Midtown (Tri-W) site, the roughly 8-acre habitat/buffer area at the Giacomazzi site, and a total of about an acre at the various pump stations sites (a total habitat management plan area of about 100 acres); agricultural easements (2:1) to address agricultural impacts at the treatment plant site and access to it; a septic system decommissioning plan to identify measures to appropriately decommission existing septic tank systems and to connect users to the approved project; a restriction on service to undeveloped Los Osos properties absent a communitywide Habitat Conservation Plan (HCP) and an LCP amendment that identifies appropriate and sustainable buildout limits for the area; and an overall Los Osos basin recycled water management plan designed to ensure that the location of the wastewater disposal maximizes long-term ground and surface water and related resource (including wetlands, streams, creeks, lakes, riparian corridors, marshes, etc.) health and sustainability, including offsetting seawater intrusion as much as possible, through aggressive recycled water reuse, water conservation, monitoring, and adaptive management. The conditions also incorporated a methodology for future CDP amendment and for resolution of potential conflicts, and required the County to indemnify the Commission against third-party lawsuits. See the Commission's adopted report approving the CDP in Exhibit B, with conditions starting on page 91.

In its CDP action, the Commission concluded as follows:

In conclusion, the Commission recognizes that the LOWWP has been conceived and designed to help improve currently impaired ground and surface water health and sustainability, including through maximizing the productive reuse of recycled water effluent in the Los Osos basin. Furthermore, the Commission believes that, as conditioned, there is no feasible, less-environmentally damaging wastewater treatment project, including with respect to plant siting and to collection and effluent disposal methodologies and siting, as required by the LCP. In short, the project as conditioned is a much needed and well-conceived beneficial coastal resource project that is essential to protect ground and surface waters in and near Los Osos, including the Morro Bay National Estuary and related habitats and resources, and to provide essential public services to the Los Osos area. Significant local and state resources have been dedicated towards addressing these needs over a period of more than 30 years, and environmental impacts and project alternatives have been thoroughly considered. The resultant project represents an important environmental enhancement project of statewide importance



that will greatly improve environmental health and safety associated with ground and surface water in and around Los Osos, including in Morro Bay, and including with respect to its related habitat resources. It is clear that the project itself includes certain impacts, but it is hard to conceive of a treatment project at this scale for this area that would not have such impacts. As conditioned, the LOWWP appropriately avoids such impacts where feasible, and appropriately mitigates for unavoidable impacts. In terms of the latter, the project includes a significant mitigation package that includes: over 100 acres of habitat restoration, enhancement, management, and protection; includes provisions to ensure appropriate and sustainable buildout through further LCP and habitat planning for Los Osos; and that includes an overall Los Osos basin recycled water management plan designed to ensure that implementation of the project maximizes long-term ground and surface water and related resource health and sustainability, including through adaptive management over time.

In the nearly two years since the Commission's CDP approval, the County worked diligently on resolving condition compliance issues, and was cleared to proceed with construction under the CDP in May of this year. The County indicates that it intends to initiate construction of the project under the CDP prior to its June 11, 2012 expiration date.⁶

B. Revocation Procedures

The grounds for revocation identify exacting criteria, and multiple thresholds must be met for the Commission to consider revoking a CDP (see Exhibit C for the Commission's revocation procedures (14 CCR Sections 13104-13108)). There are two main revocation grounds, one regarding inadequate noticing and one regarding erroneous, inaccurate or incomplete information. With respect to notice, Section 13105(b) specifies that revocation can be based on a finding that parties required to be noticed of the hearing by the Commission's regulations weren't, that their views were not otherwise made known to the Commission, and that, if those views were to have been made known, the Commission could have denied the permit or imposed different conditions. In essence, an argument that relevant viewpoints were not known to the Commission due to noticing error.

With respect to incomplete information (14 CCR Section 13105(a)), the critical criteria to allow consideration of revocation are that inaccurate, erroneous, or incomplete information must have been provided in connection with the CDP application, and that it must have been provided intentionally. This latter qualifier is important because revocation is not only about demonstrating that there was incomplete, inaccurate or erroneous information, it also must be shown that such incomplete, inaccurate or erroneous information was provided to the Commission on purpose, intentionally. If those grounds are proven, the Commission must then also find that the submittal of corrected accurate and complete information would have led to a different CDP action.

⁶ The CDP approval expires on June 11, 2014 unless the County exercises (or "vests") the CDP before then. If it is not exercised before that time, the County would request a one-year extension of the CDP, as allowed under the Commission's regulations.



If revocation grounds are met, then the Commission can consider whether to revoke a CDP, and it still retains its discretion to revoke or not revoke a CDP (i.e., when grounds are met, the regulations do not require the Commission to revoke the CDP; Section 13108(d) provides that a permit may be revoked if the grounds for revocation are met). If the Commission determines that the revocation request was not filed with due diligence, then the request must be denied (i.e., the regulations do require the Commission to deny such a request). Again, see Exhibit C for the Commission's revocation procedures.

Revocation of a CDP revokes approval, issuance, and any authority for development pursuant to a previously granted CDP. Even if a permit is exercised or vested (i.e., a permittee has begun significant construction of the approved project), if the Commission revokes the CDP, the permittee is required to stop work and, if wishing to continue, to reapply for a new CDP for the project. If the Executive Director determines that evidence clearly shows that there are grounds for revocation, Section 13107 of the Commission's regulations provides that the permit be suspended.⁷

Because of the impact of a revocation on a permittee, the grounds for revocation are necessarily narrow. The rules of revocation do not allow the Commission to have second thoughts on a previously approved or issued CDP based on information that comes into existence after the granting of a permit, no matter how compelling that information might be. Similarly, a violation of the Coastal Act or the terms and conditions of a CDP, or an allegation that a violation has occurred, are not grounds for revocation. The grounds for revocation are confined to information in existence at the time of the Commission's action.

In short, revocation proceedings present a very high bar, for example, for there to be differences in opinion over what certain data showed or didn't show. Or that some sort of data was available that wasn't all provided. Rather, it is that the data/opinions were known to be inaccurate, erroneous, or incomplete, and were intentionally provided (or intentionally withheld, in the case of incomplete information) in such form. And the Commission must still find that the intentional inclusion (or withholding) of such information would change the prior CDP decision, and it must still also exercise its discretion to revoke the CDP, unless it finds a lack of due diligence in submitting the request, in which case the revocation request is required to be denied by the Commission. The three elements that must be satisfied before a CDP can be revoked under misrepresentation/incomplete information grounds are: (1) that the applicant provided incomplete, inaccurate or erroneous information; and (2) that inaccurate, erroneous or incomplete information was supplied intentionally; and (3) that if the Commission had known of the information, it would have denied the permit or imposed additional or different conditions.

C. Revocation Request

LOSG requests that the Commission revoke the approved LOWWP CDP, generally arguing that the County and the RWQCB intentionally misled the Commission by intentionally providing inaccurate,

⁷ In this case, the Executive Director determined that the grounds for revocation did not exist, and thus did not direct that the operation of the permit be suspended.



erroneous, and incomplete information prior to the Commission's approval. Because of this alleged intentional misrepresenting of information, LOSG generally claims that the degree of water quality threat that formed the primary basis for the project was overstated, as was the degree of resource benefit attributed to the project, that there are more impacts than were disclosed, that the project will do more resource harm than good, that it includes inadequate mitigation for impacts, that the CEQA process was inadequate and flawed, that the Commission's findings to approve the project are inappropriate, that all property owners in the Los Osos area should have been noticed of the Commission's hearing on the CDP, and that persons not noticed would have provided comments that would have changed the Commission's decision. LOSG concludes that there are better alternatives to the approved project that will better protect the long-term sustainability of the Los Osos groundwater basin, the Morro Bay National Estuary, and public health and safety at lesser cost and with fewer impacts (including by reducing groundwater pumping, initiating better salt/nutrient/nitrate management measures, aggressively applying LID measures, developing a better stormwater management system, initiating more severe conservation, using a septic system management system to reduce failures, etc.). Finally, LOSG wants the Commission, County, and RWQCB to prove that the project provides significant and measurable benefits to the Morro Bay National Estuary, the Los Osos groundwater basin, and related resources, and to prove that there is no other alternative that can provide similar or greater benefits with fewer impacts and risks. This, however, is not the standard that must be met for revocation. For revocation, the burden of proof lies with the party requesting revocation, and neither the applicant nor the Commission needs to prove anything. See Exhibit D for the LOSG's complete request for revocation, including cover letter, request, outline, additional letter, and all cited documents.

D. Revocation Analysis

Section 13105(a) (Intentionally Misleading the Commission) Allegations

Perhaps the most fundamental of the Section 13105(a) revocation criteria is that an applicant intentionally misled the Commission through providing inaccurate, erroneous or incomplete information. There might be information that was not provided, or there might be information that was provided that was incorrect, but to meet the revocation grounds, it must have been intentionally omitted or provided.

In its revocation request, LOSG provides a very detailed description of its interpretation of a series of LOWWP issues and the way in which the County and the RWQCB approached such issues. LOSG has a significantly different opinion than does the County, the RWQCB, and the Commission (as evidenced in the approved CDP) regarding the bulk of these issues. In the request, LOSG describes its view of the wastewater problem in Los Osos and how to solve it, and this view is similar in many ways to LOSG's submittals prior to Commission action in June 2010, submittals urging the Commission to approve a different alternative. While LOSG's revocation request is thorough and detailed, the vast majority of it consists of re-arguing the merits of the project in reliance on primarily the same documents that were already in the record at the time the Commission acted. A revocation request does not provide a party



with an opportunity to revisit the merits of the Commission's action. The request for revocation fails to provide evidence demonstrating that the County (or the RWQCB) intentionally misled the Commission.

For example, LOSG alleges that the only source the County and RWQCB used to prove the need for the project was a study on the source of E. coli in shellfish beds throughout the Morro Bay estuary. Specifically noted in the request for revocation, LOSG reiterates that the study was not conducted to show the need for a wastewater project. Additionally, it is claimed, the study makes no significant conclusion linking nitrate pollution in Morro Bay estuary to nitrates directly from septic systems within Los Osos (see page 13 of the request, page 19 of Exhibit D). However, the RWQCB is the state agency with primary responsibility for water quality issues, and the Commission reasonably relied on the information presented by the RWQCB related to water quality. RWQCB and other agencies have raised environmental health and safety concerns regarding septic tank discharges communitywide adversely affecting ground and surface water, including Morro Bay for decades. Even if the study LOSG asserts was misused was the only document available and did not conclusively provide a causative link (and was not given the weight that LOSG believes should have been afforded or was not used to derive the conclusions that LOSG derives from it), that is not the same as intentionally providing faulty or incomplete information. Absent a showing of intent, it is immaterial as to whether documents were or were not countenanced in the way LOSG opines they should have been.

Although County and RWQCB conclusions differ from those of LOSG, LOSG has not provided evidence of intentional misrepresentation of information. Again, a difference of opinion, even a difference of opinion regarding the same information or report data (many such instances are described in LOSG's request), does not mean that there was a purposeful or pre-meditated intent to provide inaccurate or incomplete information.

Fundamentally, the main issues LOSG raises in the revocation request are the same issues that have been central to discussion and debate surrounding wastewater issues in Los Osos for the past forty years. Specifically, there has been intense discussion and debate over "the problem", including what it is and to what degree it is problematic, and "the solution" to the identified problem; all of which are raised again in the revocation request. In terms of the problem, LOSG contends that the RWQCB discharge prohibition/moratorium and related testimony and conclusions are outdated and incorrect, and represent an intent to mislead the Commission. For example, on pages 14-15 of the request (pages 20-21 of Exhibit D), LOSG claims that one reason why a letter from the Executive Officer of the RWQCB to the Commission includes a misrepresentation is because it implies that flooding septic systems are a threat to health and safety in the Los Osos watershed. LOSG does not, however, provide reliable evidence that such statement is a misrepresentation. The primary support for LOSG's claim that this statement is inaccurate is because it did not receive any evidence that it was accurate when a group called Citizens for a Sustainable Community (CSC) submitted an extensive Public Records Act request to the RWQCB (after the Commission's approval of the CDP). The revocation request does not include evidence of what the RWQCB provided to CSC in response to its request for documents, nor does the "evidence" described by LOSG actually show that the cited statement is a misrepresentation. LOSG simply provides its interpretation of some of the available evidence and the conclusions it draws from that

information. This does not show, however, that the letter includes misrepresentations, much less intentional misrepresentations. LOSG has asserted throughout the approval process for the LOWWP that there is insufficient evidence of harm caused by septic systems to justify the need for the LOWWP. The Commission weighed such evidence presented by LOSG when it approved the CDP in 2010 for the LOWWP. LOSG has not shown that the evidence in its revocation request is substantially different than the arguments it made to the Commission prior to approval of the CDP. LOSG therefore also fails to meet its burden of showing that even if quotes, such as those taken from Mr. Briggs's letter, were intentional misrepresentations that they would have resulted in a different outcome. LOSG's request for revocation fails to show that the evidence on which the Commission relied included intentional omissions or misrepresentations.

Similarly, LOSG asserts that septic systems are not threatening resources (like Morro Bay and related habitat) nor public health and safety. In short, its opinion is that these risks are overstated (see LOSG discussion under Section 1.E.1 beginning on page 10 of the request, page 16 in Exhibit D). However, the LOSG does not include evidence that the County intentionally provided inaccurate or incomplete information in this respect. For example, LOSG states that the benefits of the project are highly overestimated and the risks are understated. LOSG makes the case that through basin wide management and conservation, the goals of the project can be met with reduced risks and lower cost. While its plan may be valid, this is simply a differing opinion. Nowhere in the request does LOSG present evidence proving the County and RWQCB intentionally withheld or misrepresented information given to the Commission; it only presents information supporting a differing opinion on the project (see pages 29 through 34 of the request, pages 35-40 in Exhibit D). Examples similar in nature comprise the majority of the request for revocation. Additionally, LOSG presents a section including a cost-benefit analysis and benefit-risk assessment for the LOWWP and management. The evidence presented by LOSG, while compelling in favor of management, only further supports its preferred alternative to the project (see pages 150 and 151 of the request, pages 156-157 in Exhibit D). Again, this does not demonstrate the required intent on the part of the County or the RWQCB as is required to meet the revocation threshold.

Given the information in front of it when it approved the CDP in 2010, the Commission disagreed with LOSG's assessment of the level of threat to resources posed by existing septic systems. In making such findings over the past over twenty years (i.e., during two LCP amendment proceedings, three subsequent appeal/CDP proceedings, and one prior unsuccessful revocation request) the Commission has in large part relied on the conclusions of the RWQCB, including its waste discharge prohibition in 1983 and its discharge moratorium adopted in 1988. LOSG's revocation request fails to provide evidence that this evidence on which the Commission relied included intentional omissions or misrepresentations. Moreover, Section 30412 of the Coastal Act explicitly defers to RWQCB determinations such as this (see discussion regarding the relevance of Section 30412 to Commission and RWQCB roles under the Coastal Act starting on page 16 of the Commission's adopted staff report for the CDP in Exhibit B).

More important for this revocation request, LOSG does not show a purposeful manipulation of information on the part of the County or the RWQCB leading up to the Commission's approval of the CDP. The vast majority of its revocation request consists of a summary of information available at the



time of the Commission's action that was part of the record (e.g., the certified environmental impact report (EIR) for the project) from which LOSG draws different conclusions than does the County. For example, on pages 35-40 of the request (page 41-46 of Exhibit D), LOSG describes assertions in a letter from Mark Hutchinson, County Public Works Environmental Program Coordinator, to Commission staff that it claims are misrepresentations. One example used by LOSG was Mr. Hutchinson's statement that substantial wetland impacts are not expected to occur as the result of the project. LOSG asserts that this is a misrepresentation because the plan submitted for conditions compliance with Special Condition 20 of the prior plan states that the potential exists for adverse affects to wetlands. First, Mr. Hutchinson's letter is describing conclusions from the EIR, which may have differed from those supporting Special Condition 20 for the prior project, so there is no evidence that he was misrepresenting the conclusions from the EIR. Second, Mr. Hutchinson's statement is not necessarily inconsistent with LOSG's quote from the Special Condition 20 plan, so it isn't clearly a misrepresentation of that plan. Finally, the purpose of Mr. Hutchinson's explanation in this letter was to describe the wetland mitigation that the County was proposing to undertake if wetland impacts occur, even though such impacts were not anticipated by the County. This quote therefore does not appear to be an intentional misrepresentation of the evidence, as it outlines the County's proposed mitigation for wetland impacts, should they occur. There would be no need for the County to misrepresent evidence of anticipated wetland impacts when it is already proposing mitigation for such impacts. The fact that LOSG interprets documents differently than the County did or does not agree with the conclusions drawn by the County does not provide evidence of intentional misrepresentations or omissions needed for LOSG to meet its burden for revocation.

LOSG has similarly failed to meet its burden of showing that there were intentional omissions and misrepresentations related to the evidence supporting "the solution" that the Commission approved. As described in the background section of this report, the issue of the appropriate "solution" to the wastewater problem in Los Osos has engendered perhaps the most significant controversy over the years, with competing treatment plant sites, competing treatment technologies, and competing visions for integrating sustainable and long-term wastewater and groundwater improvements. LOSG's vision, while similar to what it suggested the Commission adopt during the 2010 CDP proceedings, is different than that of the approved CDP, but LOSG has not shown that information was purposefully falsified or omitted as part of the Commission's CDP process. For example, LOSG contends the project presented to the Commission and ultimately approved does not properly mitigate the impacts of the project and fails to disclose numerous negative impacts all together. For example, the LOSG contends that the project may reduce nitrate pollution in the estuary, but that by cutting off effluent from septic systems, it will also reduce flow to the estuary and groundwater basins by hundreds of acre feet a year, impacting groundwater resources and impacting habitat (because it claims that septic systems support ESHA) during dry weather (see page 44 of the request, page 50 in Exhibit D). This observation is not unlike LOSG's observations before the Commission in 2010, and the Commission ultimately weighed the relevant information and approved a plan designed to reduce pollution while addressing groundwater issues. That LOSG continues to have a different opinion on how best to address the problem is not grounds for revocation.



Similarly, LOSG continues to contend that the project fails to mitigate the severe seawater intrusion problem occurring throughout the lower aquifer of the Los Osos groundwater basin. In 2011, LOSG supported a request that the RWQCB prepare a SEIR to address seawater intrusion, but this request was denied. LOSG contends that this RWQCB refusal is evidence that the RWQCB knew that there were more significant seawater intrusion problems than were reported to the Commission (see page 61 of the request, page 67 in Exhibit D). However, not only did the 2011 SEIR request come after the Commission's 2010 decision, but it is unclear how this allegation shows anything other than a difference of opinion over whether an SEIR should be prepared, and certainly doesn't represent an intent to deceive. In addition, the Commission explicitly considered seawater intrusion issues, and explicitly conditioned the LOWWP to prioritize recycled water reuse to address sweater intrusion (see for example, special condition 5 of the Commission's approval in Exhibit B, requiring a Los Osos Basin Recycled Water Management Plan for this and other purposes). The effects and severity of seawater intrusion within the basin are subjective and debatable. If the County and RWQCB did not believe a SEIR was needed to mitigate for project impacts on seawater intrusion, then that is their expert opinion. Again, a difference of opinion is not grounds for revocation.

In short, LOSG is raising similar concerns as have been debated and discussed for literally decades. The information before the Commission in 2010 was developed over the course of many years, including many public hearings (over 100 for just the LOWWP), resulting in a voluminous record of debate and deliberation. LOSG fully participated in such proceedings for the LOWWP CDP. The Commission reviewed the project, including problem definition and solution, and found the LOWWP, as conditioned, to be consistent with the County's certified LCP and the access and recreation policies of the Coastal Act, including analysis of the issues identified in the revocation request. The Commission's written findings (excluding exhibits) totaled some 100 pages, explicitly addressing the relevant issues in nine issues areas (ESHA, agriculture, groundwater, public services, water quality, public views, archaeology, hazards, and public recreational access), and included some ten pages of conditions designed to appropriately modify and mitigate for the project, including through a comprehensive habitat management plan (defining restoration, enhancement, management, and protection over some 100 acres of habitat) as well as a recycled water management plan (designed to ensure that wastewater disposal maximizes long-term ground and surface water and related resource health and sustainability). LOSG participated in the Commission's hearings leading up to CDP approval in June 2010, and presented similar observations as are presented now, particularly as it relates to its opposition to the LOWWP. It is clear that LOSG would prefer a different project outcome, and has a different viewpoint of the relevant facts. However, as described above, the LOSG has not submitted evidence that the County intentionally omitted information or misled the Commission on the facts that formed the basis for the Commission's decision to approve the subject CDP.

In sum, LOSG has not met the threshold requirement of showing an intentional omission of information or intentional submission of inaccurate or erroneous information to the Commission. Even if LOSG had met this requirement, however, the last element of the test needed for the Commission to revoke a permit is that the intentional misrepresentations or omissions would have resulted in a different permit



outcome – either through denial of the permit or additional or different permit conditions. This final element for revocation therefore requires the Commission to exercise its discretion to determine whether the information included in a revocation request is sufficient for it to find that the permit should have been denied or conditioned differently. The Commission declines to exercise its discretion to so find in this case.

The Commission’s approval of the County’s CDP was the final step in a multi-decade process in which all of the issues raised by LOSG in its revocation request were thoroughly considered at both the local and Commission level. As indicated above, the LOWWP (and prior iterations of projects) were debated and discussed at length, with a full spectrum of competing visions and differences of opinions on core issues central to that process. The revocation request rehashes those same issues. Ultimately, the Commission weighed the evidence and made a decision in 2010, and approved the LOWWP as the least environmentally damaging feasible alternative to address the wastewater and related issues in Los Osos.

In addition, and in full recognition of the complexity and inherent uncertainty for many interrelated issues (such as the way in which wastewater treatment approaches affect groundwater resources), the Commission also intentionally conditioned the permit to require adaptive management, so that if the primary coastal resource issues (such as those LOSG is again raising now) do lead to unforeseen and/or more significant adverse coastal resource impacts than expected, then the County is required to modify the project to avoid, and where unavoidable to mitigate, for those impacts. Thus, even if there were intentional omissions or misrepresentations that might result in resource impacts, the CDP’s terms and conditions are explicitly designed to address such impacts. In short, the Commission approved a project that forms the critical foundation for addressing wastewater issues in Los Osos in a way that also allows for inherent uncertainties to be tracked and resolved in a manner that is required to be the most protective of coastal resources. Nothing in the revocation request, even if it were proven that the Commission was intentionally misled (which LOSG has not proved), would cause the Commission to deny or differently condition the permit. For this additional reason the Commission finds that LOSG’s request for revocation should be denied.

Section 13105(b) (Noticing) Allegations

LOSG indicates that all property owners in the Los Osos area should have been notified due to the potential for the LOWWP to adversely affect their properties, and that, if they had been noticed, they would have provided comments to the Commission that could have changed the Commission’s CDP decision (see page 153 of the request, page 159 of Exhibit D). LOSG doesn’t explicitly indicate who was not noticed, nor which viewpoints would have been provided had these persons been noticed of the hearing, rather LOSG identifies a series of potential adverse impacts that could accrue to individual properties.

In terms of notice for the June 2010 CDP hearing, the Commission sent 116 notices via first class mail to individual addressees who were identified during the appeal process (e.g., elected officials, County representatives, appellants, interested parties known to staff and/or identified in appeals, local

environmental and community groups, local newspapers, state and federal resource agencies, nearby residents, etc.). In addition, the hearing item was posted on the Commission's website, and notice was posted at the Commission's Central Coast District Office in Santa Cruz. In addition, the LOWWP project was the subject of significant public interest and numerous newspaper and electronic articles leading up to the Commission's June 2010 CDP hearing, providing an additional level of effective notice to interested parties in the community. LOSG has not demonstrated that the Commission failed to comply with the noticing procedures required in 14 CCR 13054, thus the revocation criteria of 14 CCR Section 13105(b) are not met.

Even if it were determined that the Commission failed to comply with the noticing provisions of 14 CCR Section 13054, the other criteria of Section 13105(b) are likewise not met. In particular, Section 13105(b) also requires that there be viewpoints that weren't made known to the Commission and that these viewpoints would have changed the Commission's CDP decision. As described above, the County and Commission process for the LOWWP was long and inclusive, with over 100 local hearings and two Coastal Commission hearings after that on the LOWWP project alone (and many more on prior project iterations, including the two LCP amendments, two prior appealed projects, and one unsuccessful CDP revocation preceding the LOWWP). Such a process provided significant opportunities for participation, and created an enormous administrative record reflecting the results of such input over many, many years. The body of viewpoints before the Commission was thus fairly comprehensive, and it is unlikely that (a) significant never-described viewpoints were not represented, and (b) that such viewpoints would (to the degree they exist) have changed the Commission's decision. LOSG certainly has not shown in its revocation request that these conditions are met here. The impacts cited by LOSG in its revocation request (i.e., impacts to wells, soils, landscaping, views, and home values on individual private properties; see page 153 of the request, page 159 of Exhibit D) are speculative, covered to one degree or another in the administrative record, and unlikely in any case to have modified the Commission's CDP decision overall. In fact, the Commission's CDP decision identified such groundwater, habitat, view and related impacts overall in the community, and identified specific mitigations through its approval to address such issues, and LOSG has not shown that if additional viewpoints were presented that there would have been different measures adopted to address individual property issues.

Therefore, there are insufficient grounds to revoke the CDP under the provisions of 14 CCR Section 13105(b).

Conclusion

The grounds for revocation are narrow, and they are not met in this case. In particular, LOSG has not submitted evidence demonstrating the type of intentional misrepresentation (or withholding) of information that is required to revoke a CDP. Even if it had, the materials submitted would not have led to a different Commission outcome on the CDP. The issues surrounding wastewater in Los Osos are complex and are subject to differences of opinion. As indicated, the Commission reviewed the entirety of the LOWWP project, including problem definition and solution, and found this project to be the least environmentally damaging feasible alternative across the full range of evaluation factors, including the



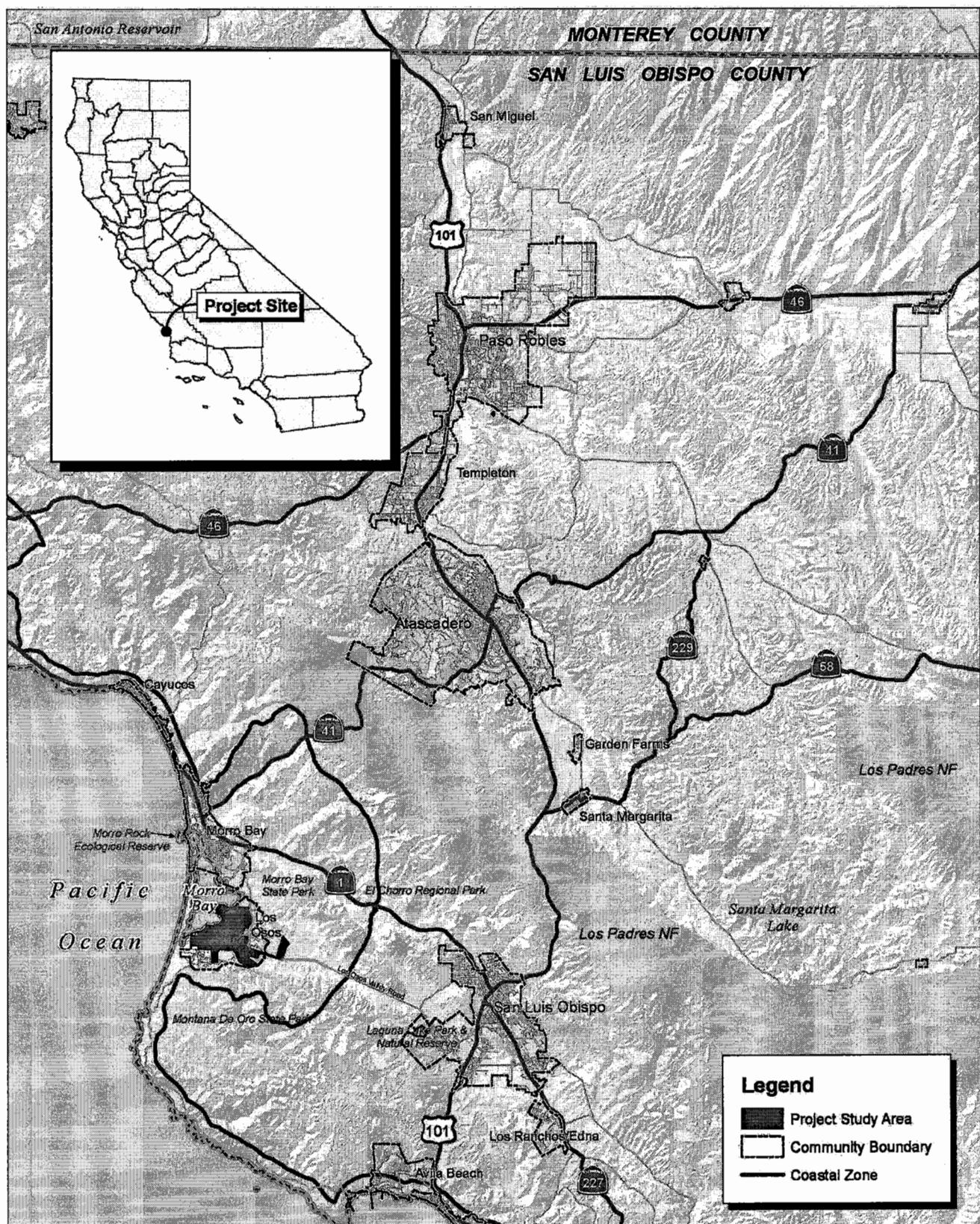
ones identified in the revocation request. The Commission's written findings fully addressed the relevant issues in nine issues areas (ESHA, agriculture, groundwater, public services, water quality, public views, archaeology, hazards, and public recreational access), and included some ten pages of conditions designed to appropriately modify and mitigate for the project, including through comprehensive habitat and recycled water management plans. The approval of the permit was explicitly premised on an adaptive management approach, one that would allow for the project to be modified over time in response to project monitoring so as to best protect and enhance coastal resources.

It is clear that LOSG would prefer a different project outcome, and has a different viewpoint of the relevant facts. However, the critical revocation criterion, that of intentionally misleading the Commission, is not met here. Likewise, there is no evidence that there was inadequate noticing, and that revocation criterion is not met either. Absent such evidence, revocation cannot even be considered under the California Code of Regulations, and is not appropriate here. The revocation request is thus denied.

In addition, while the rest of the revocation request is moot absent such evidence of intentional omission or misrepresentation, the issues raised therein are not new issues per se, rather they are largely the same issues considered by the Commission in 2010, and the same issues generally as have been the focus of intense discussion and deliberation spanning some four decades, including, at the Commission level, two project-driven LCP amendments, three different appealed projects (including the LOWWP), two Commission CDPs, and now two revocation requests. LOSG participated in the Commission's hearings leading up to CDP approval in June 2010, and presented similar observations as are presented now, particularly as it relates to their opposition to the LOWWP.

When the Commission approved the CDP for the LOWWP, the Commission carefully considered the information presented. Although the Commission respects and understands that there were and are alternatives to the LOWWP, a request to revoke a permit is not the appropriate time to re-consider the record and sift through it yet again, including revisiting competing views and visions for a project. That process concluded when the CDP was approved nearly two years ago. Absent evidence of intentional omission or misrepresentation, and LOSG has not demonstrated such an intent in its revocation submittal, revocation is not warranted.





Source: Census 2000 Data, The CaSIL, MBA GIS 2008.

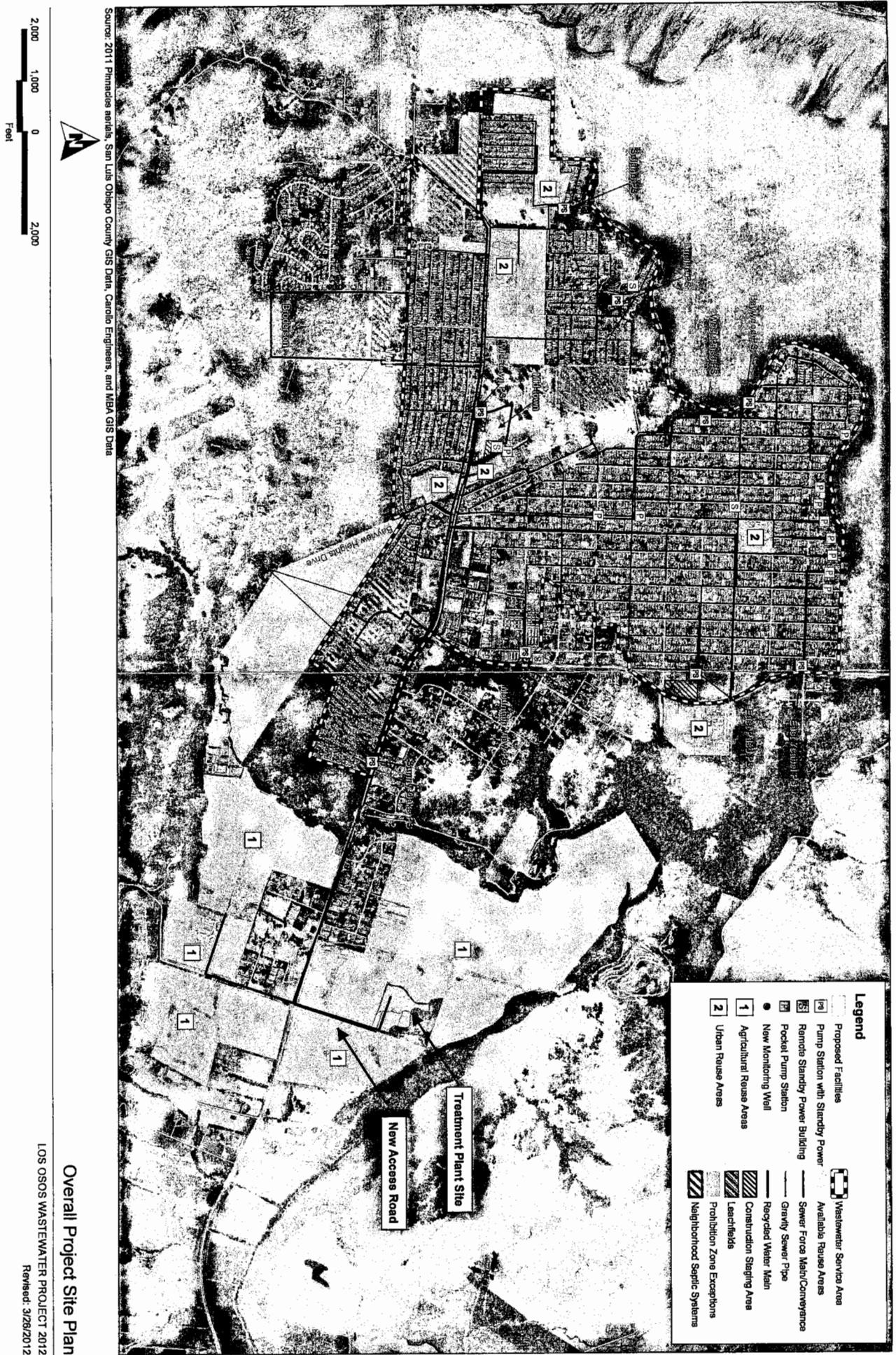


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Exhibit 1-1
CCC Exhibit A Project Vicinity
 (page 1 of 2 pages) TEWATER PROJECT 2010

CCC Exhibit A

(page 2 of 2 pages)



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ADOPTED**Th7b**

Staff report prepared:
 Staff report prepared by:
 Staff report approved by:
 Hearing date:

5/27/2010
 Jonathan Bishop
 Dan Carl
 6/11/2010

COASTAL DEVELOPMENT PERMIT APPLICATION

Application number A-3-SLO-09-055/069, Los Osos Wastewater Project (LOWWP)

Applicant San Luis Obispo County Public Works Department

Project description Construction and operation of a community sewer system, including a treatment plant, collection/disposal/reuse facilities, and all associated development and infrastructure.

Project location The unincorporated coastal community of Los Osos adjacent to Morro Bay in central San Luis Obispo County (with the treatment plant located at 2198 Los Osos Valley Road and other related infrastructure located throughout Los Osos).

File documents Administrative record for San Luis Obispo County coastal development permit (CDP) number DRC2008-00103; San Luis Obispo County certified Local Coastal Program (LCP).

Staff recommendation Approve with Conditions

A. Staff Recommendation**1. Staff Note**

San Luis Obispo County's approval of a CDP for the proposed project in late 2009 was appealed to the Commission by multiple parties. On January 14, 2010, the Coastal Commission found that a substantial issue existed with respect to the grounds on which the appeals were filed, and the Commission took jurisdiction over the CDP application. Due to the manner in which the County acted on the CDP for the proposed project (an overall approval action followed by an amendment action to modify a portion of the project), there are two Coastal Commission appeal/application numbers associated with the proposed project, A-3-SLO-09-055 and A-3-SLO-09-069. However, there is only one proposed project, and these two applications have been combined as CDP application number A-3-SLO-09-055/069.

In its January 14, 2010 action, the Commission was generally satisfied with the core elements of the proposed project with respect to treatment plant siting, the gravity collection system, and the project's reuse concept overall. However, the Commission did direct staff to focus on seven main issue areas requiring additional clarification, correction, and/or potentially project changes to address LCP and



California Coastal Commission

ADOPTED A-3-SLO-09-055_069 (LOWWP) strprt 6.11.10 hrg.doc

Exhibit B

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Coastal Act requirements: 1) verification of wetland delineations; 2) mitigation requirements for the proposed project relative to the prior abandoned wastewater treatment plant project at the Tri-W (Midtown) site; 3) increased implementation specificity and timing, including with respect to conservation and agricultural reuse elements; 4) protection of Willow Creek; 5) impact identification and mitigation associated with potential alteration of groundwater flows; 6) issues associated with the proposed construction staging area; and 7) specificity with respect to septic tank decommissioning/reuse. Staff coordinated with the County and multiple Appellant groups on these and related questions, and the County and many interested parties provided significant materials to assist in this analysis. On this, staff makes three observations.

First, the proposed project, while simple in concept on its most basic level (i.e., enhanced wastewater treatment to address ongoing human and environmental health and safety problems), raises a series of interrelated and complicated issues relating to the manner in which this community can both cost-effectively meet its water and wastewater needs and protect the rich coastal resource areas within and around the Community. The seven identified issue areas all relate to these questions and each other in such a way to make it difficult to address these seven issues without addressing the project more comprehensively.

Second, although the core proposed project is a wastewater project, it will also significantly affect groundwater and thus water supply, and the two issues are not readily separated. Nor should they be, particularly given that this is a significant and expensive public works project. This opportunity should be taken to address on-going public service needs as comprehensively as possible, including with respect to the manner in which the location of the disposal of the treated wastewater can be used to maximize its groundwater/water supply utility within its basic framework.

Third, thoughtful consideration and analysis of the issues raised by the LOWWP requires significant time, including time for staff to coordinate with the County and with the numerous interested groups and persons who continue to be actively engaged on the project. The County has been understanding about the need for time for staff to properly review the issues and prepare a recommendation, but is also understandably concerned to have the matter heard as soon as possible. Most recently, the County has indicated that taking any more time (for example in order to provide more time for additional data creation/analysis, more time for interested parties to respond to this recommendation and the Commission otherwise, and/or more time to allow the matter to be heard at the Commission's San Luis Obispo hearing in August) would put potential federal stimulus funds for the project in jeopardy should the Commission act on the proposed project any later than the June Commission meeting.¹ Staff has conferred with the federal agency in question, and based on that consultation agrees with the County in that respect. Although the project may still qualify for such funds if the Commission acts later than June, the funds are available on a first-come, first-serve, competitive basis, and staff believes it is in the best interest of the success of the project for the Commission to take its action as soon as possible so as to maximize the project's eligibility to receive funding support that can offset local costs. The affordability

¹ The federal funds center around a potential \$80 million funding package, or nearly half of the estimated project costs, that together with other funding sources being pursued by the County could reduce estimated property owner assessments for the project by roughly half.



of the project has been and will continue to be a major concern for the residents of Los Osos.

Staff is therefore bringing this item forward for Commission consideration at the June hearing in Marina del Rey as opposed to the August hearing in the City of San Luis Obispo. While this will make it incrementally more difficult for interested parties to attend the hearing (as Marina del Rey is further from Los Osos than is the City of San Luis Obispo), staff believes that the desire for a more “local” hearing to facilitate local participation needs to be balanced against the need to bring this matter to timely resolution, including to preserve the best possibility for offsetting federal funds. In making this determination staff notes that the project (not even including prior incarnations raising similar issues) has been discussed and debated through over one hundred public hearings over the last four years, including through a well attended Commission hearing on the matter in January 2010, and it is hard to make a case that public participation has not been maximized in that process.

In conclusion, staff believes that the following recommendation addresses the issues the Commission identified in January, addresses the issues raised by interested parties, and provides for a wastewater treatment project that can successfully address ongoing resource degradation in the Los Osos area while also improving groundwater and other coastal resource protection in a manner appropriate for a major public works project. In addition to maximizing the avoidance and mitigation of resource impacts, the recommended conditions of approval provide for adaptive management of various issues, to the benefit of project implementation and resource protection. Although there may be potential for incremental refinements to the project through continued, more specific analysis, this potential must be weighed against the long-standing need to take action as soon as possible to protect water quality in Los Osos, including sensitive wetland, riparian, and groundwater resources.

2. Summary of Staff Recommendation

Los Osos is an unincorporated coastal community of about 15,000 residents that is located in central San Luis Obispo County at the south end of Morro Bay, a designated State and National Estuary that is well known and recognized as one of the most important biologic and wetland resources in California’s coastal zone. Since at least the early 1970s, the Central Coast Regional Water Quality Control Board (RWQCB) and other agencies have raised environmental health and safety concerns regarding septic tank discharges communitywide adversely affecting ground and surface water, including Morro Bay. The RWQCB has taken a series of steps since that time to address the problem, and currently most of Los Osos has been under a RWQCB discharge moratorium since the mid-1980s.

In the time since there have been a series of ultimately unsuccessful attempts to address the identified ground and surface water pollution issues in Los Osos through construction and operation of a wastewater project. Environmental work and CDPs (each preceded by Commission approval of project-driven LCP amendments) have been approved by the County and appealed to the Commission for two different wastewater projects (including with different treatment plant sites) proceeding this one. Both of these projects were contentious, and engendered significant differences of opinion regarding the best method to address wastewater in Los Osos, including with respect to where to site a treatment plant.



Most recently, the Commission approved a CDP for a different wastewater treatment project in Los Osos in 2004, but work on that project was halted in 2005, the CDP expired, and the project was never completed.²

Following the collapse of the last project attempt in 2005, state legislation authorized the County to take over pursuit of a wastewater solution from the LOCSD, and the County embarked on a long and inclusive local process that included evaluation of treatment plant siting, collection system approaches (e.g., STEP versus gravity flow³), effluent disposal and reuse options, water supply, preservation of groundwater basins, protection of agriculture, and the protection of other sensitive coastal resources. The County polled Los Osos property owners subject to the discharge moratorium (with 80% in favor of the assessing themselves to pay for the proposed project), and held over 100 public hearings on the project. The County's efforts culminated in 2009 with a series of ten County Planning Commission hearings (including two field trips) and multiple County Board of Supervisors' hearings leading to the Board's approval of the proposed project in late 2009. On appeal of the Board's CDP actions, the Commission took jurisdiction over the CDP for the proposed project following a public hearing in January 2010. This report and the hearing on this item in June is the culmination of the CDP process for the proposed project.

The proposed Los Osos Wastewater Project (LOWWP) includes construction and operation of a community sewer system, including a treatment plant, collection/disposal/reuse facilities, and all associated development and infrastructure. The proposed treatment plant is sited on approximately 30 acres located about one-half mile inland of Morro Bay at 2198 Los Osos Valley Road just past and north of the Los Osos Mortuary and Memorial Park, known locally as the Giacomazzi site. Proposed collection, disposal, and reuse infrastructure would be located throughout the community of Los Osos, with the primary effluent disposal leach field proposed for eight acres at the top of Sea Horse Lane, known locally as the Broderson site. The project would treat wastewater to a tertiary level, and would reuse as much of the treated effluent as possible for urban and agricultural irrigation with disposal prioritized to reduce seawater intrusion and otherwise improve the health and sustainability of the underlying Los Osos groundwater basin. The project includes other complementary components (e.g., water conservation), and includes proposed mitigation for project impacts including restoration and permanent protection of about 80 acres of sensitive habitat at the Broderson site (including restoration and re-restoration of the leach field area as it is periodically disturbed) and about 6 acres of habitat buffer area at the Giacomazzi site. Only existing developed properties would be allowed to hook up to the new wastewater system, and the project includes a requirement that a communitywide Habitat Conservation Plan (HCP) and an LCP amendment precede development on undeveloped properties in Los Osos to ensure that habitat is protected and that there are adequate services for any new future development

² The Los Osos Community Services District (LOCSD) project that featured a wastewater treatment plant sited in the middle of town at the Tri-W site.

³ STEP is an acronym that stands for septic tank effluent pump, and describes a type of collection system that includes a STEP tank at each site, where tank solids are pumped out of each such tank on a periodic basis and effluent is conveyed via gravity and pressure (i.e., the pipelines are sealed and pressurized) to a street collection system and ultimately to a treatment plant. A gravity collection system conveys both solids and effluent to a street collection system and ultimately to a treatment plant via gravity and pumping.



consistent with Coastal Act and LCP objectives.

It is clear that the proposed project addresses a critically needed wastewater treatment facility in an area with significant coastal resources, including the Morro Bay National Estuary, that are currently being damaged due to inadequate wastewater treatment and disposal in Los Osos. And although there continues to be some local disagreement over siting, collection, and disposal elements of the project, the County's proposed treatment plant site, and its gravity collection and effluent disposal methodologies are generally sound. The Commission in its January substantial issue action came to this same conclusion and raised seven points, each covered below.

On the question of wetland delineation, staff, including the Commission's ecologist, reviewed additional documentation, visited the treatment plant site and the pump station sites, and verified the location of wetlands. Based on this analysis, the County's delineations were mostly correct. Staff did identify some small additional areas of wetland/ESHA, both at the treatment plant site and at individual pump stations sites. To address these areas and to mitigate for potential impacts, staff has included conditions to site the project in locations that will avoid such areas, to appropriately setback from such areas, and to mitigate impacts from such siting by requiring restoration of such areas and the setbacks to them. In this way, the project appropriately addresses wetland issues under the LCP

With respect to the mitigation requirements for this proposed project in relation to the prior abandoned wastewater treatment plant project at the Tri-W site (the question of "double dipping"), staff reviewed the record associated with the prior action and has concluded that the proposed mitigation at the Broderson site is currently required for impacts that have already occurred at the Tri-W site associated with the prior abandoned project there. As a result, Broderson mitigation cannot be used as mitigation for this proposed project. To address habitat impacts from the proposed project then, a different mitigation program is necessary. The County has, nevertheless, proposed to restore the Broderson site, in part because it must use approximately 8 acres of the site for a proposed leach field. Staff believes that the habitat impacts created by this project can be appropriately addressed by requiring this project to restore the wetland/ESHA and associated setback areas at the Giacomazzi site and the pump station sites as described above, and to restore the Tri-W site. In conjunction with the County's restoration and protection of the Broderson site, the project would result in about 100 acres of habitat restoration and permanent protection, including restoration to offset the roughly 8.5 acres of direct unavoidable impact to coastal scrub habitat.⁴

In terms of the identified need for increased implementation specificity and timing, including with respect to mitigation required due to siting the project in ESHA and on agricultural lands, staff has identified new conditions to ensure that conservation and agricultural reuse elements timely occur as part of the project, including requiring certain plan submittals ahead of permit issuance for Executive

⁴ The 8.5 acres of unavoidable habitat impact equates to 8 acres at Broderson for a leach field, and roughly one-half acre total for the pump stations sites. The San Luis Obispo County LCP allows for some level of such impact, including to wetlands and ESHA, for a wastewater treatment project like this provided the project represents the least environmentally damaging feasible alternative. In this case, staff believes that overall and as conditioned this project meets that critical LCP test.



Director review and approval. In addition, recommended conditions build-in monitoring and adaptability over time to ensure that project components, particularly related to effluent reuse, are modified as necessary to best protect coastal resources.

On the Commission's question regarding the appropriate location for effluent disposal, including the manner in which these siting decisions might best help address groundwater issues (such as ongoing saltwater intrusion) and best promote health and sustainability of the underlying groundwater basin, Special Condition 5 requires the submission of a comprehensive Los Osos Basin Recycled Water Management Plan to the Executive Director for review and approval prior to issuance of the permit. As specified in Special Condition 5, this plan would require the County to ensure that the location and timing of the wastewater disposal component of the LOWWP project maximizes long-term ground and surface water and related resources (i.e., wetlands, streams, creeks, lakes, riparian corridors, marshes, etc.) health and sustainability, including with respect to offsetting seawater intrusion as much as possible within the Los Osos Groundwater Basin. The plan must include programs for recycled water reuse, water conservation, monitoring, and reporting, and it must include an adaptive management component. It would also require that any specific project components necessary for effective implementation of the plan, such as pipelines, leach fields, etc., be constructed prior to project operation. The plan may specifically provide for phasing as the LOWWP comes on-line. Most important, the monitoring and adaptive management required by the plan would allow the County to adjust the location and timing of wastewater disposal within the basin (including to address uncertainty in the current models, new circumstances, etc.) to the benefit of the groundwater basin and surface resources such as wetlands and riparian areas.

With respect to the question of how best to protect Willow Creek, Special Condition 5 also addresses this issue. In short, although the County would direct recycled water to the Bayridge leach field to offset existing septic flows that would cease with the project, there is some uncertainty that the amount of recycled water to be so directed would be sufficient in this regard. Special Condition 5 provides a specific mechanism for addressing this uncertainty, including through a monitoring plan designed to establish the baseline ecological requirements of Willow Creek (and other similar resources in the basin) and to provide for modifications in the location and timing of wastewater discharges to benefit Willow Creek (and other similar resources) should it be necessary. In short, the intent is to ensure that the project does not adversely impact such resources, instead that the appropriate siting of the project's wastewater disposal can be used to enhance these resources as much as possible.

With respect to the proposed construction staging area site, the Commission asked about the status of the site with respect to ESHA and alleged unpermitted development already occurring there and associated with the LOWWP. Staff, including the Commission's staff ecologist, visited the site in April 2010. The site was heavily disturbed and generally devoid of natural vegetation. As far as staff could deduce, and based on representations by the County, there had been some unpermitted development previously on the site, but that development was not associated with the LOWWP, and had been removed via County enforcement action as of the time of the site visit. With respect to ESHA, the site, like most of Los Osos, appeared to consist of sandy soils that could provide habitat for the shoulderband snail. However, the



Commission's staff ecologist did not think the site had a high habitat value, and did not see an ESHA reason under this LCP to pursue a different construction staging area site. In other words, any Los Osos site that could serve the construction staging area function for the LOWWP will have ESHA issues for similar soil reasons, and using this site where the habitat was low value to non-existent was deemed appropriate under the LCP. Because the County had not proposed how the site would be addressed after construction staging was complete, staff recommends conditions to require the site to be returned to its current state or better following completion of the project as mitigation for using this site for a construction staging area.

Finally, in terms of the Commission's seventh identified issue, namely the need for specificity regarding septic tank decommissioning, it is clear that although the County's proposal generally describes the way in which septic tanks would be taken out of service and includes a County commitment to assist private landowners to reuse such tanks to optimize groundwater recharge, it appears possible that the County's CDP did not include sufficient specificity on how it would carry out this decommissioning project. Accordingly, conditions are included to ensure an appropriate tank decommissioning regime and reuse process, with the objective of reusing such tanks as much as possible to help with related groundwater and conservation problems.

Thus, staff recommends a series of conditions that help refine and better implement the proposed LOWWP. These conditions require revised plans showing revised treatment plant and pump station layout to avoid habitat issues, revised treatment plant access road to avoid agricultural impacts, and details on measures to be taken to ensure all project landscaping is limited to native and non-invasive species; a habitat management plan defining restoration, enhancement, management, and protection of the 80-acre Broderson site, the 12-acre Mid-Town (Tri-W) site, the roughly 8-acre habitat/buffer area at the Giacomazzi site, and a total of about an acre at the various pump stations sites (a total habitat management plan area of about 100 acres); agricultural easements (2:1) to address agricultural impacts at the treatment plant site and access to it; a septic system decommissioning plan to identify measures to appropriately decommission existing septic tank systems and to connect users to the approved project; a restriction on service to undeveloped Los Osos properties absent an LCP amendment that identifies appropriate and sustainable buildout limits; and an overall Los Osos basin recycled water management plan designed to ensure that the location of the wastewater disposal maximizes long-term ground and surface water and related resource (including wetlands, streams, creeks, lakes, riparian corridors, marshes, etc.) health and sustainability, including with respect to offsetting seawater intrusion as much as possible, through aggressive recycled water reuse, water conservation, monitoring, and adaptive management. The conditions also incorporate a methodology for future CDP amendment and for resolution of potential conflicts, and require the County to indemnify the Commission against 3rd party lawsuits.

As conditioned, staff believes that there is no feasible, less-environmentally damaging wastewater treatment project, including with respect to plant siting, and with respect to collection and effluent disposal methodologies and siting, as required by the LCP. In addition, the project has been conceived and designed to maximize the productive reuse of the effluent in the Los Osos basin, and to help



improve groundwater health and sustainability. In short, the project as conditioned is a much needed and well-conceived beneficial coastal resource project that is essential to protect ground and surface waters in and near Los Osos, including the Morro Bay National Estuary and related habitats and resources, and to provide essential public services to the Los Osos area. Significant local and state resources have been dedicated towards addressing these needs over a period of more than 30 years, and environmental impacts and project alternatives have been thoroughly considered. The resultant project represents an important environmental enhancement project of statewide importance that will greatly improve environmental health and safety associated with ground and surface water in and around Los Osos, including in Morro Bay, and including with respect to its related habitat resources. The project does entail certain impacts, but it is hard to conceive of a treatment project at this scale for this area that would not have such impacts. As conditioned, the LOWWP appropriately avoids such impacts where feasible, and appropriately mitigates for unavoidable impacts.

As such, staff believes that the conditioned project is consistent with the LCP and the Coastal Act's access and recreation policies, and recommends that the Commission approve a CDP for the proposed project. The motion to implement this recommendation is found directly below.

3. Staff Recommendation on CDP Application

Staff recommends that the Commission, after public hearing, **approve** the CDP for the proposed development subject to the standard and special conditions below.

Motion. I move that the Commission approve Coastal Development Permit Number A-3-SLO-09-055/069 pursuant to the staff recommendation. I recommend a yes vote.

Staff Recommendation of Approval. Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve a Coastal Development Permit. The Commission hereby approves the coastal development permit on the ground that the development as conditioned will be in conformity with the policies of the San Luis Obispo County Local Coastal Program and the public access and recreation policies of the Coastal Act. Approval of the coastal development permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.



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B.Findings and Declarations

The Commission finds and declares as follows:

1. Project Location

Los Osos is an unincorporated coastal community of about 15,000 residents that is located in central San Luis Obispo County at the south end of Morro Bay roughly due west of the City of San Luis Obispo (see



Exhibit 1). Upcoast lies the City of Morro Bay, and past that the community of Cayucos. Los Osos extends south and east from Morro Bay proper into the lower foothills of the Irish Hills and the Los Osos Valley. Historically, the Los Osos area was subdivided in the late nineteenth century into smaller lots (generally 25 to 50 feet by 125 feet) arranged along wider (generally 40 to 80 feet) streets arranged in a grid-like pattern, and the area was primarily intended as a location for summer homes and retreats. By the early 1960s, Los Osos had evolved into a tight-knit community of small-scale homes, many of them vacation homes. Although there has been redevelopment and some larger residential and other types of projects that have brought a more finished facade to the area in more recent years, Los Osos continues to retain a small town look and feel that is firmly grounded in its historic roots.

Los Osos is located directly adjacent to Morro Bay, a designated State and National Estuary that is well known and recognized as one of the most important biologic and wetland resources in California's coastal zone.⁵ Anchored by iconic Morro Rock, Morro Bay sustains a variety of distinct habitats as well as many sensitive plant and animal species. The Bay's rich resources support one of the state's largest waterfowl habitats, and it is an important stop on the Pacific Flyway attracting vast numbers of migrating birds to the area. Morro Bay also serves as an important nursery for both marine and anadromous fish, and provides a forage and resting area for marine mammals. The Bay also serves as a significant resource and home base for commercial and recreational fishing, recreational boating, and a diverse range of other water-oriented recreational opportunities. The Morro Bay watershed stretches inland to the foothills of the Santa Lucia Range, and a variety of coastal creeks and tributaries (including Los Osos, Warden, Chorro, and Morro Creeks) wend their way from the hills down through Los Osos and to Morro Bay. Los Osos' prime location along the back bay's frontage anchor its vitality directly to that of the Bay and its related resources, and visa versa.

Its location along the back Morro Bay environment also means that Los Osos is generally is located atop an ancient dune system formed by centuries of wind-blown sand coming from the southern end of the Bay. As a result, the terrain consists primarily of gently rolling hills and sandy soils. The sandy soils of Los Osos, its connection to the Bay, and its generally mild marine climate have combined to produce a unique coastal ecosystem that is home to a wide variety of adapted plant and animal species, some of which are found nowhere else in the world. These same landform attributes and others, such as varying depths to groundwater, also combine to confound wastewater treatment in Los Osos, almost all of which is based on the use of individual septic systems serving individual developed properties, and in some cases on larger septic systems serving multiple properties.

See Exhibit 1 for maps showing Los Osos and the surrounding area.

2. Project Background

Beginning in the early 1970's, the RWQCB and other health agencies began to raise environmental

⁵ Morro Bay was established as the first designated State Estuary in 1994, and it was accepted into the National Estuary Program shortly thereafter in 1995.



health and safety concerns regarding the use of septic systems in Los Osos.⁶ In particular, the depth to groundwater in Los Osos was determined to be shallow enough in some areas to lead to inadequately treated septic discharges into ground and surface water, including due to flooding of leach fields in wet weather,⁷ thus leading to environmental degradation, including to adjacent Morro Bay (from both surface flow and lateral seepage of inadequately treated septic discharge) and to groundwater resources more generally.⁸ Groundwater contamination issues were and are compounded by the fact that the Los Osos area obtains its potable water supply from local groundwater aquifers.

The RWQCB took a series of steps to address these concerns, beginning with adopting an interim Basin Plan in 1971 that included a provision prohibiting septic system discharges in much of Los Osos after 1974. In 1983, the RWQCB subsequently determined that the situation was worsening, and adopted a wastewater discharge prohibition for a portion of the Los Osos area known as the Prohibition Zone (see Exhibit 1), finding as follows:⁹

- *Previous studies (Brown and Caldwell, 1983) indicated that the quality of water derived from the shallow aquifer underlying the community was deteriorating, particularly as it relates to increasing concentrations of nitrates in excess of State standards.*
- *The current method of wastewater disposal by individual septic tank systems located in areas of high groundwater may be a major contributing factor to this degradation of water quality. And,*
- *Continuation of this method of waste disposal could result in health hazards to the community and the continued degradation of groundwater quality in violation of the Porter-Cologne Act.*

In 1988, the RWQCB also established a discharge moratorium that effectively halted all new construction and all major expansions of existing development until a solution to the septic tank pollution problem could be developed and implemented. Even so, the identified problems have

⁶ Septic systems handle sewage by separating the sewage solids from the sewage fluids. Solids are collected in septic tanks and eventually pumped out and disposed off-site, while fluids flow directly into on-site soil through septic leach fields. Thus, a septic system's efficiency in neutralizing the liquid waste is dependent on the ability of the soil to treat and disperse sewage pollutants. Key controlling factors for soil in this respect include its composition and the vertical distance between leach fields and groundwater. When septic systems fail, either by direct leakage or by clogged and/or inoperative leach fields, there is high potential for ground and surface water contamination.

⁷ For example, in the low-lying Baywood Park area of Los Osos few of the septic systems can meet RWQCB criteria for separation between the bottom of a leach field and groundwater. In addition, many of the smaller lots in Los Osos are too small for leach fields, and as a result they utilize deeper seepage pits that also can lead to inappropriate discharge to groundwater.

⁸ Sewage contains a variety of constituents of significant concern to human and environmental health and safety, including primarily nitrates, bacteria (such as fecal coliform), and viruses. Excessive nitrate levels can lead to health problems and can also cause algal blooms in surface water, which consume large quantities of dissolved oxygen resulting in adverse impacts to aquatic life. Bacteria and viruses likewise pose potential health risks from direct contact with and ingestion of contaminants in surface and ground water, as well as through secondary consumption (e.g., eating contaminated shellfish).

⁹ RWQCB Resolution Number 83-13.



continued. More recently, the RWQCB indicated as follows in 1998:¹⁰

Monitoring data indicates much of the shallow groundwater in the most densely developed areas exceeds 45 mg/l, the drinking water standard for nitrate. For this reason, many of the shallow water supply wells have been removed from service and demand shifted to the deeper aquifer. Dependence on the deeper aquifer exacerbates the surface water problems because the community's water supply, formerly from the upper aquifer, is now drawn from the deeper aquifer and recharged (after use) to the upper aquifer causing groundwater levels to rise and flood more septic systems. Increasing surface water impacts including: restriction of portions of shellfish harvesting areas because of rising bacteria levels; waters around the Los Osos area periodically do not meet bacteria standards for water contact recreation (such as swimming, wading, kayaking and small boat sailing); and the public is increasingly exposed to surface wastewater.

There have been a series of attempts to address the identified ground and surface water pollution issues in Los Osos through construction and operation of a wastewater project. In the late 1980s and early 1990s, the County proposed a conventional wastewater collection and treatment project with a plant that would have been sited on rural agricultural land off Turri Road. In 1990, the Coastal Commission approved an amendment to the Estero Area Plan that would have allowed the Turri Road plant. The County subsequently abandoned the Turri Road plant site in favor of an alternative site, located at South Bay Boulevard and Pismo Avenue. In 1997, the County approved a CDP for that project and the County's action was appealed to the Coastal Commission.¹¹ The Commission conducted four public hearings on the project between 1997 and 1998, but ultimately did not take action on a CDP for the project, instead continuing it at least in part to allow the community an opportunity to pursue potential alternative wastewater projects, including alternative treatment plant sites.

In 1998 a local ballot measure formed the Los Osos Community Services District (LOCSD) and LOCSD pursued a new CDP for a conventional wastewater collection and treatment project with a plant that would have been sited in the middle of town along Los Osos Valley Road across from Ravenna Avenue (known as the "Tri-W" or "Midtown" site). In August 2002, the Commission approved an LCP amendment to allow a wastewater treatment and associated facilities as allowable uses on the Tri-W site.¹² In 2003, the County approved a CDP for the project and the County's action was appealed to the Commission. The Commission took jurisdiction over the CDP and ultimately approved the project with conditions in 2004.¹³ In 2005, project construction commenced on the Tri-W site. In the fall of 2005, however, voters recalled a majority of the LOCSD board members in a special election and the new board immediately suspended construction on the wastewater project. The CDP subsequently expired, and to this date the Tri-W site remains the subject of active enforcement efforts at both the Commission

¹⁰ RWQCB letter dated July 10, 1998.

¹¹ Appeal number A-3-SLO-97-040.

¹² LCP amendment number SLO-MAJ-3-01.

¹³ CDP number A-3-SLO-03-113.



and County levels.¹⁴

In 2006, wastewater authority for the Los Osos area was returned from LOCSD to the County,¹⁵ and the County embarked on a long and inclusive local process that included evaluation of treatment plant siting, collection system approaches (e.g., STEP versus gravity flow), effluent disposal and reuse options, water supply, preservation of groundwater basins, protection of agriculture, and the protection of other sensitive coastal resources. The County polled property owners in the Prohibition Zone about assessment costs (with 80% in favor of the assessing themselves approximately \$25,000 per single-family residence¹⁶ in the Prohibition Zone to pay for the proposed project),¹⁷ and held over 100 public hearings on the project.¹⁸ The County's efforts culminated in 2009 with a series of ten County Planning Commission hearings (including two field trips)¹⁹ and multiple County Board of Supervisors' hearings leading to the Board's approval of the proposed project in late 2009.²⁰

The Board's CDP decision was appealed to the Coastal Commission and on January 14, 2010 the Coastal Commission found that a substantial issue existed with respect to the grounds on which the appeals were filed, and the Commission took jurisdiction over the CDP application.²¹ This report and the

¹⁴ Such efforts have focused to date on pursuing temporary site stabilization as opposed to permanent site restoration (i.e., to its pre-development condition) at least partially to allow the Tri-W site to be considered for potential wastewater treatment facility siting as part of the County's current efforts.

¹⁵ Pursuant to Assembly Bill (AB) 2701 (Blakeslee).

¹⁶ The County has been exploring other funding possibilities to reduce local costs, and at least three potential funding opportunities show promise. The USDA indicates that the project is eligible to apply for funding through their Rural Utilities Program, and has invited the County to apply for an \$80 million funding package (a \$16 million grant and a \$64 million low interest loan on a 40-year term), which represents nearly half of the estimated project costs. The extraordinary size of this package is made possible by ARRA (federal stimulus) funds. The County is also anticipating participation in the State Water Resource Control Board's (SWRCB's) State Revolving Fund Program, and may receive additional Federal funds through the Water Resources Development Act. Altogether, the County indicates that the homeowner assessment for the project could be reduced by 50% if all three funding sources are obtained.

¹⁷ As required by Proposition 218. Proposition 218 amended the California Constitution in 1996 to require local government to have a vote of the affected property owners for any proposed new or increased assessment before it could be levied, such as for the subject project.

¹⁸ These public hearings took place in a variety of venues and before a variety of groups, including the Board of Supervisors agendized the project on a weekly basis for all of 2007 and on a monthly basis through 2008, the project's Technical Advisory Committee held 35 community meetings from January to December 2007 to review project issues ranging from greenhouse gas emissions to alternative treatment systems, two CEQA scoping meetings were held in the community in 2007, and additional updates were presented at LOCSD and Los Osos Citizens' Advisory Committee meetings. Many of these meetings were recorded and repeated on the local public television station. The County also held three Town Hall style meetings (two evenings and one Saturday) on December 18, 2006, June 19, 2007, and November 19, 2008. In addition, five project information brochures were developed for various aspects of the project and mailed to the community, and two separate public opinion surveys were conducted. Ultimately, a dozen Planning Commission and Board of Supervisor hearings occurred in 2009 leading up to the Board's approval of the proposed project in late 2009.

¹⁹ Beginning in February 2009 with a Planning Commission Study Session and ending in July of 2009, when the project underwent significant final refinement and change in response to comments, including moving the treatment plant facility closer to town (to the currently proposed location) and upgrading the proposed facility to provide for tertiary treatment and associated beneficial reuse.

²⁰ CDP DRC2008-00103 as approved by the San Luis Obispo County Board of Supervisors on September 29, 2009 and amended on November 24, 2009.

²¹ Due to the manner in which the County acted on the CDP for the proposed project (an overall approval action followed by an amendment to modify a portion of the project), there are two Coastal Commission appeal/application numbers associated with the proposed project, A-3-SLO-09-055 and A-3-SLO-09-069. However, there is only one proposed project, and these two applications are



hearing on this item is the culmination of that CDP process, and is the Commission's evaluation of the proposed project in relation to the certified LCP and the public access and recreation policies of the Coastal Act.

3. Project Description

The proposed LOWWP includes construction and operation of a community sewer system, including a treatment plant, collection/disposal/reuse facilities, and all associated development and infrastructure. The proposed treatment plant would be sited on 30 acres located about one-half mile inland of Morro Bay at 2198 Los Osos Valley Road just past the Los Osos Mortuary and Memorial Park (Cemetery site), known locally as the Giacomazzi site. Proposed collection, disposal, and reuse infrastructure would be located throughout the community of Los Osos, with the primary effluent disposal leach field proposed for eight acres at the top of Sea Horse Lane, known locally as the Broderson site. The project would treat wastewater to a tertiary level, and would reuse as much as possible of the treated ("recycled water") effluent for urban and agricultural irrigation with disposal prioritized to reduce seawater intrusion and otherwise improve the health and sustainability of the underlying Los Osos groundwater basin. The project includes other complementary components (e.g., water conservation), and includes mitigation for project impacts including restoration and permanent protection of 80 acres of sensitive habitat at the Broderson site (including the 8-acre leach field area) and about 8 acres of habitat and habitat buffer (about 6 acres of which is buffer) the Giacomazzi site. Only existing developed properties would be allowed to hook up to the new wastewater system, and the project includes a requirement that a communitywide Habitat Conservation Plan (HCP) and an LCP amendment precede development on undeveloped properties in Los Osos.

With respect to the treatment plant site itself, the Giacomazzi site is currently part of a larger 100-acre property north of Los Osos Valley Road and west of Clark Valley Road. The proposed project would create a 30-acre rectangular lot on which the treatment plant facility would be located, leaving an existing modular residence and an agriculturally cultivated area on the larger 70-acre remainder parcel. The 30-acre site slopes gently downward toward the north and east toward an ephemeral drainage that extends along the easterly portion of the site to Warden Lake and onto Warden Creek. The treatment plant would occupy about 22 acres of the new 30-acre site, with the balance of the site left undeveloped as open space.

The treatment plant site is located outside of the urban core, roughly one-half mile east of the Urban Reserve Line (URL).^{22,23} The treatment facility would consist of an extended aeration wastewater treatment plant which relies primarily on the acceleration of natural waste biodegradation by aerobic

being considered as one coherent whole in that respect, and the application numbers have been combined as CDP application number A-3-SLO-09-055/069.

²² The URL is an LCP planning line that serves to define appropriate boundaries separating urban/suburban land uses and rural land uses.

²³ The remainder parcel abuts the URL on its west end.



bacteria to treat collected wastewater.²⁴ The facility would be designed with a capacity to treat a maximum average annual dry weather flow of approximately 1.1 million gallons per day (mgd) that takes into account the implementation of a water conservation program that is expected to conserve between 150,000 and 330,000 gallons per day for the County-estimated build out population of 18,428 residents within the collection zone.²⁵ At current indoor water use rates, the 14,428 persons in the Prohibition Zone currently would generate wastewater flows of 1.25 mgd; the project has a goal of reducing indoor water use to below 50 gallons per day per person which would equate to 0.92 mgd wastewater flows at buildout. If this goal is met or exceeded and/or if buildout is less, the project will operate at a higher level of redundancy.

Finally, the proposed project that is before the Commission is the project approved by the County Board of Supervisors, including as adjusted by the 111 conditions of approval attached to the Board's original approval on September 29, 2009, and including as adjusted by the amendment to condition 97 approved by the Board on November 24, 2009. In other words, the project description includes the base project before the Board as well as all of the adjustments to that base project that are required by the Board's conditions, and together these elements comprise the "proposed project" for Commission review in this CDP application.²⁶

See Exhibit 2 for project description materials and plans.

4. Coastal Development Permit Determination

The Commission notes two things regarding this CDP determination. First, the Commission reviewed the project in light of the relevant LCP and Coastal Act policies in the January 2010 substantial issue hearing and, based on that review, was generally satisfied at that time with the core elements of the proposed project with respect to treatment plant siting, the gravity collection system, and the project's reuse concept overall. As opposed to questioning those core elements, the Commission in January instead identified seven main issue areas requiring additional clarification, correction, and/or potentially project changes to address LCP and Coastal Act consistency: 1) verification of wetland delineations; 2) mitigation requirements for this proposed project in relation to the prior abandoned wastewater treatment plant project at the Tri-W site; 3) increased implementation specificity and timing, including with

²⁴ Extended aeration with denitrification is a proven wastewater treatment technology employed in hundreds of locations worldwide. These types of treatment plants have demonstrated the ability to remove nitrate from wastewater effluent to the levels required by the RWQCB for the community of Los Osos.

²⁵ The County has estimated buildout by 2020. However, potential buildout under the LCP is significantly constrained, including due to public service constraints, habitat, and rural/agricultural protection. Thus, it is not clear at the current time that buildout of that degree is possible, nor whether it could be found consistent with the LCP. The County has committed to rectifying buildout issues through an LCP amendment following the LOWWP. Specifically the proposed project includes condition 86, which states: *(Consistent with condition of approval #34 from CDP A-3-SLO-03-113). To prevent wastewater treatment system from inducing growth that cannot be safely sustained by available water supplies, the sewer authority is prohibited from providing service to existing undeveloped parcels within the service area, unless and until the Estero Area Plan is amended to incorporate a sustainable buildout target that indicates that there is water available to support such development without impacts to wetlands and habitats.*

²⁶ See also May 5, 2010 letter from the County confirming the proposed project description for purpose of Commission review.



respect to conservation and agricultural reuse elements; 4) protection of Willow Creek; 5) impact identification and mitigation associated with potential alteration of groundwater flows; 6) issues associated with the proposed construction staging area; and 7) specificity with respect to septic tank decommissioning/reuse. Thus, this CDP determination focuses on evaluating the proposed project with a focus on the seven identified issues.²⁷

In this respect the Commission notes that there has been substantial local debate regarding whether to use a STEP or a gravity collection system, and to a somewhat lesser degree a question in some minds regarding treatment plant siting. The Commission does not believe that there is an LCP or Coastal Act need to revisit treatment plant siting in terms of an evaluation of alternative sites or to revisit the collection system debate between STEP and gravity. A detailed constraints and alternatives analysis was used to identify a gravity system as the least environmentally damaging feasible alternative collection system (see Viable Project Alternatives Rough Screening Report of March 2007 and Fine Screening Report of August 2007). A cost comparison between a STEP collection system and a gravity system is included in the Fine Screening Report for the wastewater project. The report found that the cost associated with construction of both collection systems were substantially the same. In addition, the project EIR includes a detailed analysis of both STEP and gravity systems with regards to resource impacts (see Final Environmental Impact Report, September 2009).

In terms of overall ground disturbance, the analysis concluded that the difference in ground disturbance quantities associated with STEP and a gravity system would not be significant. While a STEP system can be directionally drilled, thereby possibly avoiding the impacts associated with trenching or “deep” excavation, even that technique involves large amounts of ground disturbance. For example, directional drilling requires bore pits at both ends, receiving pits, and lateral service connections (most will need to be trenched). The installation of new STEP tanks also requires excavations (roughly 8 feet deep) that match the majority of the gravity system depth. Excavations for new STEP tanks would likely require substantial excavation areas confined to small front yard areas. Therefore, the STEP alternative provides minimal opportunity to avoid resources if they are located within these areas.

The issue of sludge production and biosolids hauling is also analyzed. The studies performed by the County estimate the gravity system will produce about 4,000 lbs of sludge per day (at buildout), whereas a STEP system would produce about 1,000 lbs per day (at buildout). For the gravity system this means there would be four truck trips per week (two loaded, two empty) hauling dewatered sludge to the landfill from the treatment plant. For the STEP system, sludge would be pumped from individual tanks at the rate of about 20 tanks per week, or 4 per day, trucked to the treatment plant, and then run through the full treatment system, dewatered, and then hauled to the landfill once or twice per week (but in smaller loads than with a gravity system). The timing of the hauling is established at once or twice per week, regardless of volume, because the sludge is still biologically active and has the capability to produce odors if not disposed of or treated further. Therefore, STEP would generate 2-4 trips per week to the landfill (loaded and empty), and 20 in town trips per day to collect sludge from STEP tanks in

²⁷ And the County has submitted a response on these issues for Commission consideration (see Exhibit 3).



town. Although there is a reduction in sludge volume using a STEP collection system, there is also an increase in greenhouse gas emission. The reduction of sludge generation with the STEP system comes from the fact that at a pumping rate of once per five years, each tank will generate a bacterial colony that, after about year 3, breaks down some of the solids producing methane gas (a greenhouse gas), and releasing it to the atmosphere. Therefore, although there is an overall reduction in sludge volume, there is an increase in greenhouse gas emissions at each tank, and the sludge that is delivered to the treatment facility is relatively low in carbon relative to the nitrogen in the sludge. This is problematic because carbon is an important element in the de-nitrification process, and the County would need to add carbon to the sludge from the STEP tanks (likely in the form of methanol) to complete the de-nitrification treatment process, resulting in an additional increase in the carbon footprint from trucking in a carbon source. The County estimated the carbon footprint for these two project alternatives (assuming methanol was used as the additional carbon source to treat STEP (and storage pond) effluent) and found that a STEP system would produce greater amounts of greenhouse gas than a gravity system.

A common cause of sewer system overflows is due to the infiltration of groundwater and rainwater into sewer pipes, commonly referred to as inflow and infiltration (I/I). To address this issue, the County selected a “sealed system” using elastomeric/bell and spigot pipes which is not anticipated to leak under appropriate installation practices. According to the County, the materials used are subject to standards which specify zero leakage. However, the County also will use fusion welded or chemically sealed pipes and will do additional inspections in the field during construction to ensure proper installation in areas of high groundwater to further reduce I/I (see County condition 98, Exhibit 2). In other words, the project includes appropriate safeguards to address I/I. That said, it should be noted that any system, including pressurized systems, constructed in the field and subjected to various environmental factors, over time has some potential for failures of various kinds. According to the County, conservative design parameters for wastewater treatment plants include designing for infiltration, even when the potential for such flows to occur is low, and with modern operational requirements applied, will be insignificant. In short, the project recognizes I/I and takes appropriate precautions to protect coastal resources, including the Los Osos Groundwater Basin and Morro Bay, from potential I/I and sewer overflow impacts.

Issues have also been raised that additional increases in water conservation approved by the County (a roughly 25% reduction from current usage) would reduce the flows needed for proper gravity system function and may undermine efforts to balance the groundwater basin. However, the project is conditioned to appropriately mitigate impacts related to reduced septic flows (see County conditions 88, 97, 101, and 103). In addition, County condition 111 requires the use of recycled water for typical routine flushing. Moreover, the concern that the use of treated effluent or potable water for system flushing is an unnecessary waste of water does not appear on point because all water that is sent through the wastewater system will be re-used within the Los Osos Basin, as required by the project conditions of approval.

It is also fair to note a number of issues raised by the County related to feasibility of construction and operations. For instance, the County notes that STEP likely has higher in-lot costs (borne by the individual without benefit of public financing opportunities) for electrical hookups and yard restoration.



Right-of-way issues can also be problematic, including because the RWQCB will require the County to own and operate all STEP tanks. To do that, the tanks must be accessible in the front yard and within a County-owned easement. Securing such easements may be difficult, and according to the County may result in substantial additional costs and delays. While every home currently has some sort of septic tank, there are areas where installing new tanks, even in the same spot as the existing tank, could be problematic from a space/size perspective. While it may be simple to install a STEP tank on a vacant, undeveloped property, doing so in a space already developed with a house can be much more difficult, especially with infrastructure present (other underground lines, overhead lines, fences, garages, concrete walks and patio space, etc.). In short, the County concluded that the process of the County managing and handling waste from over 4,000 individual STEP tanks, along with a wastewater treatment plant and disposal system, was fraught with potential operational and maintenance issues, and would not result in significant reduction of environmental impacts. In sum, there does not appear to be a significant difference in terms of coastal resource protection by switching to a STEP based collection system.

In addition to the extensive alternatives analysis of the STEP versus gravity systems, the County analyzed various alternatives for the treatment plant location. Technical Appendices B-1: Alternatives Development and Descriptions and B-2: Systems Component Evaluation, and the Fine Screening Report (Corollo Engineers 2007) and Rough Screening Report (Corollo Engineers 2007) summarize the process the County followed to identify the four alternative project locations analyzed in detail in the EIR, while dismissing other alternatives from further consideration. The four location alternatives evaluated in the EIR include: 1) Cemetery/Giacomazzi/Branin; 2) Giacomazzi; 3) Giacomazzi/Branin; and 4) Tonini.

Originally, the County selected the Tonini site as the preferred treatment plant location. All of the alternative sites analyzed included some impact to agricultural resources. However, due to significant visual resource impacts at the Tonini site, including a shift away from sprayfields as an effluent disposal option, the County ultimately selected the Giacomazzi site for the treatment plant. The Cemetery/Giacomazzi/Branin and the Giacomazzi/Branin alternatives were dismissed because use of these combined sites would convert more than one agricultural parcel to non-agricultural public facility use and unnecessarily fragment agricultural lands. The County found that the Giacomazzi site alone better avoided significant public viewshed impacts, better avoided sensitive wetlands and other ESHA's, better avoided known archaeological resources, and would better accommodate a treated effluent urban/agriculture reuse program. The CCC concurs with the County's conclusion that the Giacomazzi site is the least environmentally damaging feasible alternative location for the treatment plant.

It is clear, as will be shown in the findings that follow, that there are certain project modifications necessary, but that the proposed treatment plant site and the proposed gravity collection system are appropriate from an LCP and Coastal Act standpoint. Thus, the findings that follow are premised on evaluating the site proposed and the collection system proposed for LCP and Coastal Act consistency. Such analysis does not require, and does not purport to cover, a co-equal evaluation of STEP versus gravity collection, or co-equal evaluation for a different treatment plant site. The Commission does not believe that such analysis is required inasmuch as the proposed project before the Commission, with certain modifications as are discussed below, meets LCP and Coastal Act requirements.



Second, the Coastal Act imposes specific review criteria on the Commission when a “treatment work”, such as the proposed project, is considered by the Commission. Such criteria is part of Coastal Act Chapter 5, which identifies the manner in which the Coastal Act is to be understood in terms of other state agencies and their programs under the law. Chapter 5 identifies the Legislature’s intent that the Coastal Act not “increase, decrease, duplicate or supersede the authority of any [then] existing state agency”, while requiring all state agencies to “carry out their duties and responsibilities in conformity with [the Coastal Act].”²⁸ Chapter 5 is premised on avoiding and addressing potential state agency conflicts, and includes guidance in relation to implementation of the Coastal Act in relation to the programs of the State Water Resources Control Board (SWRCB) and the RWQCBs. Specifically, Coastal Act Section 30412 (also explicitly referenced and embodied in LCP Public Works Policy 9) states:

- (a) *In addition to Section 13142.5 of the Water Code, this section shall apply to the commission and the State Water Resources Control Board and the California regional water quality control boards.*
- (b) *The State Water Resources Control Board and the California regional water quality control boards are the state agencies with primary responsibility for the coordination and control of water quality. The State Water Resources Control Board has primary responsibility for the administration of water rights pursuant to applicable law. The commission shall assure that proposed development and local coastal programs shall not frustrate this section. The commission shall not, except as provided in subdivision (c), modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights.*

Except as provided in this section, nothing herein shall be interpreted in any way either as prohibiting or limiting the commission, local government, or port governing body from exercising the regulatory controls over development pursuant to this division in a manner necessary to carry out this division.

- (c) *Any development within the coastal zone or outside the coastal zone which provides service to any area within the coastal zone that constitutes a treatment work shall be reviewed by the commission and any permit it issues, if any, shall be determinative only with respect to the following aspects of the development:*

- (1) *The siting and visual appearance of treatment works within the coastal zone.*
- (2) *The geographic limits of service areas within the coastal zone which are to be served by particular treatment works and the timing of the use of capacity of treatment works for those service areas to allow for phasing of development and use of facilities consistent*

²⁸ Coastal Act Sections 30401 and 30402.



with this division.

- (3) *Development projections which determine the sizing of treatment works for providing service within the coastal zone.*

The commission shall make these determinations in accordance with the policies of this division and shall make its final determination on a permit application for a treatment work prior to the final approval by the State Water Resources Control Board for the funding of such treatment works. Except as specifically provided in this subdivision, the decisions of the State Water Resources Control Board relative to the construction of treatment works shall be final and binding upon the commission.

- (d) *The commission shall provide or require reservations of sites for the construction of treatment works and points of discharge within the coastal zone adequate for the protection of coastal resources consistent with the provisions of this division.*

- (e) *Nothing in this section shall require the State Water Resources Control Board to fund or certify for funding, any specific treatment works within the coastal zone or to prohibit the State Water Resources Control Board or any California regional water quality control board from requiring a higher degree of treatment at any existing treatment works.*

As a result, the Commission's review of a treatment work is limited to questions of siting and design, and appropriateness of service areas (including in terms development projections). Within this framework, it is important to recognize that there is a fairly expansive definition of what constitutes a "treatment work" for purposes of Section 30142. Specifically, Section 30120 of the Coastal Act states that treatment work shall have the same meaning as that set forth in the Federal Water Pollution Control Act. This Act²⁹ defines treatment work as follows:

A) The term treatment works means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 1281 of this title, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment. (B) In addition to the definition contained in subparagraph (A) of this paragraph, treatment works means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water

²⁹ 33 U.S.C. Section 1292(2)(A-B).



runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems. Any application for construction grants which includes wholly or in part such methods or systems shall, in accordance with guidelines published by the Administrator pursuant to subparagraph (C) of this paragraph, contain adequate data and analysis demonstrating such proposal to be, over the life of such works, the most cost efficient alternative to comply with sections 1311 or 1312 of this title, or the requirements of section 1281 of this title.

Thus, a treatment work includes the treatment plant, the collection system, and the disposal system, among other things. In this case, essentially the entirety of the proposed project is part of such a treatment work. As such, the Commission is within its purview to evaluate the proposed project in terms of siting, design, and service area per Section 30412. Of note, siting questions involve all aspects of siting and not just the treatment plant itself. In this context, the Commission's review appropriately extends to siting related to recycled water reuse and evaluation of such reuse components in terms of LCP and Coastal Act requirements. In addition, the Commission notes that the primary objective of Section 30142 as it applies here is to ensure that the Commission's review under the Coastal Act (and by extension the LCP) does not frustrate the programs of the State and Regional Boards in terms of the proposed wastewater treatment project. As of the date of this report, the Commission is not aware of any way in which the Commission's review to date, nor the analysis and conclusions of this report, would conflict in any way with the SWRCB or the RWQCB. On the contrary, the Commission has coordinated with the RWQCB on the proposed project, and, to the extent there is any such question, this report's analysis and conclusions are clearly supportive of the RWQCB's determinations and actions regarding wastewater issues and their appropriate resolution in Los Osos.

Finally, the standard of review for this project is the certified San Luis Obispo County LCP and the public access and recreation policies of the Coastal Act.

A. Environmentally Sensitive Habitat Area (ESHA)

As discussed below, the proposed project does not comply with LCP policies and ordinances protecting ESHA, as the project's impacts to ESHA, caused by the location of its various components, have not been adequately addressed by the County's proposal. Special conditions are needed to bring the project into conformance with the LCP in this respect.

1. Applicable Policies

The LCP has multiple overlapping provisions that protect ESHA in and around Los Osos, including the area's terrestrial habitats, certain wetlands, coastal streams and riparian habitat areas. One of the primary ways the LCP protects these areas is through avoidance and the use of setbacks/buffers. In addition, the way the LCP is structured is that to the extent more specific guidance and direction is provided in the LCP's area plan, in this case the LCP's Estero Area Plan, then the area plan standards govern. This is relevant in this case because the Estero Area Plan provides very specific prescriptions for certain habitat areas, and includes standards for appropriate setback adjustments and allowed uses within LCP prescribed habitat and setback areas, and these standards help form the basis for project review as a result. Applicable LCP policies and ordinances include:



Policy 1: Land Uses Within or Adjacent to Environmentally Sensitive Habitats. New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]

Policy 2: Permit Requirement. As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE CZLUO.]

Policy 3: Habitat Restoration. The County or Coastal Commission should require restoration damaged habitats as a condition of approval when feasible. Detailed wetlands restoration criteria are discussed in Policy 11. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.170 OF THE CZLUO.]

Policy 4: No Land Division in Association with Environmentally Sensitive Habitats. No division of parcels having environmentally sensitive habitats within them shall be permitted unless it can be found that the buildable area(s) are entirely outside the minimum standard setback required for that habitat (100 feet for wetlands, 50 feet for urban streams, 100 feet for rural streams). These building areas (building envelopes) shall be recorded on the subdivision parcel map. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.170 OF THE CZLUO.]

Policy 5: Supporting Greenbelt Formation and Maintenance. The County shall continue programs and policies that support greenbelt and open space areas on the urban fringe of coastal communities. In conjunction with the development of Habitat Conservation Plans (HCP's), certain greenbelt areas may be suitable as habitat mitigation banks to help offset impacts from development in adjacent urban areas. Other areas may be best utilized for open space, agriculture, or public recreation. Mitigation banking shall be further evaluated as a potential implementation mechanism. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

Policy 6: Off-Site Mitigation Bank for Urban Development. The county shall participate in creating a program (e.g. through the update of area plans) that would allow development to occur on sites in urban areas that contain sensitive species habitat but do not represent long-term viable habitat in exchange for participation in an off-site mitigation program. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]



Policy 7: Protection of Environmentally Sensitive Habitats. Coastal wetlands are recognized as environmentally sensitive habitat areas. The natural ecological functioning and productivity of wetlands and estuaries shall be protected, preserved, and where feasible, restored. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE CZLUO.]

Policy 13: Diking, Dredging or Filling of Wetlands. All diking, dredging and filling activities shall conform to the provisions of Section 30233, 30411 and 30607.1 of the Coastal Act. These policies establish the appropriate uses, criteria for evaluation of a project and requirements for restoration or replacement. Allowable activities within open coastal waters, wetlands (with the exception of Morro Bay and the Santa Maria River mouth), estuaries and lakes include:

- a. New or expanded port, energy, and coastal dependent industrial facilities, including commercial fishing facilities.
- b. Maintenance dredging of existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- c. In wetlands areas only, entrance channels for new or expanded boating facilities, and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411 for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland; provided, however, that in no event shall the size of the wetland area used for such boating facility, including berthing space, turning basins, necessary navigational channels, and any necessary support service facilities be greater than 25 percent of the total wetland area to be restored.
- d. In open coastal waters, other than wetlands, including streams, estuaries and lakes, new or expanded boating facilities.
- e. Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- f. Mineral extraction, including sand for restoration of beaches, except in environmentally sensitive areas.
- g. Restoration purposes.
- h. Nature study, aquaculture, or similar resource-dependent activities.
- i. Maintenance of flood control facilities by permit.

The wetlands of Morro Bay and the Santa Maria River mouth are identified in Section 30233(c) as among those identified by the Department of Fish and Game in its report entitled,



“Acquisition Priorities for the Coastal Wetlands of California.” Under this section, allowable uses within these wetlands shall be restricted and limited to very minor incidental public facilities, restorative measures consistent with PRC Section 30411 of the Coastal Act and nature study.

Diking, dredging, and filling for these types of development in wetlands, estuaries, coastal waters and lakes shall be permitted only where there is no feasible, less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental impacts, and where consistent with the maintenance of the tidal flow and continued biological viability of the wetland habitat. The development must meet the following conditions:

- a. *Diking, dredging and filling shall be prohibited in breeding and nursery areas and during periods of fish migration and spawning.*
- b. *Diking, dredging and filling shall be limited to the smallest area feasible that is necessary to accomplish the project.*
- c. *Designs for diking, dredging and filling and excavation projects shall include protective measures such as silt curtains, and weirs to protect water quality in adjacent areas during construction by preventing the discharge of refuse, petroleum spills and unnecessary dispersal of silt materials.*

Dredge spoils shall not be deposited in areas where public access or environmental habitats would be significantly or adversely affected. Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore currents. Limitations may be necessary on the timing of the operation, the type of operations and the quality and location of the spoils site.

Other mitigation measures are required under Section 30607.1. Where any dike fill development is permitted in wetlands in conformity with Chapter 3 of the Coastal Act, mitigation measures shall include, at a minimum, either acquisition of equivalent areas of equal or greater biological productivity or opening up equivalent areas to tidal action; provided however, that if no appropriate restoration site is available an in-lieu fee sufficient to provide an area of equivalent productive value or surface area shall be dedicated to an appropriate public agency or such replacement site shall be purchased before the dike or fill development may proceed. Such mitigation measures shall not be required for temporary or short-term fill or diking; provided that a bond or other evidence or financial responsibility is provided to assure that restoration will be accomplished in the shortest feasible time. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

Policy 15: Vehicle Traffic in Wetlands. No vehicle traffic shall be permitted in wetlands. This shall not restrict local and state agencies or the property owner from completing the action



necessary to accomplish a permitted use within the wetland. Pedestrian traffic shall be regulated and incidental to the permitted uses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

Policy 16: Adjacent Development. Development adjacent to coastal wetlands shall be sited and designed to prevent significant impacts to wetlands through noise, sediment or other disturbances. Development shall be located as far away from the wetland as feasible, consistent with other habitat values on the site. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

Policy 17: Wetland Buffer. In new development, a buffer strip shall be required and maintained in natural condition along the periphery of all wetlands. This shall be a minimum of 100 feet in width measured from the upland extent of the wetland unless a more detailed requirement for a greater or lesser amount is included in the LUE or the LUO would allow for adjustment to recognize the constraints which the minimum buffer would impose upon existing subdivided lots. If a project involves substantial improvements or increased human impacts, necessitating a wide buffer area, it shall be limited to utility lines, pipelines, drainage and flood control facilities, bridges and road approaches to bridges, and roads when it can be demonstrated that: a) alternative routes are infeasible or more environmentally damaging, and b) the adverse environmental effects are mitigated to the maximum extent feasible. Access paths and/or fences necessary to protect habitats may also be permitted.

The minimum buffer strip may be adjusted by the county if the minimum setback standard would render the parcel physically unusable for the principal permitted use. To allow a reduction in the minimum standard set-back, it must be found that the development cannot be designed to provide for the standard. When such reductions are permitted, the minimum standard shall be reduced to only the point at which the principal permitted use (development), modified as much as is practical from a design standpoint, can be accommodated. At no point shall this buffer be less than 25 feet. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

Policy 19: Open Space Easement for Wetlands. Open space easements or offers to dedicate the wetland shall be a condition of major structural development (including single-family residence) for all property larger than one acre which contain wetlands habitat. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

Policy 20: Coastal Streams and Riparian Vegetation. Coastal streams and adjoining riparian vegetation are environmentally sensitive habitat areas and the natural hydrological system and ecological function of coastal streams shall be protected and preserved. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.174 OF THE CZLUO.]

Policy 21: Development in or Adjacent to a Coastal Stream. Development adjacent to or within the watershed (that portion within the coastal zone) shall be sited and designed to prevent



impacts which would significantly degrade the coastal habitat and shall be compatible with the continuance of such habitat areas. This shall include evaluation of erosion and runoff concerns. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.174 OF THE CZLUO.]

Policy 28: Buffer Zone for Riparian Habitats. In rural areas (outside the USL) a buffer setback zone of 100 feet shall be established between any new development (including new agricultural development) and the upland edge of riparian habitats. In urban areas this minimum standard shall be 50 feet except where a lesser buffer is specifically permitted. The buffer zone shall be maintained in natural condition along the periphery of all streams. Permitted uses within the buffer strip shall be limited to passive recreational, educational or existing nonstructural agricultural developments in accordance with adopted best management practices. Other uses that may be found appropriate are limited to utility lines, pipelines drainage and flood control facilities, bridges and road approaches to bridges to cross a stream and roads when it can be demonstrated that: 1) alternative routes are infeasible or more environmentally damaging and 2) adverse environmental effects are mitigated to the maximum extent feasible. Lesser setbacks on existing parcels may be permitted if application of the minimum setback standard would render the parcel physically unusable for the principal permitted use. In allowing a reduction in the minimum setbacks, they shall be reduced only to the point at which a principal permitted use (as modified as much as is practical from a design standpoint) can be accommodated. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.174 OF THE CZLUO.]

Policy 29: Protection of Terrestrial Habitats. Designated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site. Development adjacent to environmentally sensitive habitat areas and holdings of the State Department of Parks and Recreation shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]

Policy 30: Protection of Native Vegetation. Native trees and plant cover shall be protected wherever possible. Native plants shall be used where vegetation is removed. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]

Policy 35: Protection of Vegetation. Vegetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disruption of habitat value. All development shall be designed to disturb the minimum amount possible of wildlife or plant habitat. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]

Policy 36: Protection of Dune Vegetation. Disturbance or destruction of any dune vegetation



shall be limited to those projects which are dependent upon such resources where no feasible alternatives exist and then shall be limited to the smallest area possible. Development activities and uses within dune vegetation shall protect the dune resources and shall be limited to resource dependent, scientific, educational and passive recreational uses. Coastal dependent uses may be permitted if it can be shown that no alternative location is feasible, such development is sited and designed to minimize impacts to dune habitat and adverse environmental impacts are mitigated to the maximum extent feasible. Revegetation with California native plant species propagated from the disturbed sites or from the same species at adjacent sites shall be necessary for all projects. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

CZLUO Section 23.07.172: Wetlands. Development proposed within or adjacent to (within 100 feet of the upland extent of) a wetland area shown on the Environmentally Sensitive Habitat Maps shall satisfy the requirements of this section to enable issuance of a land use or construction permit. These provisions are intended to maintain the natural ecological functioning and productivity of wetlands and estuaries and where feasible, to support restoration of degraded wetlands.

- a. *Location of development: Development shall be located as far away from the wetland as feasible, provided that other habitat values on the site are not thereby more adversely affected.*
- b. *Principle Permitted Uses in wetlands: Hunting, fishing, wildlife management, education and research projects.*
- c. *Department of Fish and Game review. The State Department of Fish and Game shall review all applications for development in or adjacent to coastal wetlands and recommend appropriate mitigation measures where needed which should be incorporated in the project design.*
- d. *Wetland setbacks: New development shall be located a minimum of 100 feet from the upland extent of all wetlands, except as provided by subsection d(2). If the biological report required by Section 23.07.170 (Application Content) determines that such setback will provide an insufficient buffer from the wetland area, and the applicable approval body cannot make the finding required by Section 23.07.170b, then a greater setback may be required.*
 - (I) *Permitted uses within wetland setbacks: Within the required setback buffer, permitted uses are limited to passive recreation, educational, existing non-structural agricultural development in accordance with best management practices, utility lines, pipelines, drainage and flood control of facilities, bridges and road approaches to bridges to cross a stream and roads when it can be demonstrated that:*
 - (i) *Alternative routes are infeasible or more environmentally damaging.*
 - (ii) *Adverse environmental effects are mitigated to the maximum extent feasible.*



(2) *Wetland setback adjustment: The minimum wetland setback may be adjusted through Minor Use Permit approval (but in no case shall be less than 25 feet), provided that the following findings can be made:*

- (i) *The site would be physically unusable for the principal permitted use unless the setback is reduced.*
- (ii) *The reduction is the minimum that would enable a principal permitted use to be established on the site after all practical design modifications have been considered.*
- (iii) *That the adjustment would not allow the proposed development to locate closer to the wetland than allowed by using the stringline setback method pursuant to Section 23.04.118a of this title.*

(3) *Requirements for wetland setback adjustment: Setbacks established that are less than 100 feet consistent with this section shall include mitigation measures to ensure wetland protection. Where applicable, they shall include landscaping, screening with native vegetation and drainage controls. The adjustment shall not be approved until the approval body considers the following:*

- (i) *Site soil types and their susceptibility to erosion.*
- (ii) *A review of the topographic features of the site to determine if the project design and site location has taken full advantage of natural terrain features to minimize impacts on the wetland.*
- (iii) *The biologists report required by Section 23.07.170 shall evaluate the setback reduction request and identify the types and amount of vegetation on the site and its value as wildlife habitat in maintaining the functional capacity of the wetland.*
- (iv) *Type and intensity of proposed development.*
- (v) *Lot size and configuration and location of existing development.*

e. *Site development standards:*

(1) *Diking, dredging, or filling of wetlands: Diking, dredging, or filling activities in wetland areas under county jurisdiction shall be allowed only to the extent that they are consistent with Environmentally Sensitive Habitats Policy 13 of the San Luis Obispo County Coastal Plan Policies, and shall not be conducted without the property owner first securing approval of all permits required by this title. Mineral extraction is not an allowed use in a wetland.*

(2) *Vehicle traffic: Vehicle traffic from public roads shall be prevented from entering wetlands by vehicular barriers, except where a coastal accessway is constructed and*



designated parking and travel lanes are provided consistent with this title. The type of barrier and its proposed location shall be identified in the materials accompanying an application for a land use permit and must be approved by the Planning Director before permit issuance to insure that it will not restrict local and state agencies or the property owner from completing the actions necessary to accomplish a permitted use within the wetland.

- (3) *Open space easement required: A land use or construction permit for a structure larger than 1000 square feet in floor area shall not be approved on a parcel of one acre or larger that contains a wetland, unless the property owner first grants the county or an approved land trust an open space easement or fee title dedication of all portions of the site not proposed for development, as well as the entire wetland.*

CZLUO Section 23.07.174: Streams and Riparian Vegetation. Coastal streams and adjacent riparian areas are environmentally sensitive habitats. The provisions of this section are intended to preserve and protect the natural hydrological system and ecological functions of coastal streams.

- a. *Development adjacent to a coastal stream. Development adjacent to a coastal stream shall be sited and designed to protect the habitat and shall be compatible with the continuance of such habitat. ...*
- d. *Riparian setbacks. New development shall be setback from the upland edge of riparian vegetation the maximum amount feasible. In the urban areas (inside the URL) this setback shall be a minimum of 50 feet. In the rural areas (outside the URL) this setback shall be a minimum of 100 feet. A larger setback will be preferable in both the urban and rural areas depending on parcel configuration, slope, vegetation types, habitat quality, water quality, and any other environmental consideration. These setback requirements do not apply to non-structural agricultural developments that incorporate adopted best management practices in accordance with LUP Policy 26 for Environmentally Sensitive Habitats.*

- (1) *Permitted uses within the setback: Permitted uses are limited to those specified in Section 23.07.172d (1) (for wetland setbacks), provided that the findings required by that section can be made. Additional permitted uses that are not required to satisfy those findings include pedestrian and equestrian trails, and non-structural agricultural uses.*

All permitted development in or adjacent to streams, wetlands, and other aquatic habitats shall be designed and/or conditioned to prevent loss or disruption of the habitat, protect water quality, and maintain or enhance (when feasible) biological productivity. Design measures to be provided include, but are not limited to:

- (i) *Flood control and other necessary instream work should be implemented in a manner than minimizes disturbance of natural drainage courses and vegetation.*



- (ii) Drainage control methods should be incorporated into projects in a manner that prevents erosion, sedimentation, and the discharge of harmful substances into aquatic habitats during and after construction.
- (2) Riparian habitat setback adjustment: The minimum riparian setback may be adjusted through Minor Use Permit approval, but in no case shall structures be allowed closer than 10 feet from a stream bank, and provided the following findings can first be made:
- (i) Alternative locations and routes are infeasible or more environmentally damaging; and
 - (ii) Adverse environmental effects are mitigated to the maximum extent feasible; and
 - (iii) The adjustment is necessary to allow a principal permitted use of the property and redesign of the proposed development would not allow the use with the standard setbacks; and
 - (iv) The adjustment is the minimum that would allow for the establishment of a principal permitted use.

CZLUO Section 23.07.176: Terrestrial Habitat Protection. The provisions of this section are intended to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats. Emphasis for protection is on the entire ecological community rather than only the identified plant or animal.

- a. Protection of vegetation. Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Development shall be sited to minimize disruption of habitat.
- b. Terrestrial habitat development standards:
 - (1) Revegetation. Native plants shall be used where vegetation is removed.
 - (2) Area of disturbance: The area to be disturbed by development shall be shown on a site plan. The area in which grading is to occur shall be defined on site by readily-identifiable barriers that will protect the surrounding native habitat areas.
 - (3) Trails. Any pedestrian or equestrian trails through the habitat shall be shown on the site plan and marked on the site. The biologist's evaluation required by Section 23.07.170a shall also include a review of impacts on the habitat that may be associated with trails.

As described previously, the Estero Area Plan includes specific habitat and setback requirements that apply in this particular case. In particular, these standards form the basis for project review with respect to the proposed pump stations. Estero Area Plan Combining Designation Standard 5 states:



Wetland Setbacks. The following setbacks shall be required to provide appropriate separation between development and the wetland vegetation and habitat. Setbacks established here supersede the 100 foot setback requirement by the Coastal Zone Land Use Ordinance. However, in no case shall a setback be adjusted pursuant to Section 23.07.172 of the CZLUO to less than the following standards. Setbacks are measured between the upland extent of the wetland vegetation and development. The minimum setbacks are as follows:

- a. For the area west of Tract 316 (APN 74-022-03): To be determined by the Coastal Zone Land Use Ordinance;
- b. For Tract 316 (Butte Drive Neighborhood): 50 feet;
- c. For the area between Butte Drive and Pecho Road: On the lots located between Butte Drive and Pecho Road all structures shall be located a minimum of 100 feet from the wetland and its riparian area.
- d. For the area between Pecho Road and Doris Avenue which is the south half of Cuesta Inlet (Blocks 4 and 5 Cuesta-by-the-Sea Tracts): 75 feet;
- e. For the area comprising the north half of Cuesta Inlet (Blocks 13, 14, and 35 of Cuesta-by-the-Sea Tract): 50 feet;
- f. For the area between Doris Avenue northeast to Tract 40 near First Street: 75 feet;
- g. For lots within Tract 40: 75 feet except where adjusted down to no closer than 50 feet from the wetland pursuant to Section 23.07.112d(2) of the CZLUO;
- h. For the area east and northeast of Tract 40: 50 feet except where adjusted pursuant to Section 23.07.172d(2) of the CZLUO. In no case shall development occur closer than 25 feet from the mean high tide line.

Finally, under the LCP a wastewater treatment plant facility is considered a “public utility facility”. Public utility facilities are allowed in all land use categories except Recreation (REC) and Open Space (OS). LCP resource protection policies are further implemented in terms of public utility facilities by CZLUO Section 23.08.288(d), which specifically addresses the siting of such facilities in relation to sensitive areas, including LCP-identified Sensitive Resource Areas and ESHA. Section 23.08.288(d) states:

CZLUO Section 23.08.288(d): Limitation on use, sensitive environmental areas. Uses shall not be allowed in sensitive areas such as on prime agricultural soils, Sensitive Resource Areas, Environmentally Sensitive Habitats, or Hazard Areas, unless a finding is made by the applicable approval body that there is no other feasible location on or off-site the property. Applications for Public Utility Facilities in the above sensitive areas shall include a feasibility study, prepared by a qualified professional approved by the Environmental Coordinator. The feasibility study shall



include a constraints analysis, and analyze alternative locations.

Thus, Section 23.08.288(d) of the LCP allows public utility facilities in these sensitive resource areas provided there are no feasible alternatives.³⁰ In other words, the LCP allows for some ESHA disturbance for a public utility facility project, such as the current proposed project, provided it is the least environmentally damaging feasible alternative. In this context, the LCP still requires avoidance of ESHA impacts if feasible, but also recognizes that there may be circumstances where such projects result in unavoidable impacts, and the LCP allows such impacts if there is no feasible alternative.

In sum, the LCP generally limits new development in ESHA to resource dependent uses, and in wetlands to a limited set of uses otherwise; requires avoidance of and setback from ESHA and wetlands, including explicit and specific wetland setback prescriptions for Los Osos; and requires ESHA, wetland, and buffer enhancements where feasible and appropriate. The LCP also allows public utility facilities in such sensitive areas if there are no feasible alternatives as demonstrated via a feasibility study analyzing constraints and alternative locations.

2. ESHA Analysis

As previously indicated, Los Osos is located directly adjacent to Morro Bay, a designated State and National Estuary that is well known and recognized as one of the most important biologic and wetland resources in California's coastal zone. The Morro Bay watershed stretches inland to the foothills of the Santa Lucia Range, and a variety of coastal creeks and tributaries (including Los Osos, Warden, Chorro, and Morro Creeks) wend their way from the hills down through Los Osos and to Morro Bay forming the area's ESHA mosaic. Most of the Los Osos built environment has been constructed on ancient dunes formed by centuries of wind-blown beach sand that was deposited along the south end of Morro Bay, and as a result, the terrain of Los Osos consists of gently rolling hills and sandy soils, often referred to as "Baywood fines". The sandy soils and marine climate combine to produce a unique coastal ecosystem that is home to a wide array of plant and animal species, some of which are found nowhere else in the world. The dune, bluff, dune scrub, and chaparral communities that comprise this unique coastal ecosystem are all environmentally sensitive habitat areas (ESHAs). Since nearly all the urban area of Los Osos is underlain by sandy soil that supports ESHA or ESHA seed bank, the rebuttable presumption is that all sandy soil in Los Osos is considered ESHA. Thus, all of the undeveloped land within the main project area within the LCP's urban reserve line (that is, all of the land west of Los Osos Creek), including the remaining vacant parcels within this zone, are comprised of the same sandy soils constituting ESHA under the LCP.

Beneficial Impacts to Coastal Waters and Wetlands

As discussed previously, in addition to addressing contamination of the groundwater drinking water supply of Los Osos, a major part of the need for the LOWWP is to address pollution of environmentally sensitive coastal waters in and around Los Osos. In fact, the project is best characterized as a large scale

³⁰ CZLNU Section 23.11.030 defines the term "Feasible" as: Capable of being accomplished in a successful manner within reasonable period of time, taking into account economic, environmental, social and technological factors.



environmental remediation and improvement effort that has been critically necessary for many years, and its implementation should result in significant resource enhancement and protection for a particularly sensitive series of resources, including the Morro Bay Estuary itself. To the extent the project will address long-standing water pollution issues, the Commission finds that the project is consistent with the LCP's requirements to protect and enhance ESHA and coastal waters.

Direct Impacts to ESHA from Project Construction

Notwithstanding its overall benefit to sensitive resources, there will be some direct and adverse impacts to ESHA and sensitive wetland resources due to the project construction. These include impacts at the treatment plant site, the Broderson disposal site, various pump stations associated with the collection system, and a staging area, as well as potential impacts to surface resources from changes to hydrology. As discussed below, the County project has addressed many of the direct impacts appropriately through selection of the least environmentally-damaging alternative, avoidance, mitigation of impacts, and requirements for monitoring. In addition, the County has worked closely with Commission staff since the substantial issue hearing to revise the project to address wetland and ESHA issues.³¹

Avoidance of ESHA Impacts to the Maximum Extent

There continues to be some local disagreement over siting, collection, and disposal elements of the project. Nonetheless, the County's proposed use of the Giacomazzi site for the treatment plant site, and its gravity collection and effluent disposal methodologies are sound project alternatives. A detailed constraints and alternatives analysis, coupled with the project EIR, were used by the County to identify the collection system and disposal elements as well as to locate the treatment plant at the Giacomazzi site.³² As discussed at the Commission's substantial issue hearing, other locations that could be considered to site such a facility each present similar and more difficult issues with respect to development of sensitive areas for purposes of LCP Section 23.08.288(d). So although there are some direct impacts (see below) associated with the proposed project and requiring modifications, the proposed project, including the treatment plant and including the collection and effluent disposal methodologies, as modified is appropriately considered to be the least environmentally damaging and most feasible alternative after taking into account economic, environmental, social, and technical factors.

Impacts at the Treatment Plant Site

One of the first and most important steps in the development review process is identifying the presence of ESHA and wetland resources within or adjacent to a proposed development site. At the substantial issue hearing for this project, concerns were raised that the County wetland delineations at the treatment plant site and other locations were not done using appropriate LCP criteria, thereby calling into question the ability to accurately avoid and/or mitigate ESHA wetland impacts as required by the LCP.

³¹ See also County's response to the Commission on issues identified in the January substantial issue hearing in Exhibit 3.

³² See Viable Project Alternatives Rough Screening Report (March 2007), Fine Screening Report (August 2007), and Final Environmental Impact Report LOWWP (September 2009).



Commission staff, including the Commission's ecologist, reviewed additional documentation, visited the treatment plant site (and the pump station and leach field sites – see below), and verified the location of wetlands (see Exhibit 6 for the Commission ecologist's complete analysis and findings). The Commission's ecologist made the following finding specific to the siting of the treatment plant and its relationship to known wetland drainages on the Giacomazzi site:

*Disking for weed control has continued to the present time and the historical farming and continual disking has resulted in a relatively uniformly sloped field dominated by annual weeds with two erosional features that drain water and storm runoff. The site slopes downward toward the northeast into a depressional wetland dominated by arroyo willow, *Salix lasiolepis*, and surrounded by coyote bush, *Baccharis pilularis*. Both erosional features start out as shallow trenches and become progressively deeper ditches with bare dirt beds and banks. While these drainage ditches may once have been natural features, years of farming and disk ing have reduced them to erosional scars that rapidly convey water to the depressional wetland. The tops of the drainage ditches are dominated by non-wetland invasive weeds and non-native annual grasses including wild radish, *Raphanus sativus*, corn spurry, *Spergula arvensis*, scarlet pimpernel, *Anagallis arvensis*, Italian rye-grass, *Lolium multiflorum*, wild oats, *Avena fatua*, ripgut brome, *Bromus diandrus*, and soft chess, *Bromus hordeaceus* (see Appendix 1 - plant species observed on the Giacomazzi property during our site visit).*

The depressional wetland on the northeast corner of the property supports native scrub and wetland species. Following our site visit and based on field reconnaissance, the County extended their identified ESHA boundary along the northwestern finger of the depressional wetland to encompass the coyote bush. The County also increased their identified ESHA boundary to better capture the riparian canopy along the western boundary of the depressional wetland as well as the coyote bush in the southeastern finger of the depressional wetland. The revised boundary of the scrub and wetland is appropriately mapped as ESHA, and the County has applied an appropriate 100-foot buffer out from this ESHA.

Specific to the proposed access road for the treatment plant across the adjacent Andre property, the Commission's staff ecologist identified additional wetland areas and made the following findings:

*The Andre property, adjacent to the Los Osos Valley Memorial Park (cemetery) and the Giacomazzi property, is where the County has proposed an access road for the wastewater treatment plant. During our site visit we walked the alignment of the proposed road. We found that the road, as designed, crossed several low relief areas filled with spikerush, *Eleocharis* sp., a species characteristic of wetlands (see Appendix 1 - plant species observed on the Andre property during our site visit). We did not conclude on these areas as wetlands, but presuming they were wetland areas, and following our site visit, the County prepared an alternative access road alignment that avoids and appropriately buffers these potential wetland areas (Exhibit 1-2, Overall Project Site Plan, revised 4/13/10 & Biological Constraints Map, Figure 4, revised 4/13/10). In addition, you have asked me whether there would be biological issues associated with siting the road along the eastern property line of the Los Osos Valley Memorial Park and*



the western property line of the Andre property. This siting also avoids the potential wetland areas on the Andre property and avoids all ESHA, wetland, and buffer areas otherwise. Thus, from a biological perspective, neither access road alignment would adversely impact habitat resources.

Thus, based on County and Commission staff analysis, confirmed in the field by the Commission's ecologist, the Commission can concur that the County's delineations of wetlands and ESHA on the Giacomazzi treatment plant site were mostly correct. The Commission's Staff ecologist did identify some small additional areas of wetland/terrestrial habitat ESHA at the treatment plant site. To address these areas and to mitigate for potential impacts from the adjacent treatment plant (e.g., light, noise, disturbance), the Commission adopts conditions requiring the avoidance of such areas, and appropriate setbacks, and restoration of these areas including the setbacks to them (see Special Conditions 1 and 3). In this way, the project appropriately addresses wetland/terrestrial habitat ESHA issues under the LCP. In anticipation of these requirements, the County has revised its site plan for the treatment plant (see Exhibit 8), and concurred with the restoration on Giacomazzi that is required by the conditions.

Impacts at Broderson Disposal Site

As with the LOCSD wastewater project previously approved by the Commission, the LOWWP requires the use of the Broderson site for wastewater disposal. Specifically, the County will use 8 acres of the Broderson site for a leach field designed to provide groundwater recharge in the upper aquifer. The Commission's Staff ecologist has visited the Broderson site, and consistent with prior Commission analyses and findings related to Broderson, has concluded that the site is entirely ESHA, most of it very high quality:

The proposed Broderson leach field is located on 8 acres within the larger 80 acres that comprise the Broderson property. The Broderson property supports maritime chaparral and coastal scrub habitat on a slope overlooking the south end of Morro Bay. Maritime chaparral is a rare plant community characterized by specific species of manzanita or ceanothus, nutrient poor soils, and maritime climate. The maritime chaparral on the Broderson property supports two maritime chaparral indicator species; the federally threatened Morro Manzanita, Arctostaphylos morroensis and wild lilac, Ceanothus cuneatus; as well as an array of associated species. The maritime chaparral portion of the Broderson property is nearly pristine and is located at the higher elevations near the southern end of the property where no development is proposed.

The County has sited the leach field on the lower, northernmost portion of the Broderson property, well below the maritime chaparral boundary, within coastal scrub habitat that is highly invaded by veldt grass. The area slated for the leach field is dominated by invasive veldt grass interspersed with mock heather, California sage, Artemesia californica, and coyote bush. Immediately following construction of the leach field, the County will restore, enhance, and maintain the disturbance area and all unaffected habitat on the Broderson property to promote the land's functional value as suitable habitat for sensitive plants and animals that are local or



endemic to the area.

The Broderson leach field would be located on the least sensitive portion of the site in disturbed coastal scrub. Although ideally the leach field would not be necessary, its construction at this location will be adequately protective of habitat resources because other leach field sites would be more habitat damaging, the area would be restored as part of the wastewater treatment project (and re-restored following maintenance cycles), and such facilities are allowed under the LCP if they are the least environmentally damaging feasible alternative. Within this context, and premised on the proposed long term enhancement, restoration, management (including funding), and protection of the 80-acre Broderson site that is proposed and should be required, I believe that the leach field portion of the project appropriately protects ESHA and wetlands.

The proposed leach field will periodically directly disturb 8 acres of the lower coastal scrub portion of the property, beginning with initial installation and then through the anticipated maintenance of the leach field every 5-10 years. Although ideally this impact to ESHA would not be required, it is the least environmentally damaging, feasible alternative for this component of the wastewater discharge element of the LOWWP.

Impacts at Pump Stations

The project includes nine pump stations and thirteen pocket pump stations that provide continuous pressure in the force mains, enabling the transfer of wastewater to the treatment plant from areas that cannot be served by gravity. The pump stations are located throughout the community on vacant lots or within public rights-of way and are run by dedicated stand-by power facilities. Because nearly all the urban area of Los Osos is underlain by fine sandy soil that supports ESHA, some amount of impact due to the pump station footprint is unavoidable (see following discussion for more detail on unavoidable project impacts). Concerning the project pump stations, including the Midtown site, the following findings have been made by the Commission's staff ecologist:

The majority of the Los Osos community has been constructed on ancient dunes formed by centuries of wind-blown beach sand that was deposited along the south end of Morro Bay. As a result, the terrain consists of gently rolling hills and sandy soils, often referred to as Baywood fines. The sandy soils and marine climate combine to produce a unique coastal ecosystem that is home to a wide array of plant and animal species, some of which are found nowhere else in the world. The dune, bluff, dune scrub, and chaparral communities that comprise this unique coastal ecosystem are all environmentally sensitive habitat areas, or ESHA.

Since nearly all the urban area of Los Osos is underlain by sandy soil that supports ESHA or ESHA seed bank, the presumption is that all sandy soil in Los Osos is considered ESHA. As such, siting a wastewater treatment project in Los Osos outside of ESHA is likely impossible. As indicated above, my understanding is that the LCP allows for some ESHA disturbance for such a project provided it is the least environmentally damaging feasible alternative. Within this context, the County has examined various options for pump station, leach field, and staging area



locations, and has made extensive efforts to identify the least environmentally damaging alternatives. To this end, all the project component locations identified by the County are disturbed sites heavily impacted by invasive species; the only exceptions are the Midtown and Broderson sites that, while invaded by non-natives, still support large areas of native plant communities. In addition to sandy soil ESHA, Los Osos sits adjacent to Morro Bay and has wetland habitat scattered throughout town. Within this setting, the County has also gone to great lengths to site and design project components a minimum of 75-feet back from any wetland feature per the LCP; the one exception is the West Paso pump station site, where the pump station set-back is proposed to be 50-feet.

As with Giacomazzi, the Commission's Staff ecologist did identify some small additional areas of wetland/terrestrial habitat ESHA at individual pump stations sites. To address these areas and to mitigate for potential impacts, conditions require the avoidance of such areas, and appropriate setbacks, and restoration of these areas including the setbacks to them (see Special Conditions 1 and 3). In this way, the project appropriately addresses wetland/terrestrial habitat ESHA issues under the LCP. In addition, Los Osos sits within the Morro Bay watershed and has a network of coastal streams and wetland habitat scattered throughout. Within this context, the County has also gone to great lengths to site and design the pump stations to avoid wetland ESHA and meet the minimum setback from any wetland feature as required by the LCP. More specifically, all pump stations and associated power buildings but for two are consistent with LCP wetland setback standards. As described in detail by the Commission Staff ecologist Jonna Engel (see Exhibit 6), the two exceptions are the West Paso pump station site, where the pump station setback is proposed to be 50 feet instead of 75 feet; and the Lupine pump station, where field investigations showed the presence of wetland indicator plant species within the proposed building area.

The West Paso pump station is located on a residential lot fronted by 3rd Street, which runs alongside Morro Bay. Currently the lot is completely covered with invasive iceplant which offers little to no habitat value. On the bay side, and across the street, there are several eucalyptus trees with an understory of invasive species including iceplant, fennel, and castor bean. A pump station is required for this area and a staff site visit confirmed that the West Paso location is the least environmentally damaging feasible alternative. Although a wetland buffer adjustment of 25 feet (from the LCP required 75 feet down to 50 feet) is necessary to accommodate this pump station, the buffer reduction is not significant and the buffer proposed is adequate to protect the adjacent wetland, including because the site is dominated by invasive species. Moreover, a power generator is not required at this site and the pump station will be located completely underground and partially within the graded road right-of-way. Thus, the proposed setback adjustment in this case is consistent with the provisions of the LCP.

Wetland ESHA indicators were identified within and adjacent to the proposed Lupine pump station building envelope. The proposed Lupine pump station site consists of a level residential lot at the corner of Lupine Street and Donna Avenue. A distinct wetland area associated with Morro Bay is located to the south. The lot is principally dominated by non-native grasses and invasive plants including veldt grass, ripgut brome, wild radish, and iceplant. During field investigations, however, several large patches of the sedge, *Carex praegracilis*, a wetland indicator species (FACW), were observed growing on the lot in the



corner where Lupine Street and Donna Avenue meet, and along Donna Avenue. The wetland delineation report for the Lupine Pump Station³³ does not identify the sedge or wetland in the area where the sedge patches are located. As such, the proposed pump station is inconsistent with the LCP ESHA protection provisions and wetland setback standards and must be relocated. Special conditions of approval are included to avoid impacting the sedge wetland area by setting the pump station building back a minimum of 75-feet from this wetland area, meaning that the Lupine pump station must be moved to an alternative site. The County has indicated that this relocation is feasible and would support the new condition to better avoid wetland ESHA.

Impacts at the Walker Staging Area

At the substantial issue hearing, concerns were raised about the location of the construction staging area on the Walker (Gray) property, located at 18th and Paso Robles Avenue (see Exhibit 2). Because of its size and central location, the County identified the site as the preferred construction staging area for the project. The concern raised is that the County intends to use a staging area that is in ESHA, and that the County has already begun to clear and ready the site for the project without the benefit of a CDP.

The County has provided additional material (see Exhibit 3) supporting the use of the Walker site for construction staging. A portion of the site is currently being used by the Northern Chumash Tribal Council as an organic farm. Apparently the farm constructed a greenhouse on the property, which is the cause of some of the complaints regarding unpermitted development occurring on site. According to the County, there is no formal enforcement action at this time. It should also be noted that the Walker property is one of the sites approved by the Coastal Commission for primary staging by the Los Osos CSD initiated project in 2005. With respect to the concern regarding advance work on the wastewater project, the County states that they are not aware of any such activity on the part of the County or its consultants and contractors. It is the County's belief that construction materials previously abandoned on the LOCSD-owned portion of the Walker site were removed several months ago by the contractor who owned the materials.

Commission staff, including the Commission's staff ecologist, visited the Walker site in April 2010. The site was heavily disturbed and generally devoid of natural vegetation, and no sensitive plant or animals are known to be present on the site. As far as staff could deduce, and based on representations by the County, there had been some unpermitted development previously on the site, but that development was not associated with the LOWWP, and had been removed via County enforcement action as of the time of the site visit. With respect to ESHA, the site, like most of Los Osos, appeared to consist of sandy soils that could provide habitat for the shoulderband snail. However, the Commission's staff ecologist did not think the site had a high habitat value, and did not see an ESHA reason under the LCP to pursue a different construction staging area site. In other words, any Los Osos site that could serve the temporary construction staging area function for the LOWWP will have ESHA issues for similar soil reasons, and using this site where the habitat was low value to non-existent was deemed appropriate under the LCP.

³³ Prepared by Morro Group, Inc. in 2004.



Because the County had not proposed how the site would be addressed after construction staging was complete, conditions are needed that require the restoration of the site to its pre-project condition or better after completion of the project.

Impacts Due to Hydrological Changes

Another potentially significant impact to ESHA attributable to the project is possible changes to groundwater due to septic tank decommissioning. Concerns have been raised that septic decommissioning will lead to impacts to wetland and riparian systems, including Willow Creek, inconsistent with the LCP. The County evaluated these potential impacts and concluded that although localized alterations of habitats may occur, no net loss of wetland habitat is anticipated (see Exhibit 3). More discussion of the hydrological modeling underlying this conclusion is provided in the Coastal Watersheds finding below.

Notwithstanding the County's conclusions, due to uncertainty in the hydrological modeling, a precautionary approach is warranted. Special conditions are required that shore up the County approval by including submittal of a plan that includes identification of baseline conditions, monitoring, and adaptive management in the event of any adverse impacts or trends. This plan will ensure wetland protection, and provide the foundation for an ongoing adaptive management approach to deal with changing groundwater levels and possible ESHA impacts. Additional discussion of hydrology issues and potential impacts to Willow Creek is presented in the Coastal Watersheds finding below.

Conclusion: Unavoidable Impacts of Project Construction

Following field evaluations of the treatment plant site, all pump stations, and the proposed leach field locations (see discussion above), it can be verified that the proposed project would result in the unavoidable loss of 8.55 acres of coastal dune scrub/terrestrial habitat ESHA (8 acres at the Broderson leach field site and 0.55 acres at 7 different pump station locations). In addition, 6 acres of temporary impacts will occur at the construction staging area (Walker) and a small amount of willow trimming will be necessary to hang a sewer pipe from the LOVR bridge (an environmentally superior alternative designed to avoid trenching the pipe through the Los Osos Creek channel). The following table illustrates the amount, location, and type of ESHA impacted by the LOWWP:

	Facility	Location	Impact	Type
1	Sunny Oaks Pump Station	LOVR @ Sunny Oaks	0.10	TH
2	Mountain View Pump Station	Mtn View @ Santa Ynez	0.00	TH
3	East Paso Pump Station	Paso Robles @ 18th	0.11	TH
4	East Ysabel Pump Station	Santa Ysabel @ SBB	0.12	TH
5	Solano Pump Station	Solano @ Butte	0.10	TH
6	Lupine Pump Station	Lupine @ Donna	0.00 ³⁴	WET
7	West Paso Pump Station	Paso Robles @ 3rd	0.02	TH

³⁴ 0.05 acre impact avoided by condition (see Special Condition 1).



8	Baywood Pump Station	Second @ El Morro	0.00	TH
9	Midtown Pump Station	LOVR @ Palisades/Ravenna	0.10 ³⁵	TH
10	Broderson Leach Field	Broderson Site	8.00	TH
11	LOWWP Treatment Plant	Giacomazzi Site	0.00	TH/WET
Total			8.55	TH

Mitigation of Unavoidable Impacts

The LOWWP will result in an unavoidable impact to 8.55 acres of Terrestrial Habitat (TH) ESHA that is protected pursuant to the LCP's ESHA policies cited above. More specifically, as shown in the above table, the total amount of direct and unavoidable impact includes 8 acres of disturbance to coastal scrub habitat for the Broderson leach fields and 0.55 acres of scrub habitat (combined) at six pump stations. The Broderson site clearly meets the LCP definition of ESHA, and were it not for the specific ordinance in the LCP that allows the siting of needed public works facilities in ESHA, the impact would not be allowed. Impacts to terrestrial habitat at the various pump stations also would not be allowed but for the needed public works facility (or some other overriding policy such as the need to avoid a takings of private property), though it should be noted that the County's square footage of habitat impact calculated for each pump station appears to be a conservative (and most protective) figure. In some cases, the area of impact was measured by the footprint of the pump building where the only known habitat was sandy soil adjacent to the side of the road.

Although the impacts to ESHA are allowable under the LCP for this public works project, they must nonetheless be mitigated. Typically the Commission would seek habitat mitigation in the form of restored or created like for like habitat; and depending on the circumstances, this restoration could range from a ratio of 1 or 2:1 up to higher ratios, such as 4 or 5:1. The location and nature of the restoration site often plays a role in this determination, as does the anticipated success of the restoration.

Similar to the previously approved LOCSD project approved by the County and the Commission, the County project includes the protection of the 80-acre Broderson site, including targeted restoration of the 8-acre leach field area and adjacent coastal scrub habitat on this property. However, the periodic revegetation of the leach field area, and targeted restoration of surrounding existing scrub habitat, is not sufficient to address the effective loss of the approximate 8.5 acres of coastal scrub habitat due to the project because the 8 acre area will not function as undisturbed habitat. Likewise, while recognizing its significance to the protection of already-existing habitat in Los Osos, the Commission also acknowledges that the proposed protection of the 80-acre Broderson site, approximately 55 acres of which consist of very high quality maritime chaparral habitat, will not result in the offsetting creation of coastal scrub habitat, as would ordinarily be required for direct impacts to coastal scrub.

More fundamental, though, the Broderson property currently remains an asset of the LOCSD, and has been part and parcel of the Commission's pending violation case related to the LOCSD's grading of the Tri-W/Midtown site for its now abandoned wastewater project. That is, as discussed in more detail

³⁵ 0.15 acre impact avoided by condition (see Special Condition 1).



below, the protection of Broderson was (and still is, potentially), a critical piece of the mitigation package that allowed the Commission to approve the use of the Midtown site, which itself consisted largely of coastal dune scrub as well as other sensitive habitats, for a public service facility in the first place. This was accomplished not through the public works override ordinance but through a rezoning of the Midtown site based on resolution under Coastal Act Section 30007.5 of the conflict between the necessary protection of coastal water quality, and the required protection of ESHA. The Broderson mitigation proposal was central to the Commission's finding under the Coastal Act that allowing a public facility in the ESHA at Tri-W was, on balance, the most protective of coastal resources. In short, as discussed in more detail in the following section, absent resolution of the pending LOCSD violation, the proposed protection and targeted restoration of the existing habitat on the Broderson property cannot be countenanced as mitigation for the direct impacts to coastal scrub habitat entailed by the County's LOWWP. Moreover, as reiterated below, the LCP itself requires that violations associated with properties proposed for new development be resolved prior to approval of the new development. Thus, the LCP itself precludes use of the Broderson site for wastewater disposal, let alone mitigation, unless and until the pending violation associated with this LOCSD property is resolved (see below for more detail).

The County, of course, is not directly responsible for resolving the LOCSD violation, and the fact that the project approved by the County includes protection and restoration of the Broderson site not proposed for wastewater disposal use is an extremely beneficial aspect of the project; this is only to say that this project component cannot directly address LCP mitigation requirements under current circumstances. However, it is the case that another asset of the LOCSD – the Midtown site – is available to the County as a potential mitigation site. Moreover, the County is in fact proposing to use a portion of the Midtown site for the project (a pump station). But as with Broderson, the Midtown site cannot be used for new development until the pending violation on the site (LOCSD grading) is resolved. In addition, the Midtown site consists of degraded coastal dune scrub habitat as well as Baywood fines – both of which would be appropriate habitat types for mitigation of the project impacts to coastal dune scrub at Broderson and various pump station sites. As described by the Commission's Staff ecologist, notwithstanding the grading of the site by the LOCSD, the site remains ESHA:

The Mid-Town site is a 12-acre parcel characterized by dune scrub, dune swale, and non-native grasses and weeds growing on Baywood fine soils which as a whole meets the Commission definition of ESHA. The Mid-Town site has been identified as appropriate habitat for the federally endangered Morro shoulderband snail and the state and federally endangered Morro Bay kangaroo rat. While disturbed by invasive species and grading associated with initial construction of the formerly approved wastewater treatment project, the Mid-Town site continues to support large stands of dune scrub dominated by the indicator species for this community, mock heather, Ericameria ericoides. Other native dune scrub species on the property include deer weed, Lotus scoparius; California croton, Croton californica; bush lupine, Lupinus chamissonis; and coyote bush. As with much of the Los Osos open space, the Mid-Town site is heavily invaded by veldt grass, Ehrharta calycina, as well as a number of other invasive species.



And:

The Mid-Town site continues to suffer from the grading for the abandoned wastewater treatment plant. Weeds and an erosional feature that has become a deep gully seriously impact the habitats and natural functioning of the site. The Mid-Town site is a large parcel with high habitat and ecosystem value and the potential to support robust native plant communities and the federally endangered Morro shoulderband snail and the state and federally endangered Morro Bay kangaroo rat.

Thus, the Midtown site is a logical mitigation site for the LOWWP. Since the Commission's substantial issue hearing when the question of habitat mitigation was raised, the County has recognized the need to address the Midtown site, and has proposed to stabilize the Midtown site, including through revegetation with native plant species (see Exhibit 3). To implement the County's proposed use and protection of the Broderson site, as well as provide mitigation for the 8.55 acres of ESHA impacts as a result of the current project and to address the question of mitigation and the outcome for the balance of the Midtown site (previously Tri-W), Special Condition 3 requires implementation of the County-proposed project, and additional mitigation measures, consisting of the following habitat restoration and protection components: 1) as proposed by the County, permanent protection of 72 acres of high-quality, existing sensitive habitat at the Broderson disposal site, and restoration of coastal dune scrub areas, in and around the 8 acre leach field area (a total of 80 acres); 2) restoration and enhancement of 5.7 acres of habitat buffer at the Giacomazzi site and protection of the existing 2.6 acres of ESHA there (a total of 8.3 acres); 3) restoration of approximately 12 acres of coastal dune scrub and related habitats at the Midtown site; and 4) pump station habitat restoration and buffer enhancement totaling nearly 1 acre where such activity has the potential to reduce impacts and improve habitat values. In total this habitat protection and restoration package would result in approximately 100 acres of habitat protection, of which 18 acres is mitigation in the form of habitat restoration sufficient to offset the 8.55 acres of unavoidable impact.³⁶

Double Counting of Mitigation?

Some have argued that the County's proposed use of the Broderson site to satisfy habitat mitigation requirements for the proposed project is impermissible because the site was already required to be protected as part of the abandoned LOCSD project. As summarized earlier, the LOCSD initiated its wastewater project in 2005, including by completely grading the Tri-W site, which the Commission had previously determined to be entirely ESHA. To offset these impacts, the Commission had required the LOCSD to protect the Broderson site (through the acquisition, enhancement, dedication, funding, and permanent management of the 80-acre site).³⁷ Because the impacts to the Tri-W habitat have occurred,

³⁶ As previously indicated, the San Luis Obispo County LCP allows for some level of such impact, including to wetlands and ESHA, for a wastewater treatment project like this provided the project represents the least environmentally damaging feasible alternative. Overall and as conditioned this project meets that critical LCP test.

³⁷ Of the total 80 acres, 8 acres would be disturbed by leach field development. This leach field area would be similarly acquired, enhanced, dedicated, and permanently managed, and thus is part of the mitigation package, but it would be manipulated over time, including to put in the leach field initially, and to periodically maintain the leach field over time on a rotational basis so that the entire leach field is not excavated at any one time for such maintenance). Although this leach field area is part of the mitigation package, and



the requirement to protect Broderson was triggered and, according to many, should be completed independent of the new LOWWP.³⁸ It is further argued therefore that the Broderson site cannot be used to mitigate the impacts of the LOWWP, as this would constitute double counting of the Broderson site. As outlined above, the Commission agrees that the LOWWP cannot use Broderson as mitigation for its habitat impacts and thus, other mitigation is required. At the same time, because the LOWWP requires the Broderson site for wastewater disposal, and because the LCP requires the resolution of violations on sites proposed for development prior to the approval of that development, completion of the anticipated protection of Broderson as proposed by the County is needed to resolve the outstanding violation issues and is therefore appropriate.

As background, when the Commission approved the LCP amendment through conflict resolution allowing for the former project with a treatment plant at the all-ESHA Tri-W site, the LCP was changed to require offsetting mitigation of “approximately 40 acres”, and the “northerly Broderson parcels” were explicitly called out as the preferred mitigation site.³⁹ In addition, the LCP was also changed to explicitly require that the mitigation acreage referred to also satisfy the habitat mitigation requirements of both CDFG and USFWS. At that time, LOCSD had entered into an agreement to purchase the 80-acre Broderson site to satisfy these requirements, and the Commission recognized this as appropriate in its LCP amendment approval findings. The Commission found as follows:

The long-term preservation and enhancement of the 80 acres of habitat contained on the Broderson site provides an effective way to offset the unavoidable biological impacts that will result from the construction of this essential public facility, and will help ensure the biological continuance of the affected types of habitats...

Subsequently, the Commission’s CDP for the LOCSD project placed the same requirements on the project as identified in the LCP, and required that such property be acquired prior to construction, subject to CDFG and USFWS concurrence on its parameters.⁴⁰ Based on Commission, CDFG, and USFWS concurrence on its appropriateness as mitigation for the LOCSD project impacts to sensitive habitat, including at the Tri-W site, the LOCSD acquired the 80-acre Broderson site to initiate satisfaction of the terms and conditions of the CDP. In approving the CDP, the Commission found as follows:

The project proposes to mitigate unavoidable impacts to ESHA by acquiring, restoring, and protecting the 80-acre Broderson site in accordance with the requirements established by LCP Amendment 3-01. ... The 80-acre Broderson parcel is a key component of the “greenbelt”

the leach field area would be revegetated and managed as habitat over time as well, the fact that it would require periodic disturbance means that really only the remaining 72 acres would be allowed to exist in a pure habitat state over time. That is not to say that the leach field area enhancement measures would not have some habitat value, because they would, but it is just a lesser relative value than the remaining 72 acres of the site that would not be so manipulated.

³⁸ The Commission has been pursuing this case as a violation, but has been awaiting the completion of the LOWWP decision process to determine appropriate resolution, since the Tri-W site was a potential treatment plant site for the LOWWP.

³⁹ Id (LCP number SLO-MAJ-3-01).

⁴⁰ CDP A-3-SLO-03-113 special condition 68.



surrounding the urban area of Los Osos. The establishment, protection, and long-term maintenance of the sensitive habitat areas that comprise the greenbelt is intended to maximize protection and enhancement of the multiple species and habitats that are unique to the area, as further discussed below. ... The Conditions of approval adopted by San Luis Obispo County provide an effective means for implementing the mitigation requirements described above, and have therefore been incorporated as terms of the Commission's approval. (See Special Conditions 62–72.)

Thus, in working with the Commission, CDFG, and USFWS to satisfy the agencies' respective habitat protection mandates the LOCSD was required under the prior CDP to implement the Broderson mitigation package for all 80 Broderson acres as a prior to construction condition.⁴¹ However, while the 80-acre site was acquired by LOCSD, it was never granted to an appropriate agency or conservation organization as required, and LOCSD has never allocated the \$10,000 per year for maintenance and restoration of the site as required. As a result, this prior CDP requirement was never satisfied, even though construction commenced and the Tri-W site was graded by LOCSD in 2005. Both the Commission and the County have been tracking the matter as a violation for several years.⁴²

Although there was clearly a violation of the terms and conditions of CDP A-3-SLO-03-113, the fact that the LOCSD abandoned its project, and the fact that the CDP expired in 2007 by its own terms,⁴³ has complicated matters. Nonetheless, there is little doubt that: (a) a violation of the Coastal Act and the LCP exists; (b) LOCSD is responsible for the violation; and (c) resolution of that violation involves resolving impacts associated with LOCSD grading of the Tri-W site, including with respect to the Broderson mitigation package tied to such impacts.⁴⁴ CDFG and USFWS have indicated that they believe the Broderson mitigation package was required, and needs to be implemented, due to prior grading at Tri-W, and that using Broderson as mitigation for the proposed project would be “double-dipping” and inappropriate.⁴⁵ The Commission agrees, and believes that the current project needs to address resolution of both the Broderson and Midtown/Tri-W sites.

In coming to this conclusion, the Commission makes several observations. First, the enabling legislation

⁴¹ Id (special condition 68).

⁴² Coastal Commission enforcement case number V-3-07-034.

⁴³ CDP A-3-SLO-03-113 expired on August 11, 2007 pursuant to special condition 78.

⁴⁴ It is noted that the 80-acre Broderson site was mitigation for more than just the habitat impacts at the Tri-W site. In other words, the LOCSD project included about 12 acres of habitat impacts at Tri-W and another 9 acres or so of impacts elsewhere in the community (i.e., for transmission lines, pump stations, etc.). The Broderson mitigation package was tied to all of those 21 or so acres of impacts. However, per the terms and conditions of the CDP, all of Broderson was to be granted, along with a program to contribute \$10,000 per year for its maintenance and restoration, prior to construction of the project. As a result, the entire Broderson mitigation package was required before the project could proceed, and it is immaterial whether the project that subsequently proceeded was less than the total project. In addition, after abandonment of the LOCSD project, all that is left is the required mitigation at Broderson, and a degraded ESHA area at Tri-W. In other words, the area degraded at Tri-W was only allowed as part of a complete project that resulted in a wastewater treatment plant and related facilities there.

⁴⁵ USFWS (dated January 29, 2009) and CDFG (dated January 30, 2009) letters to the San Luis Obispo County Public Works Department on the project DEIR.



that allows the County to pursue the proposed project within LOCSD service boundaries⁴⁶ contemplates that the County would step in and get a wastewater project up and running, at which point it would transfer operation of the project back to LOCSD. AB 2701 states:

After a minimum of 3 years and when the district and the county mutually apply for, and are granted, a modification to the waste discharge permit issued by the Regional Water Quality Control Board, responsibilities would be transferred back to the district.

AB 2701 identified that the County was more appropriately situated than the LOCSD in terms of the expertise necessary to get a wastewater project in place and operational,⁴⁷ but it also identified the LOCSD as the long-term wastewater services provider for Los Osos.

Second, AB 2701 also requires LOCSD to convey to the County lands needed “for the purpose of furthering the construction and operation of a wastewater collection and treatment system”.⁴⁸ Such lands include the Broderson and Tri-W sites on which development is proposed for the current project (habitat leach fields and pump station). These lands are the subject of an ongoing violation, and the responsibility for addressing such violations runs with the land. If the land is conveyed to the County, then it is the County’s responsibility as landowner to resolve the violations, even if the prior owner was the violator. Moreover, according to the County LCP, violations must be rectified as part of applications for development. CZLUO Section 23.01.034(c) states:

Compliance with applicable provisions of this title and code is required as follows:...Application where violation exists. No application for land use permit, construction permit or land division shall be approved where an existing land use, building or parcel is being maintained in violation of any applicable provisions of the Subdivision Map Act, this code or any condition of approval of a land use permit, except where the application incorporates measures proposed by the applicant to correct the violation, and correction will occur before establishment of the new proposed use, or recordation of a final or parcel map in the case of a land division or the permit is necessary to maintain the health and/or safety of the occupants.

As a result, the current CDP application before the Commission cannot be approved unless and until it incorporates measures to resolve the violation.⁴⁹

⁴⁶ Id (AB 2701).

⁴⁷ AB 2701 states: “The Los Osos Community Services District has a relatively small staff that has no experience of successfully designing and constructing facilities of the size and type needed to eliminate these discharges. ... The County of San Luis Obispo has a larger staff that has experience in successfully designing large public works projects.”

⁴⁸ AB 2701 states: “Promptly upon the adoption of a resolution by the board requesting this action, the board of directors of the district shall convey to the county any requested retained rights-of-way, licenses, funds, and permits previously acquired by the district in connection with construction projects for which the district awarded contracts in 2005. The county shall use those fee interests, rights-of-way, licenses, and funds for the purpose of furthering the construction and operation of a wastewater collection and treatment system pursuant to this section.”

⁴⁹ The Section 23.01.034(c) language only allows approval “where the application incorporates measures proposed by the applicant to correct the violation”. Although this language indicates that an applicant must propose such measures to allow approval, the section is



Third, the County's proposed project includes the Broderson mitigation package as part of it. In addition, the County has more recently proposed resolution of the degradation associated with the Tri-W site as well (see County's ESHA mitigation submittal in Exhibit 3). In terms of the Broderson site, the County would ensure that the site was acquired, restored/enhanced, and granted with adequate funding to an appropriate entity for management as high quality habitat in perpetuity (see project description in Exhibit 2, including County conditions 56-70). In terms of the Tri-W site, the County's recent submittal proposes stabilization via re-grading the violation area and re-vegetating the area with native plant species. As far as the Commission understands it based on the County's submittal, the proposed "stabilization" is simply another way of saying restoration.^{50,51} Thus, the County's project goes a long ways towards resolving the prior violations, as is required under LCP Section 23.01.034(c), and the mitigation proposed can form the basis for an appropriate mitigation package.

Fourth, the proposed project represents a unique project in some ways in terms of sensitive habitat avoidance/mitigation due to the way the LCP is structured to allow public utility facilities on sensitive habitats in certain circumstances,⁵² and due to the fact that much of undeveloped Los Osos is ESHA of one type or another.⁵³ As a result, ESHA impacts can be reasonably expected (and the project includes approximately 8.55 acres of unavoidable direct ESHA impacts),⁵⁴ and areas to offset such impacts through creation of new habitat will be difficult to find. As a result, impact mitigation in this case is less an exercise of mitigation ratios and acreage offsets, and more a factor of identifying suitable areas for habitat enhancement and long-term stewardship.⁵⁵ In that context, a driving consideration is obviously mitigating as close to the impact location as possible (such as at the treatment plant, leach field, construction staging, and pump station sites), but it is also premised on identifying appropriate habitat properties of a size and location such that mitigation value and utility is maximized. As discussed above, in this case, the Broderson and Tri-W sites meet each of these criteria, and, along with other components of the necessary habitat protection and restoration package can appropriately offset the habitat impacts of

internally inconsistent if that is read to mean that such measures cannot be imposed by the decision making body. In other words, the clear purpose of the section is to rectify violations when applications involving violations are considered. If that were deemed to only be based on applicant-generated proposals, then it is more aptly characterized as a filing requirement for an application, and not as a decision criteria. The section clearly withholds approvals of applications, which necessarily refers to a decision making body taking action on an application already proposed and before the body. To narrowly interpret the section to be based only on applicant proposals and not also on decision making body requirements to rectify violations would limit its effectiveness and be contrary to its clear purpose. In any case, the proposed project currently includes applicant proposals to resolve the subject violations, albeit in slightly different form than would constitute resolution of the violations from the Commission's perspective (see below).

⁵⁰ The County states: "The County...will develop and implement a stabilization plan for the Tri-W site, for the review and approval of the Executive Director of the Coastal Commission. stabilization plan will include grading to contours similar to the approved LOCSD project grading plans, and will include revegetation with native plant species. The County will maintain the site until, in the opinion of the Executive Director of the Coastal Commission, it is appropriately stabilized." See Exhibit 3.

⁵¹ Including in the opinion of the Commission's staff ecologist (see Exhibit 6).

⁵² Id (CZLUO Section 23.08.288(d) and 'least environmentally damaging feasible alternative' concept).

⁵³ For example, see previous findings and see Commission staff ecologist memo in Exhibit 6.

⁵⁴ Id (8 acres of which are due to the Broderson leach field that itself will be restored).

⁵⁵ See also memo from Commission staff ecologist Dr. Engel identifying this mitigation concept in Exhibit 6.



the proposed project.⁵⁶

Overall, the County's proposed project includes both the use of the Broderson and Tri-W sites for project development and mitigation. While the County's restoration and protection of Broderson cannot be considered mitigation for new project impacts, it can be approved as part of the entire proposed project. Through the County's proposed mitigation, it is both resolving an outstanding violation, as it must before using the Broderson site for its leach field or the Midtown site for its pump station, and providing additional mitigation for its current project impacts to 8.55 acres of coastal scrub. The Broderson and Tri-W sites are therefore appropriately considered part of the overall habitat protection and restoration package approved through this CDP. Thus, although the Broderson piece cannot be countenanced as mitigation for the proposed project because it was already required for impacts from the prior LOCSD project (and thus cannot be "double dipped"), and although the Tri-W site can and should be mitigated due to having been graded in 2005, these sites can and should be part of an overall habitat protection and restoration package for the proposed project. In addition, the construction staging area can serve as an appropriate restoration site as well, as can the pump stations sites themselves and the buffer areas at the treatment plant site itself. All told, this required mitigation of approximately 18 acres, in conjunction with the County's proposed projection of the Broderson site totals roughly a 100-acre⁵⁷ habitat mitigation package. This package, and related measures to assure adequate hydrologic inputs for wet habitat types (see groundwater findings) can adequately and appropriately address and offset unavoidable habitat impacts associated with the proposed project. Although this habitat protection and restoration package does not include "new" habitat creation per se (other than the extent to which the buffer area restoration/enhancement could be considered to be such new habitat), it does provide meaningful long-term habitat restoration, enhancement, preservation, and management at appropriate locations and in scale roughly proportionate to the project impacts.⁵⁸

Impacts Related to Future Community Buildout

⁵⁶ The Commission recognizes that, as with all undeveloped properties in Los Osos that are sensitive habitat, non-resource dependent land uses may be considered in the future for the Midtown site as part of the HCP evaluation and LCP amendment processes that are part of the proposed project (and part of the Commission's approval – see special condition 6), and that such evaluation of the Midtown site could raise questions regarding whether considering any such use of the Midtown site is appropriate given the restoration and mitigation requirements for Midtown that are part of this CDP. The Commission believes that any future planning efforts should not be required to avoid evaluating the Midtown site in that way due to it being used as mitigation for the LOWWP. Thus, the Commission's action here does not preclude a different action by the Commission in the future related to the Midtown site. In making this finding, however, the Commission notes that because the Midtown site is mitigation for the LOWWP, any future HCP/LCP amendment process that would allow for non-resource dependent development at Midtown would necessarily need to account for the mitigation for the LOWWP CDP that accrues to Midtown, and the additional mitigation required by any HCP/LCP amendment that might allow for non-resource dependent land use and development on Midtown, and this would need to be reflected in the HCP, the LCP amendment, and in an amendment to this CDP.

⁵⁷ 80 acres at the Broderson site, 12 acres at the Tri-W site, 8 acres at the Giacommazi site, and 0.75 acres at the various pump station sites together.

⁵⁸ Note that the prior LOCSD project included roughly 21 acres of habitat impacts and 80 acres of habitat mitigation (all at Broderson) whereas this project has reduced the habitat impacts to roughly 9 acres, and increased the mitigation package to approximately 100 acres. Furthermore, the current project, unlike the LOCSD project, includes tertiary treatment and thus the enhanced ability to address habitat issues on a broader scale in relation to overall groundwater health and sustainability (see also groundwater findings).



As described, the fine sandy soils of Los Osos help define ESHA throughout the wastewater project service area. Significant portions of the service area remain undeveloped, in large part due to the septic tank discharge prohibition established by the RWQCB in 1988. These undeveloped properties form an integral component of the areas biologic resource base. The provision of wastewater treatment will remove a primary constraint to development of these habitat areas, and are in conflict with LCP ESHA protection policies and ordinances such as Policies 1, 2, 8, 20, 21, 28 and Sections 23.07.170 and 23.07.176 which require that new development is consistent with the biological continuance of the habitat and that terrestrial habitat ESHA is preserved and protected with new development approvals.

To prevent the project from facilitating development that would place a significant cumulative threat to the biological continuance of ESHA within the service area, the project requires preparation and implementation of a Habitat Conservation Plan (HCP) for the long-term preservation of habitat prior to providing wastewater treatment service to undeveloped parcels. The Commission has endorsed this approach in previous iterations of the wastewater project to deal with the impacts of buildout on ESHA. The specific requirement for an HCP is included as part of the County approved project (County condition 92) and calls for direct coordination with the USFWS, CDFG, and the Coastal Commission. The County would be prohibited from providing service to undeveloped parcels until implementation of the measures of the HCP are integrated into the LCP through an LCP amendment and certified by the Commission.

3. Project Modifications to Result in an Approvable Project

In order to approve the project consistent with the LCP, the Commission must apply several special conditions designed to protect and preserve ESHA as required by the LCP. The foundation for these conditions is Special Condition 1 that requires that the County submit a revised set of final plans for Executive Director review and approval. The plans require all development of the treatment plant on the Giacomazzi property to be located outside of 100-foot habitat setback areas. To make this possible the northeastern buffer area has to be adjusted to account for additional terrestrial ESHA recently identified in the field. This adjustment maintains the LCP required 100 foot setback from ESHA and slightly increases the size of the ESHA buffer to about 6 acres. Treatment plant development is prohibited outside of an approved development envelope except for habitat restoration and enhancement related activities. In other words, the condition allows for the non-sensitive portion of the Giacomazzi site to be developed, and requires that the habitat areas be avoided and appropriately buffered. See Special Condition 1.

In addition, Special Condition 1 requires of a series of project siting alternatives that will allow for ESHA impacts to be completely avoided. First, an alternative access route alignment is required that completely avoids wetland ESHA. Currently, the County approved project proposes access to the treatment plant site to be taken on the adjacent agricultural parcel to the east (Andre). Follow-up site surveys on the Andre property show that the County approved access road would bisect two potential wetland areas. Thus, an alternative access road alignment must be selected away from these areas. The most resource protective (and LCP consistent) access route alignment is perpendicular to and starting at Los Osos Valley Road and continuing northward along the existing gravel road to the treatment plant



site. The access road is to be developed in such a way as to limit its width and overall length as much as possible and is to include measures to screen noise and activity associated with access road traffic. Special Condition 1(b) requires the County to adopt this alternative access road alignment as a feasible alternative that avoids wetlands.⁵⁹

Special Condition 1(d) deals with necessary project changes to the pump stations and related developments. The first pump station alternative necessary to avoid ESHA impacts is to move the Midtown Pump Station standby power building off of ESHA. According to the County, it is feasible to relocate the standby power building across the street into a non-ESHA area of Los Osos Community Park. Adjusting the location of the underground pump station at Midtown was also analyzed, but due to the operational/hydraulic needs to the project it is determined that it is not feasible to relocate the underground pump station. While this project alternative will result in only a marginal decrease in the overall amount of ESHA impacts on the Midtown site (approximately 0.10 acres), it carries forward the LCP directive to avoid ESHA impacts whenever feasible.

In addition, the Lupine Pump Station and associated force main must be relocated to avoid ESHA. Follow-up field studies identified the presence of wetland vegetation at the County approved Lupine pump station and standby power building sites. In this case, it is feasible to move the underground portion of the pump station into the road slightly west of the current location. More difficult is the ability to find an acceptable site for the standby power building on an adjacent parcel. It is important, however, that the standby power building not be sited within 75 feet of this or another wetland area. With respect to the force main, the County's EIR for the project shows the force main aligned easterly along Lupine to Fearn Avenue, north on Fearn to Ramona, and east on Ramona to join with the West Paso Force main at Fourth St. This alignment avoids terrestrial habitat ESHA, but would require excavation through a sensitive cultural resource area known to contain human remains (a type of SRA under the LCP). To address these issues, Special Conditions 1(d) and 1(e) require the Lupine Street pump station and standby power building to be relocated at least 75 feet from wetlands and the overall project site plan must be modified to show an alternative force main alignment. As such, the force main is to be routed from the Lupine Pump Station east on Lupine Street, south on Fearn Avenue, east on Binscarth Road, and then south on Pine Avenue, terminating at Los Osos Valley Road. It is most consistent with the LCP to align the Lupine force main in such a way that completely avoids both ESHA and cultural sites.

Building on these conditions, Special Condition 1(h) requires implementation of landscaping and irrigation parameters at both the treatment plant site (including along the access road) and at all pump station locations designed to ensure that the development does not disrupt adjacent habitat resources, and to ensure that habitat and buffer area resource values are enhanced. This condition is meant primarily as native vegetation planting and removal of non-natives and invasives. Furthering this landscaping requirement and to help facilitate its success, subsection (g) of the same condition requires that lighting is designed to ensure that exterior lighting is low profile and directed away from sensitive habitat areas

⁵⁹ See also Section 5.B. Agriculture finding of this report for additional discussion on access road siting alternatives that avoid impacts to agriculture.



to avoid impacts from project lighting. To mitigate for the temporary impacts that may occur due to staging equipment on the site, Special Condition 3(e) requires that the 6 acre disturbance area be replanted and restored to pre-construction conditions or better. Replanting and restoration is subject to the requirements of a Restoration and Enhancement Plan reviewed and approved by the Executive Director of the Coastal Commission.

Under Special Condition 1, submittal of Final Project Plans for the approved treatment plant site and the collection and disposal systems can be phased separately. The reason is to allow construction of the effluent collection and disposal system to begin while plans for the treatment plant site are further developed by the County. Thus, the Coastal Commission intends Special Condition 1 to allow for the phasing of these different project elements.

To further protect sensitive habitats and address unavoidable impacts of the project, Special Condition 3 requires a Habitat Management Plan covering the following mitigation sites: 1) Broderson; 2) Giacomazzi; 3) Midtown; and 4) select Pump Stations. The Habitat Management Plan requires and provides for the Broderson site to be acquired and granted to an appropriate agency or conservation organization approved by the Executive Director, where such grant shall include funding adequate to implement the Habitat Management Plan over time. The Habitat Management Plan requires and provides for each of these sites to be deed restricted against development other than that associated with the approved project and consistent with the approved Habitat Management Plan. The Habitat Management Plan must be prepared by qualified restoration ecologists, must be submitted with evidence of USFWS and CDFG review and approval, and must take into account the specific condition of each restoration and enhancement site (including soil, exposure, water flows, temperature, moisture, wind, etc.), as well as restoration and enhancement goals and success criteria. The Habitat Management Plan shall explicitly allow for potential public access interpretive facilities (including trails, signs/displays, etc.) even if such facilities are not part of initial Habitat Management Plan implementation activities, but rather will be a part of subsequent Plan implementation. At a minimum, the Plan must provide for a baseline assessment of current physical and ecological conditions of the restoration and enhancement areas; a description of the goals of the plan, including in terms of topography, hydrology, vegetation, sensitive species, wildlife usage, and potential public interpretive access; removal of all invasive and/or non-native plant species and planting of native species of local stock appropriate to the habitats of Los Osos; a description of measurable success criteria, monitoring and maintenance; as well as regular reporting. The Habitat Management Plan must be implemented concurrent with construction of the approved project and must be completed prior to commencement of operation of the project.

Special Condition 6 of this permit limits wastewater service to undeveloped properties within the service area unless and until the Estero Area Plan is amended to identify appropriate and sustainable buildout limits. This requirement builds on County conditions 86 and 92 requiring a HCP be prepared to address the potential for ESHA impacts as a result of community buildout. The HCP is intended to carry out LCP ESHA protection requirements and be effectively implemented before development of vacant land begins to occur and before providing service to undeveloped parcels.

Lastly, special conditions are required that build on the County approved project by including a



basinwide resource management plan prior to issuance of the CDP (see details in section C. Groundwater finding below). A monitoring system will provide sufficient coverage to evaluate groundwater levels, not only to help ensure wetland protection, but to guard against groundwater from disposal operations making its way to the surface (Special Condition 5).

4. ESHA Conclusion

The extensive review of environmental impacts and alternatives completed in the attempt to address community wastewater treatment needs demonstrates a diligent effort on behalf of the responsible agencies to locate the necessary facilities in a manner that is most protective of ESHA. Despite these efforts, this process has yet to identify a feasible project that would completely avoid impacts to ESHA. The critical need for the treatment plant facility has been thoroughly documented and the proposed locations for the treatment plant, including effluent collection and disposal facilities comply with LCP requirements for locating public facilities within ESHA, established by Section 23.08.288 of the CZLNUO. In order to satisfy LCP standards established to address unavoidable impacts of project construction, this permit incorporates conditions meant to work in tandem with conditions enacted by SLO County that, with some minor changes to buffer areas, pump station, and access road locations, implement the mitigation requirements of the LCP. As described previously, the County conditions addressing impacts to ESHA from new development enabled by the project are included as part of this permit approval.

In short, the project as conditioned is a much needed and well-conceived beneficial coastal resource project that is essential to protect ground and surface waters in and near Los Osos, including the Morro Bay National Estuary and related habitats and resources, and to provide essential public services to the Los Osos area. Significant local and state resources have been dedicated towards addressing these needs over a period of more than 30 years, and environmental impacts and project alternatives have been thoroughly considered. The resultant project represents an important environmental enhancement project of statewide importance that will greatly improve environmental health and safety associated with ground and surface water in and around Los Osos, including in Morro Bay, and including with respect to its related habitat resources. It is clear that the project itself includes certain impacts, but it is hard to conceive of a treatment project at this scale for this area that would not have such impacts. Thus, as conditioned, the project can be designed to appropriately address ESHA impacts, and can be found consistent with the LCP ESHA protection policies as cited in this finding. As conditioned, the project is consistent with the LCP with respect to ESHA.

B. Agriculture

As discussed below, the proposed project does not comply with LCP policies protecting coastal agriculture, and special conditions are needed to bring the project into conformance with the LCP in this respect.

1. Applicable LCP Policies



The LCP is fiercely protective of its agricultural lands. With nearly 125,000 coastal zone acres in the County zoned for agriculture (or 77% of the County's 160,916-acre coastal zone),⁶⁰ such protection is critical to meeting Coastal Act and LCP objectives related to agricultural protection. Applicable LCP policies and ordinances include:

Policy 1: Maintaining Agricultural Lands. *Prime agricultural land shall be maintained, in or available for, agricultural production unless: 1) agricultural use is already severely limited by conflicts with urban uses; or 2) adequate public services are available to serve the expanded urban uses, and the conversion would preserve prime agricultural land or would complete a logical and viable neighborhood, thus contributing to the establishment of a stable urban/rural boundary; and 3) development on converted agricultural land will not diminish the productivity of adjacent prime agricultural land.*

Other lands (non-prime) suitable for agriculture shall be maintained in or available for agricultural production unless: 1) continued or renewed agricultural use is not feasible; or 2) conversion would preserve prime agricultural land or concentrate urban development within or contiguous to existing urban areas which have adequate public services to serve additional development; and 3) the permitted conversion will not adversely affect surrounding agricultural uses.

All prime agricultural lands and other (non-prime) lands suitable for agriculture are designated in the land use element as Agriculture unless agricultural use is already limited by conflicts with urban uses.

Permitted uses on Prime Agricultural Lands. Principal permitted and allowable uses on prime agricultural lands are designated on Coastal Table O – Allowable Use Chart in Framework for Planning Document. These uses may be permitted where it can be demonstrated that no alternative building site exists except on the prime agricultural soils, that the least amount of prime soil possible is converted and that the use will not conflict with surrounding agricultural land and uses.

Permitted Uses on Non-Prime Agricultural Lands. Principal permitted and allowable uses on non-prime agricultural lands are designated on Coastal Table O – Allowable Use Chart in Framework for Planning Document. These uses may be permitted where it can be demonstrated that no alternative building site exists except on non-agricultural soils, that the least amount of non-prime land possible is converted and that the use will not conflict with surrounding agricultural land and uses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

Policy 2: Divisions of Land. *Land division in agricultural areas shall not limit existing or potential agricultural capability. Divisions shall adhere to the minimum parcel sizes set forth in the Coastal Zone Land Use Ordinance. Land divisions for prime agricultural soils shall be based*

⁶⁰ Email communication from John Kelly to Coastal Commission Senior Deputy Director Charles Lester, (June 5, 2009).



on the following requirements:

- a. The division of prime agricultural soils within a parcel shall be prohibited unless it can be demonstrated that existing or potential agricultural production of at least three crops common to the agricultural economy would not be diminished.
- b. The creation of new parcels whose only building site would be on prime agricultural soils shall be prohibited.
- c. Adequate water supplies are available to maintain habitat values and to serve the proposed development and support existing agricultural viability.

Land divisions for non-prime agricultural soils shall be prohibited unless it can be demonstrated that existing or potential agricultural productivity of any resulting parcel determined to be feasible for agriculture would not be diminished. Division of non-prime agricultural soils shall be reviewed on a case-by-case basis to ensure maintaining existing or potential agricultural capability.

(This may lead to a substantially larger minimum parcel size for non-prime lands than identified in the Coastal Zone Land Use Ordinance. Before the division of land, a development plan shall identify parcels used for agricultural and non-agriculture use if such uses are proposed. Prior to approval, the applicable approval body shall make a finding that the division will maintain or enhance agriculture viability.) [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

Policy 3: Non-Agricultural Uses. In agriculturally designated areas, all non-agricultural development which is proposed to supplement the agricultural use permitted in areas designated as agriculture shall be compatible with preserving a maximum amount of agricultural use. When continued agricultural use is not feasible without some supplemental use, priority shall be given to commercial recreation and low intensity visitor-serving uses allowed in Policy 1.

Non-agricultural developments shall meet the following requirements:

- a. No development is permitted on prime agricultural land. Development shall be permitted on non-prime land if it can be demonstrated that all agriculturally unsuitable land on the parcel has been developed or has been determined to be undevelopable.
- b. Continued or renewed agricultural use is not feasible as determined through economic studies of existing and potential agricultural use without the proposed supplemental use.
- c. The proposed use will allow for and support the continued use of the site as a productive agricultural unit and would preserve all prime agricultural lands.
- d. The proposed use will result in no adverse effect upon the continuance or establishment of agricultural uses on the remainder of the site or nearby and surrounding properties.



- e. Clearly defined buffer areas are provided between agricultural and non-agricultural uses.
- f. Adequate water resources are available to maintain habitat values and serve both the proposed development and existing and proposed agricultural operations.
- g. Permitted development shall provide water and sanitary facilities on-site and no extension of urban sewer and water services shall be permitted, other than reclaimed water for agricultural enhancement.
- h. The development proposal does not require a land division and includes a means of securing the remainder of the parcel(s) in agricultural use through agricultural easements. As a condition of approval of non-agricultural development, the county shall require the applicant to assure that the remainder of the parcel(s) be retained in agriculture and, if appropriate, open space use by the following methods:

Agricultural Easement. The applicant shall grant an easement to the county over all agricultural land shown on the site plan. This easement shall remain in effect for the life of the non-agricultural use and shall limit the use of the land covered by the easement to agriculture, non-residential use customarily accessory to agriculture, farm labor housing and a single-family home accessory to the agricultural use.

Open Space Easement. The applicant shall grant an open space easement to the county over all lands shown on the site plans as land unsuitable for agriculture, not a part of the approved development or determined to be undevelopable. The open space easement shall remain in effect for the life of the non-agricultural use and shall limit the use of the land to non-structural, open space uses.

Development proposals shall include the following:

- a. A site plan for the ultimate development of the parcel(s) which indicates types, location, and if appropriate, phases of all non-agricultural development, all undevelopable, non-agricultural land and all land to be used for agricultural purposes. Total non-agricultural development area must not exceed 2% of the gross acreage of the parcel(s).
- b. A demonstration that revenues to local government shall be equal to the public costs of providing necessary roads, water, sewers, fire and police protection.
- c. A demonstration that the proposed development is sited and designed to protect habitat values and will be compatible with the scenic, rural character of the area.
- d. Proposed development between the first public road and the sea shall clearly indicate the provisions for public access to and along the shoreline consistent with LUP policies for access in agricultural areas.

[THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.050 OF THE



CZLUO.]

Thus, the San Luis Obispo County LCP includes strong agricultural protection policies and standards to implement the Coastal Act requirement to maintain the “maximum amount of prime land” (Coastal Act Section 30241) and to limit the conversion of agricultural land to non-agricultural uses except where agriculture is no longer feasible or such conversion would preserve prime land or concentrate development in existing urban areas (Coastal Act Section 30242). As summarized in the LUP:

To carry out the goals of the Coastal Act, the Local Coastal Program delineates long-range urban/rural boundaries to support long-term agricultural use free from urban encroachment. The Coastal Zone Land Use Ordinance contains standards for minimum parcel size, limits on non-agriculture uses and other regulations consistent with preservation of agricultural lands.⁶¹

Most important, LUP Policies 1, 2, and 3 establish strict basic requirements to achieve the broad intent of Coastal Act Sections 30241 and 30242. Policy 1 requires that agricultural lands be maintained, and limits conversions of such land to the circumstances enumerated by the Coastal Act. Thus, the intent of Policy 1 is that agricultural lands will be maintained as such unless there are circumstances in and around existing urban areas that make agriculture infeasible or that would make conversion of the land to a non-agricultural use a logical land use change to better protect agricultural lands and strengthen the urban-rural boundary. Policy 1 also establishes a presumption that all of the lands designated for Agriculture in the coastal zone are conclusively suitable for agriculture:

All prime agricultural lands and other (non-prime) lands suitable for agriculture are designated in the land use element as Agriculture unless agricultural use is already limited by conflicts with urban uses.

LUP Policy 3 strictly limits non-agricultural uses of agricultural land that may be proposed to supplement agricultural production. Such uses are only allowed if it is conclusively demonstrated that maintaining agriculture is not feasible without such uses, and only 2% of the total acreage may be allocated to such non-agricultural uses. Policy 3 also requires an open space/agricultural easement over the remaining 98% of the land in order to allow the non-agricultural use.

The overall importance of LUP Policies 1, 2, and 3 is that agricultural lands should not be subdivided unless such division would maintain or enhance agriculture and that non-agricultural uses should not be allowed except under limited circumstances, including in terms of supplemental non-agricultural uses where supplemental income is required for the continuation of agricultural use and 98% of the land restricted for and maintained in agriculture.

In short, the County’s LCP is premised on maintaining its existing agricultural lands as agricultural lands, and includes significant policy direction to implement this objective, including exacting criteria that must be met to allow non-agricultural uses and development on such properties. This extremely protective approach is underscored by other provisions of the LCP as well. For example, the LCP’s

⁶¹ County of San Luis Obispo. “Coastal Plan Policies.” March 1, 1988, Revised April 2007. Page 7-12.



Framework for Planning document enumerates the purposes of the agricultural land use designation as including the following:

- b. To designate areas where agriculture is the primary land use with all other uses being secondary, in direct support of agriculture.*
- c. To designate areas where a combination of soil types, topography, water supply, existing parcel sizes and good management practices will result in the protection of agricultural land for agricultural uses, including the production of food and fiber.*
- d. To designate areas where rural residential uses that are not related to agriculture would find agricultural activities a nuisance, or be incompatible.*
- e. To protect the agricultural basis of the county economy and encourage the open space values of agriculture to continue agricultural uses, including the production of food and fiber.⁶²*

These purposes are underscored with a description of the character of agricultural lands as including:

- b. Areas for agricultural processing and its support services.*
- c. Areas where the residential uses allowed are for property owners or employees actively engaged in agricultural production on the same property.*
- f. Areas where existing land uses are mainly truck crops, specialty crops, row and field crops, irrigated crops and pasture, irrigated vineyards and orchards, dry farm orchards and vineyards, dry farm and grain, grazing and rangeland.*
- g. Areas where parcel sizes and ownership patterns are sufficiently large to make agricultural operations economically viable, given other features such as soil types, water supply, topography and commercial potential through optimum management.*
- h. Areas with an existing pattern of smaller parcels that cannot support self-sustaining agricultural operations, but where physical factors of soil, water supply and topography would support agricultural production.*

The limitation on land uses in agricultural areas is also expressed in Table O of the LCP, which identifies the principally-permitted uses for each land use category. Significantly, there are only two land uses designated as a principally-permitted use, without qualification, on either prime or non-prime lands: “crop production and grazing” and “coastal accessways.”

LCP agriculture protection policies are further implemented by CZLUO Section 23.08.288(d), which specifically addresses siting public utility facilities in sensitive areas, such as on prime agricultural soils. Section 23.08.288(d) states:

⁶² County of San Luis Obispo. “Framework for Planning.” March 1, 1988, Revised June, 2001. Page 6-13.



CZLUO Section 23.08.288(d): Limitation on use, sensitive environmental areas. *Uses shall not be allowed in sensitive areas such as on prime agricultural soils, Sensitive Resource Areas, Environmentally Sensitive Habitats, or Hazard Areas, unless a finding is made by the applicable approval body that there is no other feasible location on or off-site the property. Applications for Public Utility Facilities in the above sensitive areas shall include a feasibility study, prepared by a qualified professional approved by the Environmental Coordinator. The feasibility study shall include a constraints analysis, and analyze alternative locations.*

Thus, the LCP recognizes that agricultural lands are a finite and sensitive resource requiring strict protection, but also allows for public facility siting on such lands should such option be conclusively show to be the least environmentally damaging feasible alternative.

2. Agriculture Analysis

The Giacomazzi site is a rectangular 38.2-acre portion of a larger 100-acre parcel north of Los Osos Valley Raod and west of Clark Valley Road. All of the 100-acre parcel is comprised of prime soils, including soils of statewide importance, and it is located in the LCP's Agriculture (AG) land use category. 62 acres of the parcel at lower elevations has a long history of production agriculture (irrigated row crops), and is currently contract farmed with a mix of high value vegetable crops, and is not part of the current proposal. The upper 38.2 acres is not currently farmed and this portion of the parcel slopes gently downward toward the north and east toward an ephemeral drainage that extends along the easterly portion of the site to Warden Lake supporting a small oak woodland along its northerly reaches. The former farmhouse complex stands at the western side of the upper 38.2 acres bordered by a number of tall eucalyptus and cypress trees. All of the original farm buildings have been removed and replaced with a modular residence.

The Giacomazzi site that is slated for treatment plant development was historically cultivated, however, crop production ceased sometime in the last 20 years. Cultivation occurs regularly for weed control, but no crop has been produced. According to the County record, farming on the site is unattractive due to a combination of soil, pests, and difficult irrigation requirements because of underlying clay layers. The site is separate from Los Osos Valley Road by the Los Osos Mortuary and Memorial Park (Cemetery property). The county-approved project would create a 30-acre rectangular lot on which the treatment plant facility would be located, leaving the existing modular residence at the old farmhouse site as part of the larger 70-acre remainder parcel with all of the currently farmed area. This would allow the row crop operation to continue in private ownership on the 70-acre remainder.

Under the LCP, the wastewater treatment plant is an allowable use in the Agriculture (AG) land use category. A wastewater treatment plant facility is considered a "Public Utility Facility". Under the CZLUO, Public Utility Facilities are allowed in all land use categories except Recreation (REC) and Open Space (OS). LCP Coastal Plan Agriculture Policy 1 requires that prime agricultural lands be maintained and, when allowed, that the least amount of prime soil possible is converted. Policy 1 also requires that the permitted use will not conflict with surrounding agricultural land and uses. Agriculture Policy 1 and other LCP resource protection policies are further implemented by CZLUO Section



23.08.288(d), which specifically addresses siting public utility facilities in sensitive areas such as on prime agricultural soils.

Agricultural Conversion

As indicated above, the LCP requires that prime agricultural land be maintained, but does allow the siting of public utility facilities on such land if there is no feasible less-environmentally damaging alternative. The County considered a range of alternative treatment plant siting locations and each of the feasible alternative sites for locating the treatment plant facilities include some degree of agricultural conversion. The County found, and the Commission concurs, that the chosen site minimizes agricultural land conversion in relation to other sites/impacts. For example, the Tonini site that preceded the Giacomazzi site had significantly more agricultural impacts associated with its use than does the Giacomazzi site, some 175 acres of direct impacts as opposed to 30 at Giacomazzi.⁶³

Mitigation measures for unavoidable impacts to agriculture are provided as part of the project which will require the conservation of similar agricultural land at a 2:1 ratio along with appropriate funds for administrative costs (see County condition 95). Additionally, if the County acquires more land than necessary to site the treatment facilities, an agricultural easement will be required over the remaining portions of the site (County condition 16).

Access Road Impacts to Agriculture

An additional impact to agriculture is identified by Commission staff relating to the proposed access road to the treatment plant. As proposed, that access road would cross the adjacent property to the east (Andre). The road would be constructed in three segments. Segment one is roughly 600 feet long starting at Los Osos Valley Road and continues northward along the east boundary of an existing PG&E easement (for power lines). The next segment runs west and parallel to Los Osos Valley Road and is roughly 400 feet long. The last 975 foot segment that ends at the treatment plant site follows the existing gravel road between the Andre property and the Cemetery (see Exhibit 2). The road would be constructed to meet current Cal Fire road standards (18 feet all-weather) to support large truck traffic. As described by the County, road drainage would be handled through various LID techniques (typically vegetated roadside swales). While the Andre site does not contain prime soils, and does not have a history of intensive agricultural uses, it does represent a parcel that has been designated in the LCP for agriculture and could potentially be used for agriculture now and in the future.

The proposed access road results in a total conversion of actual soil from bare ground to roadway of about 0.50 acres. In addition to directly converting agricultural soils to non-agricultural road development, the proposed alignment across the Andre parcel will fragment the site, resulting in a rectangular shaped piece of agricultural land separated from the larger parcel by the paved road. Even though the "square" nature of the layout, along with the very sparse history of active agriculture on the site (the County reports only seeing light grazing by horses and recently a herd of goats), results in a less

⁶³ Direct impacts at the Tonini site included agricultural land that would have been used for effluent spray fields, whereas the Giacomazzi site would not use sprayfields. Direct impacts at the Giacomazzi site includes the area needed for the treatment plant facility.



than substantial direct agriculture impact, it nevertheless is inconsistent with the LCP because there is a feasible alternative access route that exists that does not convert or fragment agricultural land. A strict reading of the LCP dictates a shift in alignment of the access road, if feasible, to the existing gravel road located between the Cemetery and Andre parcels.

3. Project Modifications to Result in an Approvable Project

Rural agricultural lands are a finite resource for which the LCP demands the highest level of protection. In order to find the project consistent with the LCP's agricultural protection policies, the project must be modified. First, the access road to the treatment plant must be re-routed along the existing unpaved road alignment extending from Los Osos Valley Road to the approved development envelope along the eastern property line of the Los Osos Mortuary and Memorial Park site and the western property line of the Andre site. In addition, the access road has to be constructed in such a manner as to limit its width and overall length as much as possible.

Depending on what part of the project is being built, traffic along the access road could vary up or down from an estimated average of 20 trips per day. Thus, the overall result seems to be that traffic volumes at the intersection at Los Osos Valley Road and the proposed access road will not be very high either during construction or during ongoing plant operations. However, if the Permittee conclusively demonstrates that the prescribed access road location is infeasible, then the access road can be located in the County's preferred location across the Andre property. Such an alignment would be subject to all the same siting and design criteria, and subject to the additional requirement that a mitigation plan for the impacts to the agriculture property located between the access road, Los Osos Valley Road, and the Los Osos Mortuary and Memorial Park site be submitted.

In addition, it is important to ensure that the agricultural easements included as part of the project are in place and that 2:1 mitigation acreage is granted in perpetuity to the County or another qualifying entity. The easements must be approved by the Executive Director along with the provision for adequate funding to compensate for administrative costs incurred by the easement holder. Fortunately, the County approved project includes many of these provisions and it is only necessary to fine tune the language of the conditions in order to bring them up to current CCC standards and methodologies (see Special condition 4).

4. Agriculture Conclusion

The wastewater treatment facility is to be located on an existing agricultural site in a rural and agricultural area outside of the urban core of Los Osos. Under the LCP, a public utility facility is an appropriate use at this location if it is sited and designed to protect agricultural lands, including by establishing a development envelope in the least attractive farming area of the site and by mitigating for unavoidable impacts to agricultural land. As conditioned, the treatment plant can be designed to offset agricultural impacts, and can be found consistent with the LCP agriculture protection policies as cited in this finding. As conditioned, the project is consistent with the LCP with respect to agriculture.



C. Groundwater

As discussed below, the proposed project does not comply with LCP policies protecting groundwater, and special conditions are needed to bring the project into conformance with the LCP in this respect.

1. Applicable LCP Policies

As detailed in previous findings, the Los Osos Groundwater Basin is in overdraft, with seawater intrusion and contamination threatening its long-term sustainability. The LCP provides direction for reviewing projects such as this that may affect such groundwater resources, and provides clear direction designed to help establish and maintain long-term and sustainable groundwater resources. Applicable LCP policies and ordinances include:

Policy 1: Preservation of Groundwater Basins. *The long-term integrity of groundwater basins within the coastal zone shall be protected. The safe yield of the groundwater basin, including return and retained water, shall not be exceeded except as part of a conjunctive use or resource management program which assures that the biological productivity of aquatic habitats are not significantly adversely impacted. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

Policy 2: Water Extractions. *Extractions, impoundments and other water resource developments shall obtain all necessary county and/or state permits. All pertinent information on these uses (including water conservation opportunities and impacts on in-stream beneficial uses) will be incorporated into the database for the Resource Management System and shall be supplemented by all available private and public resource studies available. Groundwater levels and surface flows shall be maintained to ensure that the quality of coastal waters, wetlands and streams is sufficient to provide for the optimum populations of marine organisms, and for the protection of human health. (Public works projects are discussed separately.) [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

Policy 3: Monitoring of Resources. *In basins where extractions are approaching groundwater limitations, the county shall require applicants to install monitoring devices and participate in water monitoring management programs [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 8.40.065 OF THE COUNTY CODE (WATER WELL REGULATIONS).]*

Policy 5: Los Osos Groundwater Management. *The county Planning and Engineering Departments should work with communities, property owners and the Regional Water Quality Control Board to develop and implement a basin-wide water management program for the Los Osos groundwater basin which addresses:*

- *existing and potential agricultural demand,*
- *urban expansion in relation to water availability,*
- *groundwater quality,*
- *possible need for alternative liquid waste disposal,*



- protection of aquatic habitats including coastal waters, streams and wetlands.

The Resource Management System of the Land Use Element provides a framework for implementing this policy and an interim alert process for timely identification of potential resource deficiencies, so that sufficient lead time is allowed for correcting or avoiding a problem. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]

Policy 11: Preserving Groundwater Recharge. *In suitable recharge areas, site design and layout shall retain runoff on-site to the extent feasible to maximize groundwater recharge and maintain in-stream flows and riparian habitats. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

Policy 1. Availability of Service Capacity. *New development ... shall demonstrate that adequate public or private service capacities are available to serve the proposed development. ...*

Policy 6. Resource Management System: *... Permitted public service expansions shall ensure the protection of coastal natural resources, including the biological productivity of coastal waters....*

Thus, the LCP requires that the integrity of groundwater basins be protected, and groundwater levels and surface flows be maintained. To protect groundwater basins, the LCP encourages on-site retention of runoff, where feasible, and the hydrological system and ecosystem of coastal streams and riparian vegetation are to be protected and preserved.

2. Groundwater Analysis

The LOWWP project raises several issues concerning the protection of coastal watersheds and groundwater resources. Most important, a primary objective of the project is to address nitrate contamination of the groundwater basin/drinking water supply as well as other pollutant impacts to the waters of Morro Bay. As described in prior findings, the LOWWP will address a long-standing wastewater problem in Los Osos and thus the project overall is consistent with the Groundwater policies of the LCP.

Notwithstanding its overall consistency, the LOWWP also will necessarily change the flow of water into the Los Osos groundwater basin by redirecting approximately 1,157 acre-feet per year (AFY) of existing septic system effluent currently discharged into the basin to the wastewater treatment plant, and eventually redirecting the tertiary-treated effluent back into the basin at various points. This redirection of water flows, and specifically the location and timing of wastewater discharges, raises issues concerning the long-term integrity of the groundwater basin, whether and how seawater intrusion would be affected, and potential impacts to riparian areas, coastal streams, and wetlands that may currently depend on effluent flows from existing septic systems.

As approved by the County, the LOWWP facility would be designed with a capacity to treat a maximum average annual dry weather flow of approximately 1.1 million gallons per day (mgd) that assumes the successful implementation of a water conservation program expected to save between 150,000 and



330,000 gallons per day for the County-estimated build out population of 18,428 residents within the collection zone.⁶⁴ At estimated indoor water use rates of 66 gallons per day per capita, the approximately 12,500 people who currently live in the proposed project area would generate wastewater flows of 825,000 gallons per day. The project has a goal of reducing indoor water use to below 50 gallons per day per person which would equate to 0.92 mgd wastewater flows at the projected buildout population of 18,428.⁶⁵ If this goal is met or exceeded and/or if buildout population is less, the project would operate at a higher level of redundancy (i.e. excess capacity to meet demand).

	Estimated Indoor Water Demand (gpcpd)		Estimated Wastewater Generation (gpd)		Total AFY
	Current	With 25% Conservation	Current	With 25% Conservation	
Current Population (12,500)	66	50	825,000	625,000	700
Buildout Population (18,428)	66	50	1,216,248	921,400	1,032
Inflow and Infiltration	--	--	300,000	300,000	336
Total			1,516,248	1,221,400	1,368

As proposed by the County, the project will only be serving existing development in the short-run, as new development will not be allowed to hook up to the project until habitat and groundwater management planning is completed and incorporated into the LCP, in order to address issues related to the potential impacts of the new development facilitated by the new treatment capacity. Thus, the project will only have need for the disposal of approximately 700 AFY in its initial phase.

The County's project includes tertiary filtration with ultraviolet disinfection designed to meet California Title 22 standards for tertiary recycled water. This non-potable recycled water will be reused within the community or on surrounding agricultural land overlying the groundwater basin by discharge through leach fields and through direct reuse for urban and agricultural irrigation. The proposed project's reuse program includes the following:

- Recycled water storage at the treatment plant site, with a capacity of 50 acre-feet.
- A recycled water main running from the treatment plant site to reuse sites within the community.
- 8 acres of new leach fields at the Broderson site, with an annual capacity of 450 acre-feet.
- Use of the one-acre existing leach field in the Bayridge Estates sub-division, with an annual capacity of 33 acre-feet.
- Provision of approximately 130 acre-feet of recycled water to Los Osos schools, parks, golf

⁶⁴ Id (buildout note yet established per LCP, and could be lower).

⁶⁵ The County recognizes that there is some uncertainty with the estimated per capita water use; 66 gallons per day per capita (gpdpc) is somewhat lower than the average daily use implied by the 1,157 AFY of existing flow of septic into the proposed service area assumed by the hydrologic modeling of the project, which equates to 82 gpdpc.



course, and the cemetery.

- Provision of recycled water main turn-outs to adjacent farmlands, with annual reuse estimated to account for approximately 100 to 200 acre-feet.

In the short run, the County indicates that the approximate 700 AFY generated by the project will be directed to the Broderson site (448 AFY), Bayridge Estates (33 AFY), urban reuse (144 AFY), and agricultural irrigation (86 AFY) (see Exhibit 3).

Overall, the County-approved project includes numerous components to address the distribution of the recycled water generated by the project, including an overall requirement to beneficially discharge such water only within the Los Osos Groundwater Basin. Components of the proposed project addressing recycled water reuse include the following:⁶⁶

97. Disposal of treated effluent shall be reserved for the following sites/uses in the Los Osos Groundwater Basin:

- a) *Broderson (not to exceed 448 AFY on an average annual basis,)*
- b) *Urban re-use with the urban reserve line (as identified in the Effluent Re-Use and Disposal Tech Memo, July 2008),*
- c) *Agricultural re-use overlying the Los Osos Groundwater Basin, and*
- d) *Environmental reservations (not less than 10% of the total volume of treated effluent).*

Total agricultural re-use shall not be less than 10% of the total treated effluent. Disposal shall be prioritized to reduce seawater intrusion and return/retain water to/in the Los Osos groundwater basin. Highest priority shall be given to replacing potable water uses with tertiary treated effluent consistent with Water Code Section 13550.

No amount of treated effluent may be used to satisfy or offset water needs that result from non-agricultural development outside the Urban Reserve Line of the community of Los Osos.

99. Within one year of adoption of a due diligence resolution by the Board of Supervisors, electing to proceed with a wastewater project, a water conservation program shall be developed by the applicant in consultation with the local water purveyors within the prohibition zone for the community of Los Osos, that meets the goal of 50 gallons per day / per person for indoor use. The applicant shall provide 5 (five) million dollars of funding towards a water conservation program for indoor water conservation. Incentives shall be provided to homeowners and other property owners who install conservation measures within the first year.

101. The applicant shall utilize the existing Bayridge leach field (APN 074-491-033) to dispose

⁶⁶ Id (County conditions that are part of proposed project – see Exhibit 2).



of approximately 33 acre feet per year of treated effluent upon decommissioning of the existing leach field and connection to the community sewer system. The applicant shall consult with the Los Osos Community Services District (LOCSD) prior to the design phase of the project regarding use of said facilities to ensure all their concerns are addressed.

103. Prior to individual property connections to the waste water system, each property owner shall provide verification to the satisfaction of the Planning Director that all toilets, showerheads and faucets have been replaced with high efficiency versions of the same.

108. Prior to individual property connections to the wastewater treatment project, each property owner shall provide verification to the satisfaction of the Public Works Department (in consultation with the Planning Director) that a water meter meeting American Water Works Association (AWWA) standards, and approved by the water company serving the individual property, has been installed or is existing on the connection site. A water meter shall be installed on each legally established residential / commercial unit prior to connection to the wastewater treatment project. Water usage information shall be made available to the sewer authority on a quarterly basis or on a schedule agreed to by the water purveyors and the County to verify the water savings derived from the water conservation program.

6. Prior to providing tertiary treated water for agricultural uses the applicant shall develop a Recycled Water Management Plan for Agricultural Re-use. The use of tertiary treated water shall be consistent with resource protection strategies including but not limited to those designed to protect on and off site soils, and surface and groundwater resources through the use of appropriate site-specific management practices. The applicant shall consult with technical resource providers such as the University of California Cooperative Extension and USDA Natural Resources Conservation Service. The Plan shall be reviewed and approved by the Director of Planning and Building in consultation with the Agricultural Commissioner's Office prior to providing tertiary treated water for agricultural uses

86. Consistent with condition of approval # 34 is for Coastal Development Permit (CDP A-3-SLO-03-113 / D020283), to prevent the wastewater treatment system from inducing growth that cannot be safely sustained by available water supplies, the sewer authority is prohibited from providing service to existing undeveloped parcels within the service area, unless and until the Estero Area Plan is amended to incorporate a sustainable buildout target that indicates that there is water available to support such development without impacts to wetlands and habitats.

87. Concurrent with the operation of the facility, the County shall implement the Groundwater Level Monitoring and Management Plan that details methods for measuring and responding to changes in groundwater levels that could affect wetland hydrology and habitat values. The Plan includes provisions for monitoring groundwater levels, surveys for wetland plant and animals, monitoring wetland hydrology and water quality, appropriate response procedures should impacts be identified, annual reporting, and an education program to encourage property owners to convert septic systems into areas capable of groundwater recharge



88. In order to maintain existing levels of groundwater recharge and protect coastal water quality, the County shall evaluate and, where appropriate, assist property owners in the implementation of opportunities to re-use existing septic tank effluent disposal systems (e.g., leach fields) to filter and percolate stormwater runoff. Prior to the connection of individual properties the County shall, at the consent of the landowner, evaluate whether existing on site wastewater disposal facilities have adequate capacity and depth to groundwater to accommodate and percolate stormwater runoff, and if so, provide site-specific recommendations on how to connect such a system.

As identified above, LCP coastal watershed and groundwater policies require the protection of the Los Osos groundwater basin, including its long-term safe yield. The LCP also requires monitoring and comprehensive water management of the basin, as well as the maximization of groundwater recharge and maintenance of in-stream flows and riparian habitats. With respect to the protection of the long-term integrity of the Los Osos groundwater basin, the County has appropriately proposed that all discharges of the tertiary-treated water be put back into the basin. The current overdraft condition of the basin and related seawater intrusion is well-documented, and it is critical that the maximum effort be made to bring the basin into sustainable equilibrium, including through keeping in the basin the water that is now drawn out of the basin by existing water supply wells for the community. The County's approval also appropriately identifies addressing seawater intrusion as a high priority in determining the location and timing of wastewater distribution. Indeed, the most recent evidence suggests that seawater intrusion is accelerating.

The largest component of the proposed recycled water reuse and beneficial distribution is associated with the Broderson leach field, which is anticipated to receive up to 448 AFY or approximately one third of the reclaimed water from the project, primarily in the winter. The Broderson leach field site has long been identified as an appropriate location for groundwater recharge to the Basin's upper aquifer. The Broderson property is a rectangular shaped 80-acre parcel located south of Highland Drive. Approximately 8 acres of the northern portion of the site would be used to construct a conventional leach field; the remainder of the site would be placed in permanent open space and added to the greenbelt surrounding the community. A system of new monitoring wells would be installed below the Broderson leach field. These, along with other existing wells in the community, would be used to track the movement and behavior of percolated water to maximize the efficiency of the leach fields in terms of replenishing groundwater.

The project would also dispose of approximately 33 AFY of wastewater at the existing Bayridge leach field, which currently serves the Bayridge neighborhood that would be connected to the new project. The existing septic tanks would be abandoned or repurposed (e.g., for on-site filtration and percolation of stormwater to the degree feasible and appropriate) and the leach field would be used for reclaimed water instead of septic tank leachate. During the summer, the majority of reclaimed water would be directed to urban and agricultural reuse (i.e., irrigation). The County's proposed urban reuse component is currently focused on existing turf areas at four schools, the community park, and the golf course. The proposed agricultural reuse component is currently focused on existing irrigated lands that draw from the Los Osos



groundwater aquifer.

Although the project overall includes an important reuse program, there is some uncertainty surrounding the County's proposed siting of, and timing related to, its tertiary-treated wastewater discharges back to the Los Osos groundwater basin. The hydrologic modeling conducted in support of the County project is complex, and it is based on best available information and numerous modeling assumptions. The hydrologic model of the groundwater basin has four major components, and multiple flows in, out, and between these components. The components are the upper and lower aquifers, the creek compartment, and the perched aquifer. Major inputs include septic effluent, precipitation, and irrigation. Major outputs include well withdrawals from the upper and lower aquifers and the creek compartment, and flows out to the ocean. There are also significant cross-flows between the aquifers and the creek compartment. Exhibit 3 shows the modeled existing conditions and projected flows with the project.⁶⁷ The table below presented in the County response (Exhibit 3) summarizes the modeled flows.⁶⁸

Aquifer	Budget Item (Basin IN/OUT)	Current Condition (AFY)	Project Scenario VPA 2b (AFY)
Perched Aquifer	Septic return (IN)	631	36
	Percolation of precipitation/Irrigation return (IN)	736	736
	Leakage/subsurface outflow to upper aquifer	698	634
	Leakage/subsurface outflow to creek compartment	103	103
	Willow Creek outflow/evapotranspiration (OUT)	552	35
Upper Aquifer	Septic return (IN)	606	44
	Percolation of precipitation/Irrigation return (IN)	1489	1489
	Subsurface inflow from creek compartment	187	182
	Subsurface inflow from Bayview Heights (IN)	112	107
	Broderson recharge (IN)	0	448
	Subsurface outflow to bay/ocean (OUT)	1310	1169
	Well production (OUT)	803	803
	Leakage to lower aquifer	882	835
Creek Compartment	Septic return (IN)	30	30
	Percolation of precipitation/Irrigation return (IN)	430	430
	Los Osos Creek inflow (IN)	665	665
	Subsurface inflow from bedrock (IN)	167	166
	Los Osos Creek Outflow (OUT)	77	60
	Warden drain (OUT)	6	9
	Well production (OUT)	870	870
	Subsurface flow to Urban Area upper aquifer	90	85
Lower Aquifer	Subsurface flow to Urban Area lower aquifer	366	370
	Sea water intrusion (IN)	469	352
	Well production (OUT)	1717	1557

The Commission's Staff Geologist, in his capacity as a California Certified Hydrogeologist, has reviewed the County's overall modeling effort and concluded that it is a reasonable characterization of

⁶⁷ According to the County, alternative VPA 2b most closely approximates the anticipated flow regime of the proposed project.

⁶⁸ From Table 2 "Hydrologic Budget Summary June 2008" by Cleath and Associates (see Exhibit 3)



the Los Osos groundwater condition. Although the basin is hydrologically complex and the modeling effort requires numerous assumptions concerning quantities that cannot be directly measured, the inputs are reasonable and conservative. Some inputs are indirectly measured by mass balance relations in water quality data. Others are derived at by assuming that the hydrologic system is more or less in balance, an assumption consistent with the more-or-less constant elevation of water levels in producing and observation wells since the 1970s. Nevertheless, because of the complexity of the system and the lack of information about the possible accelerating or deceleration of the advance of the seawater/freshwater front, the model must be regarded as only a best estimate of hydrogeologic conditions. Inaccuracies in these estimates could result in deviations from the expected groundwater resources available for sensitive habitats. As a means to address the inherent uncertainty in such enterprises, the Commission finds it necessary to require the submission of a comprehensive Los Osos Basin resource management plan to the Executive Director for review and approval prior to issuance of the permit. As specified in Special Condition 5, this plan would require the County to ensure that the service area, location and timing of the wastewater disposal component of the LOWWP project maximize long-term ground and surface water, and resource health and sustainability (wetlands, streams, creeks, lakes, riparian corridors, marshes, etc.), including with respect to offsetting seawater intrusion as much as possible within the Los Osos Groundwater Basin. The plan must include programs for recycled water reuse, water conservation, monitoring, and reporting, and it must include an adaptive management. It would also require that any specific project components necessary for effective implementation of the plan, such as pipelines, leach fields, etc., be constructed prior to project operation. The plan may specifically provide for phasing as the LOWWP comes on-line. Most important, the monitoring and adaptive management required by the plan would allow the County to adjust the location and timing of wastewater disposal within the basin, to address uncertainty in the current models, new circumstances, etc. to the benefit of the groundwater basin and surface resources such as wetlands and riparian areas.

Special Condition 5 also provides a specific mechanism for addressing uncertainties related to the protection of Willow Creek. The County's models show that septic effluent makes a substantial contribution to inflow into the perched aquifer; unless it is returned to the perched aquifer after treatment the project will likely have an impact on water available for riparian and wetland (evapotranspiration) use and outflows to Willow Creek. By assuming that the hydrologic budget is in balance, the County estimate that outflows through evapotranspiration and outflow to Willow Creek amount to 552 AFY.⁶⁹ Under Project Scenario VPA 2b,⁷⁰ they estimate that the amount available will be only 35 AFY. Other losses to the aquifer (leakage to the upper aquifer and to the creek compartment) are expected to only decrease slightly; thus, a change in these discharges cannot be expected to make up for loss of septic effluent. While it is true that these calculations reflect the entire perched aquifer, and only a portion of it is thought to be available to riparian and wetland vegetation concentrated in the eastern part of the basin, significant reductions in groundwater availability are likely. Accordingly, without significant new contributions (from, for example, the Bayridge leach fields) impacts could occur. Accordingly, the Commission finds that a monitoring plan is needed to establish the baseline ecological requirements of

⁶⁹ Cleath and Associates (June 2008).

⁷⁰ Id (County proposed project).



Willow Creek and to provide for modifications in the location and timing of wastewater discharges to benefit Willow Creek should it be necessary. In addition, and for similar reasons, such monitoring plan is required to address other hydrologically-affected resources in Los Osos as well. In short, the intent is to ensure that the project does not adversely impact such resources, and rather enhances these resources as much as possible.

Implementing the components of the Los Osos Basin Recycled Water Management Plan will also complement on-going efforts in Los Osos to address the large seawater intrusion program. Under Special Condition 5, the Los Osos Basin Recycled Water Management Plan must be prepared by persons known to the Executive Director to be experienced with and expert in the fields of knowledge applicable to the Los Osos Basin Recycled Water Management Plan components (e.g., groundwater monitoring and assessment components must be prepared with input from licensed and certified hydrologists), should be prepared in coordination with all Los Osos area water purveyors to the maximum degree possible, must be accompanied by all supporting documentation regarding Los Osos Basin Recycled Water Management Plan components (including assumptions and data underlying its methodologies, assessment criteria, and related measures), and must include enforceable mechanisms designed to ensure its successful implementation (e.g., legal agreements, ordinances, etc.). Currently there is a group of parties, including water purveyors in Los Osos, working under the auspices of an Interlocutory Stipulated Judgment (ISJ) in the Los Osos Groundwater Basin to draft a Basin Management Plan. This ISJ Working Group recently released an update on the Basin that summarizes various goals of the group, the status of seawater intrusion, etc. Anticipated goals of the Basin Management Plan include addressing the future sustainable water supply for existing and future development, stopping seawater intrusion into the lower aquifer, managing contamination of the upper aquifer, and establishing a strategy for maximizing the reasonable and beneficial use of Basin resources. Notably, the recent update recognizes the importance of various wastewater discharge components of the LOWWP that would be governed by Special Condition 5, including the disposal at Broderson and Bayridge leach fields, indoor water conservation, and agricultural and urban reuse to addressing the needs of the Basin. The ISJ Working Group states:

The ISJ Working Group recognizes the above-listed LOWWP actions are crucial to mitigating the negative impacts with which the Los Osos community is faced and that implementation of these measure should be pursued as soon as possible (Los Osos Groundwater Basin Update, ISJ Working Group, pg.5, May 4, 2010).

Finally, as also discussed in the public works finding, the service area and timing of wastewater disposal must not induce new growth inconsistent with other resource protection policies of the LCP. Thus, in addition to the requirement that the long-term integrity of the Los Osos groundwater basin be protected, Public Works policies 1 and 6 require that adequate public services be available for new development and that expanded public works facilities ensure the protection of coastal resources. These LCP requirements derive from Coastal Act sections 30250 and 30254, which are fundamental policies for assuring sustainable urban growth in the coastal zone. Therefore, similar to the proposed project (i.e., via incorporated County condition 86), Special Condition 6 prohibits the provision of wastewater service to



undeveloped properties within the service area unless and until the Estero Area Plan is amended to identify appropriate and sustainable buildup limits, and any appropriate mechanisms to stay within such limits, based on conclusive evidence indicating that adequate water is available to support development of such properties without adverse impacts to ground and surface waters, including wetlands and all related habitats.

D. Public Services

As discussed below, the proposed project complies with LCP policies addressing public services.

1. Applicable LCP Policies

The LCP, like the Coastal Act, is premised on ensuring that most new development be concentrated in and around existing developed areas with adequate public service capacities to serve such development, and establishes a set of priority uses that operate within the locational and resource constraints for new coastal development. These provisions are put in place both to protect and provide sometimes scarce and/or unavailable public services, such as is the case with water and wastewater services in Los Osos, as well as to concentrate urban development in urban areas able to support it and to protect urban-rural boundaries, ultimately keeping urban development and uses in such urban areas and protecting rural and agricultural areas against inappropriate development. In addition, because the proposed project constitutes a ‘treatment work’, specific review criteria are placed on the Commission by the LCP (and the Coastal Act by reference). Applicable LCP policies and ordinances include:

Policy 2: New or Expanded Public Works Facilities. New or expanded public works facilities shall be designated to accommodate but not exceed the needs generated by projected development within the designated urban reserve lines. Other special contractual agreements to serve public facilities and public recreation areas beyond the urban reserve line may be found appropriate [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO 23.04.430 OF THE CZLUO.]

Policy 9: Review of Treatment Works. For any development that constitutes a treatment works (PRC 30120)⁷¹, issuance of a permit shall be consistent with the certified LCP and PRC 30412 and shall address the following aspects of such development:

- a. *The siting and visual appearance of treatment works within the coastal zone.*
- b. *The geographic limits of the service area within the coastal zone which is to be served by the treatment works and the timing of the extension of services to allow for phasing of development consistent with the certified LCP.*
- c. *Projected growth rates used to determine the sizing of treatment works.*

⁷¹ Section 30120 provides: "Treatment works" shall have the same meaning as set forth in the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.) and any other federal act which amends or supplements the Federal Water Pollution Control Act.



Coastal Act (PRC) Section 30412, cited by LCP Public Works Policy 9, states:

Section 30412. State Water Resources Control Board & Regional Water Quality Control Boards

(a) In addition to Section 13142.5 of the Water Code, this section shall apply to the commission and the State Water Resources Control Board and the California regional water quality control boards.

(b) The State Water Resources Control Board and the California regional water quality control boards are the state agencies with primary responsibility for the coordination and control of water quality. The State Water Resources Control Board has primary responsibility for the administration of water rights pursuant to applicable law. The commission shall assure that proposed development and local coastal programs shall not frustrate this section. The commission shall not, except as provided in subdivision (c), modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights.

Except as provided in this section, nothing herein shall be interpreted in any way either as prohibiting or limiting the commission, local government, or port governing body from exercising the regulatory controls over development pursuant to this division in a manner necessary to carry out this division.

(c) Any development within the coastal zone or outside the coastal zone which provides service to any area within the coastal zone that constitutes a treatment work shall be reviewed by the commission and any permit it issues, if any, shall be determinative only with respect to the following aspects of the development:

(1) The siting and visual appearance of treatment works within the coastal zone.

(2) The geographic limits of service areas within the coastal zone which are to be served by particular treatment works and the timing of the use of capacity of treatment works for those service areas to allow for phasing of development and use of facilities consistent with this division.

(3) Development projections which determine the sizing of treatment works for providing service within the coastal zone.

The commission shall make these determinations in accordance with the policies of this division and shall make its final determination on a permit application for a treatment work prior to the final approval by the State Water Resources Control Board for the funding of such treatment works. Except as specifically provided in this subdivision, the decisions of the State Water Resources Control Board relative to the construction of treatment works shall be final and binding upon the commission.



- (d) *The commission shall provide or require reservations of sites for the construction of treatment works and points of discharge within the coastal zone adequate for the protection of coastal resources consistent with the provisions of this division.*
- (e) *Nothing in this section shall require the State Water Resources Control Board to fund or certify for funding, any specific treatment works within the coastal zone or to prohibit the State Water Resources Control Board or any California regional water quality control board from requiring a higher degree of treatment at any existing treatment works.*

CZLUO Section 23.04.430: Availability of Water Supply and Sewage Disposal Services. *A land use permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as provided by this section. Subsections a. and b. of this section give priority to infilling development within the urban service line over development proposed between the USL and URL. In communities with limited water and sewage disposal service capacities as defined by Resource Management System alert levels II or III:*

- a. *A land use permit for development to be located between an urban services line and urban reserve line shall not be approved unless the approval body first finds that the capacities of available water supply and sewage disposal services are sufficient to accommodate both existing development, and allowed development on presently-vacant parcels within the urban services line.*
- b. *Development outside the urban services line shall be approved only if it can be served by adequate on-site water and sewage disposal systems, except that development of a single-family dwelling on an existing parcel may connect to a community water system if such service exists adjacent to the subject parcel and lateral connection can be accomplished without trunk line extension.*

CZLUO Section 23.04.432: Development Requiring Water or Sewer Service Extensions. *To minimize conflicts between agricultural and urban land uses, development requiring new community water or sewage disposal service extensions beyond the urban services line shall not be approved.*

2. Public Services Analysis

In accordance with Coastal Act requirements, the LCP limits the capacity of public works facilities to avoid inducing growth beyond what can be accommodated consistent with the protection of coastal resources. Planning area boundaries provide an important tool for carrying out this objective, namely by restricting the extension of urban services beyond the areas designated for urban development by the LCP. Public Works Policy 2, along with CZLUO Sections 23.04.430 and 23.04.032, specifically prohibit the extension of services outside the LCP's Urban Service Line. Another way in which the LCP regulates public works facilities to prevent growth beyond what can be supported by the area's coastal



resources is to limit service capacities. As required by Public Works Policy 2, the project's capacity must be designed to accommodate but not exceed the needs generated by projected development within the designated urban reserve lines.

The current Estero Area Plan projects the ultimate population of the Los Osos community to be over 28,000 residents. However, such a buildout level would not be consistent with the protection of coastal resources and many of the properties historically slated for development have been acquired for permanent open space and create a "green-belt" around Los Osos. More current estimates compiled by the County as part of the Estero Area Plan update process projected the build-out population at 19,713 (2004 draft). Estimates of the future population within the prohibition zone vary by source, but generally fall in the range of 17,800 (SLO County Planning) to 18,428 (Wastewater Project Team).

Under either the current Estero Plan or Draft Update, the estimated buildout populations cited above appear to be based on assumptions that all vacant properties will be subdivided and developed according to the maximum density established by the sites primary land use designation. They appear not to take into account the limitations on development established by the LCP's Combining Designations, such as identified habitat areas, that significantly reduce potential intensities of allowable development. Nor do they account for the limitations on development intensities established by LCP standards requiring evidence of adequate public service capacities, such as water. Thus, it would be inappropriate to rely on these population buildout figures alone in determining the consistency of the proposed capacity with the Public Works provisions of the LCP.

An accurate assessment of projected development within the Los Osos urban area, under the existing development standards of the current LCP, must take into account current facts regarding actual development potential. As evidenced by the Commissions record of recent actions of proposed subdivisions and lot-line adjustments proposed in the area, as well as by the Commission's Periodic Review of the LCP, the application of current LCP policies protecting ESHA and groundwater supplies significantly limit allowable intensities of development, particularly with respect to subdivisions.

The project has been sized only to serve build-out populations for the community of Los Osos. In this case, the project includes a number of conditions that deal directly with the issue of growth inducement. For example, the County only allows wastewater service to the defined Service Area. Consistent with terms of previous CDP A-3-SLO-03-113, County condition 86 requires an amendment to the Estero Area Plan, approved by the Coastal Commission, before wastewater service can be provided to any undeveloped parcels. While some additional measures could be added to prevent the possibility of growth inducement outside of urban areas (e.g., establishment of a utility prohibition easement), the County conditions are adequate in this regard. In short, the project will ensure that only appropriate development within the service area boundary will be served by the project.

3. Public Services Conclusion

As approved and conditioned by the County, the project is designed to address public service capacity and service area issues, and can be found consistent with the LCP public services policies cited in this finding. Thus, the project is consistent with the LCP with respect to public services.



E. Water Quality

As discussed below, the proposed project does not comply with LCP policies addressing water quality, and special conditions are needed to bring the project into conformance with the LCP in this respect.

1. Applicable LCP Policies

The proposed project is at its core a ground and surface water quality water improvement project. As a result, it is an implementation project in many ways for the LCP's water quality protection policies, policies which themselves are premised on protecting, enhancing, and maintaining ground and surface water quality. Applicable LCP policies and ordinances include:

Policy 8: Timing of Construction and Grading. *Land clearing and grading shall be avoided during the rainy season if there is a potential for serious erosion and sedimentation problems. All slope and erosion control measures should be in place before the start of the rainy season. Soil exposure should be kept to the smallest area and the shortest feasible period. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]*

Policy 9: Techniques for Minimizing Sedimentation. *Appropriate control measures (such as sediment basins, terracing, hydro-mulching, etc.) shall be used to minimize erosion and sedimentation. Measures should be utilized from the start of site preparation. Selection of appropriate control measures shall be based in evaluation of the development's design, site conditions, predevelopment erosion rates, environmental sensitivity of the adjacent areas and also consider costs of on-going maintenance. A site-specific erosion control plan shall be prepared by a qualified soil scientist or other qualified professional. To the extent feasible, non-structural erosion techniques, including the use of native species of plants, shall be preferred to control run-off and reduce increased sedimentation. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]*

Policy 10: Drainage Provisions. *Site design shall ensure that drainage does not increase erosion. This may be achieved either through on-site drainage retention, or conveyance to storm drains or suitable watercourses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.034 OF THE CZLUO.]*

Policy 11: Preserving Groundwater Recharge. *In suitable recharge areas, site design and layout shall retain runoff on-site to the extent feasible to maximize groundwater recharge and to maintain in-stream flows and riparian habitats. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

Policy 13: Vegetation Removal. *Vegetation clearance on slopes greater than 30% in geologically unstable areas or on soils rated as having severe erosion hazards shall require an erosion and sedimentation control plan. Stream vegetation removal is discussed in greater detail in the Sensitive Habitat chapter. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO*



SECTION 23.05.036 OF THE CZLUO.]

CZLUO Section 23.05.040: Drainage. Standards for the control of drainage and drainage facilities provide for designing projects to minimize harmful effects of storm water runoff and resulting inundation and erosion on proposed projects, and to protect neighboring and downstream properties from drainage problems resulting from new development. The standards of Sections 23.05.042 through 23.05.050 are applicable to projects and activities required to have land use permit approval.

Thus, to address nonpoint source pollution from urban development, the LCP focuses on controlling erosion and sedimentation, on managing drainage patterns to reduce erosion and runoff, and on siting development off steeper slopes.

2. Water Quality Analysis

The LCP includes a suite of policies and ordinances designed to protect coastal water quality. A major reason for the LOWWP is to resolve longstanding impacts associated with septic seepage polluting the groundwater basin and area surface waters. As described, the RWQCB and other health agencies became concerned with the use of individual septic/disposal systems in the early 1970's when it was identified that the depth to groundwater is shallow enough in some areas of Los Osos to flood leach fields in wet weather. Surface flow and lateral seepage of inadequately treated wastewater posed adverse impacts to Morro Bay. Significant concerns were also raised regarding the impacts of septic systems on groundwater resources, particularly because the Los Osos area obtains its water supply from groundwater aquifers. In 1988, the RWQCB established a discharge moratorium that effectively halted all new construction and all major expansions of existing development until a solution to the septic tank pollution problem could be developed and implemented. In 1995, a study issued by the RWQCB titled "Assessment of Nitrate Contamination in Ground Water Basins of the Central Coast Region Preliminary Working Draft", highlighted significant increases in nitrate concentrations in both the lower and upper aquifers. According to a letter from the RWQCB on July 10, 1998 regarding the study:

Monitoring data indicates much of the shallow groundwater in the most densely developed areas exceeds 45 mg/l, the drinking water standard for nitrate. For this reason, many of the shallow water supply wells have been removed from service and demand shifted to the deeper aquifer. Dependence on the deeper aquifer exacerbates the surface water problems because the community's water supply, formerly from the upper aquifer, is now drawn from the deeper aquifer and recharged (after use) to the upper aquifer causing groundwater levels to rise and flood more septic systems. Increasing surface water impacts including: restriction of portions of shellfish harvesting areas because of rising bacteria levels; waters around the Los Osos area periodically do not meet bacteria standards for water contact recreation (such as swimming, wading, kayaking and small boat sailing); and the public is increasingly exposed to surface wastewater.

According to the RWQCB, in areas where depth to groundwater is shallow, many of the seepage pits discharge directly into the upper aquifer with no separation. Contaminated groundwater sometimes



reaches the surface, especially during the rainy season.⁷² In a 2002 support document for Morro Bay regarding total maximum daily load for pathogens (including Chorro and Los Osos Creeks) the RWQCB indicated that elevated levels of fecal coliform were present in Morro Bay and that other pollutants such as bacterial, viral, or cyst forming pathogens may also be present.⁷³ According to the same report, portions of the commercial oyster beds in Morro Bay have been closed for harvest by the California Department of Health Services per the United States Food and Drug Administration's National Shellfish Sanitation Program standards because of high fecal coliform levels. Based on the levels of fecal coliform, seasonal restrictions have been imposed on commercial shellfish harvesting in other portions of Morro Bay; however, no restrictions are in place on non-commercial shellfish harvesting related to fecal coliform levels (CRWQCB 2002). This information prompted further action to address the issue of groundwater contamination as well as possible impacts to surface water resources around the Los Osos area.

Despite the benefits to coastal water quality and the marine habitats of the Morro Bay National Estuary offered by the proposed replacement of septic systems with a wastewater treatment plant, some impacts to water quality can be anticipated. Fortunately, water quality impacts can be resolved by applying special conditions to the permit approval. Some of the special conditions are new, while others build on and improve existing County conditions. Only with these special conditions is the project consistent with the LCP's water quality protection standards.

Inflow and Infiltration (I/I)

A common cause of sewer system overflows is due to the infiltration of groundwater and rainwater into sewer pipes, commonly referred to as inflow and infiltration (I/I). To address this issue, the County selected a "sealed system" which is not anticipated to leak under appropriate installation practices. According to the County, the materials used are subject to standards which specify zero leakage. The County will use fusion welded or chemically sealed pipes and will do additional inspections in the field during construction to ensure proper installation in areas of high groundwater to further reduce I/I (see County condition 98, Exhibit 3). In other words, the County-approved project includes appropriate safeguards to address I/I. That said, it should be noted that any system, including pressurized systems, constructed in the field and subjected to various environmental factors, over time has some potential for failures of various kinds. According to the County, conservative design parameters for wastewater treatment plants include designing for infiltration, even when the potential for such flows to occur is low, and with modern operational requirements applied, will be insignificant. In short, the County approval recognizes I/I and the project takes appropriate precautions to protect coastal resources, including the Los Osos Groundwater Basin and Morro Bay, from potential I/I and sewer overflow impacts.

⁷² California Regional Water Quality Control Board. 2001. Status report on the Los Osos Community Services District wastewater project, San Luis Obispo County. San Luis Obispo, California.

⁷³ California Regional Water Quality Control Board. 2002. Support document for Morro Bay total maximum daily load for pathogens (including Chorro and Los Osos Creeks). San Luis Obispo, California.



High Groundwater

It has been suggested that areas of high groundwater have not been adequately addressed and should be expanded to account for areas of seasonal high groundwater. Contentions have been made that the use of fusion welded pipes should be expanded to account for the expanded seasonal high groundwater areas. According to the County, elastomeric/bell and spigot pipes are a “sealed system” and are not anticipated to leak under appropriate installation practices. Furthermore, the areas of high groundwater are based on nearby monitoring wells, and according to the County reflect the best available information related to groundwater conditions. County condition 98 also includes provisions for sea level rise and areas of groundwater as identified in the field during construction. Concerns were also raised with regards to dewatering activities and the resulting placement of the water. According to the County, all dewatering activities will be authorized in accordance with the RWQCB standards, as required by County condition 14. Thus, the project includes appropriate measures to deal with areas of high groundwater.

Nitrates

The project includes nitrate removal as part of the effluent treatment process. As noted by some, nitrate rich effluent can be beneficial to local growers. This has been shown to be the case in other effluent reuse programs, such as in Monterey County. However, as described by the County, the amount of nitrates that would be authorized in the treated effluent will be dictated by the RWQCB through their discharge permit. The County notes in their approval that municipal wastewater effluent typically contains approximately twice the nitrate concentration than what can be efficiently taken on by plants. Therefore, even if all of the effluent were used for urban and agricultural irrigation, according to the County, nitrate removal would still be necessary.

Harmful Discharges

Concerns have been raised that pollution of Morro Bay is likely at the Giacomazzi site because spills could flow directly into Warden Lake and then into Morro Bay. While the Giacomazzi site is located closer to a surface water body than some of the alternative sites studied, the site will be designed to contain any potential spills and site runoff within the boundaries of the treatment facility. According to the County, any spill/runoff from the site would be designed to flow back through the treatment process as opposed to being discharged offsite, thereby minimizing any potential for contamination of Warden Lake and/or Morro Bay. Additionally, plant operations will be monitored 24 hours per day to ensure proper operations of the facility. The facility will be equipped with a backup generator in case of a power failure and procedures identifying manpower and equipment for an efficient response in the event of an accidental release of chemicals or effluent from the facility or collection system pipelines (see County conditions 25 and 46, Exhibit 2)

Concerns have also been raised that the project will result in harmful discharges to Morro Bay and the Los Osos groundwater basins due to incomplete removal of harmful substances; the disposal system will adversely impact drinking water supplies; the project will not adequately remove salts, carcinogens, pharmaceuticals, endocrine disruptors, and other pollutants and will therefore not achieve a safe or sustainable source of potable water; and the project poses human health risks. However, concerns regarding the plant’s ability to effectively remove harmful substances from wastewater, and dispose of



the treated effluent and sludge in a manner that protects human health and safety, are issues addressed by RWQCB waste discharge requirements and Department of Health Services regulations. Further, the primary reason for the project is to reduce harmful discharges to Morro Bay and the Los Osos groundwater basins. In fact, the RWQCB has determined that construction and operation of the proposed facility is necessary to protect and restore the water quality of the Los Osos groundwater basin and the Morro Bay National Estuary.

Construction BMP's

To protect water quality during and after construction, the County is responsible for: obtaining a National Pollutant Discharge Elimination System (NPDES) permit from the RWQCB that must also be approved by the County Engineering Department; preparing a final grading, drainage, and erosion control plan for the Giacomazzi site that incorporates the recommendations of a geotechnical engineering evaluation; and, developing a long-term erosion control plan that identifies the erosion control practices to be implemented throughout the construction and operation of the wastewater treatment facilities. In accordance with RWQCB and DOHS requirements, the County will prepare an Emergency Response Plan that will prescribe procedures for responding to sewer or chemical spills. Standards for seismic and geologic safety, and a requirement for a Hazardous Materials Management Plan, have been attached as conditions of permit approval and further serve to ensure project compliance with the marine resource protection objectives of the LCP. Most importantly, correcting water quality problems associated with existing septic discharges will have a beneficial impact on the Morro Bay National Estuary.

3. Project Modifications to Result in an Approvable Project

The LCP focuses on controlling erosion and sedimentation, on managing drainage patterns to reduce erosion and runoff, and maximizing groundwater recharge. One issue identified by Commission Staff involves the incorporation of low impact development (LID) techniques into street reconstruction. With a nearly every road in the community trenched, opportunities to implement such development techniques consistent with the LCP are abundant. Special condition 1(j) requires that all public roadway work, including complete roadway reconstruction, be done in a manner that includes LID and other water quality protection systems to the maximum degree feasible.

4. Water Quality Conclusion

As conditioned, the project will improve water quality, and will thereby have a beneficial impact on marine habitats. Adverse impacts posed by project development and operations are addressed by conditions regulating construction activities (e.g., grading, dewatering, and erosion control), drainage improvements, hazardous material containment, and seismic safety. As conditioned for the implementation of expanded LID techniques, the project will be designed to address water quality issues during street reconstruction and can be found consistent with the LCP water quality policies as cited in this finding. As conditioned, the project is consistent with the LCP with respect to water quality.



F. Public Views

As discussed below, the proposed project does not comply with LCP policies protecting public views, and special conditions are needed to bring the project into conformance with the LCP in this respect.

1. Applicable LCP Policies

Protection of visual resources is a fundamental LCP policy, particularly with proposed development that is located in highly scenic and/or rural/agricultural areas with high scenic value. In this case, Los Osos extends south and east from Morro Bay proper into the lower foothills of the Irish Hills and the Los Osos Valley, and is an area rich in public view resources, including with respect to the character of the more developed area in town as well as the undeveloped areas surrounding the town area, and including in relation to the manner in which these viewshed resources themselves make the area a special visitor destination. Applicable LCP policies and ordinances include:

Policy 1: Protection of Visual and Scenic Resources. *Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved, protected, and in visually degraded areas restored where feasible. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

Policy 2: Site Selection for New Development. *Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Wherever possible, site selection for new development is to emphasize locations not visible from major public view corridors. In particular, new development should utilize slope created "pockets" to shield development and minimize visual intrusion. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

Policy 4: New Development in Rural Areas. *New development shall be sited to minimize its visibility from public view corridors. Structures shall be designed (height, bulk, style) to be subordinate to, and blend with, the rural character of the area. New development which cannot be sited outside of public view corridors is to be screened utilizing native vegetation; however, such vegetation, when mature, must also be selected and sited in such a manner as to not obstruct major public views. New land divisions whose only building site would be on a highly visible slope or ridgetop shall be prohibited. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.04.021 OF THE CZLUO.]*

Policy 5: Landform Alteration. *Grading, earthmoving, major vegetation removal and other landform alterations within public view corridors are to be minimized. Where feasible, contours of the finished surface are to blend with the adjacent natural terrain to achieve a consistent grade and natural appearance. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.034 OF THE CZLUO.]*

Policy 7: Preservation of Trees and Native Vegetation. *The location and design of new development shall minimize the need for tree removal. When trees must be removed to accommodate new development or because they are determined to be a safety hazard, the site is to be replanted with similar species or other species which are reflective of the community*



character. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.05.064 OF THE CZLUO.]

CZLUO Section 23.05.034: *Grading Standards. All excavations and fills, whether or not subject to the permit requirements of this title, shall be conducted in accordance with the provisions of Sections 7009 through 7013 of the Uniform Building Code, and the following standards: ...*

- d. *Landform alterations within public view corridors. Grading, vegetation removal and other landform alterations shall be minimized on sites located within areas determined by the Planning Director to be a public view corridors from collector or arterial roads. Where feasible, contours of finished grading are to blend with adjacent natural terrain to achieve a consistent grade and appearance.*
- e. *Final contours: Contours, elevations and shapes of finished surfaces are to be blended with adjacent natural terrain to achieve a consistent grade and natural appearance. Border of cut slopes and fills are to be rounded off to a minimum radius of five feet to blend with the natural terrain. ...*
- g. *Revegetation: Where natural vegetation has been removed through grading in areas not affected by the landscape requirements (Section 23.04.180 et seq. Landscape, Screening and Fencing), and that are not to be occupied by structures, such areas are to be replanted as set forth in this subsection to prevent erosion after construction activities are completed.*
 - (1) *Preparation for revegetation: Topsoil removed from the surface in preparation for grading and construction is to be stored on or near the site and protected from erosion while grading operations are underway, provided that such storage may not be located where it would cause suffocation of root systems of trees intended to be preserved. After completion of such grading, topsoil is to be restored to exposed cut and fill embankments or building pads to provide a suitable base for seeding and planting.*
 - (2) *Methods of revegetation: Acceptable methods of revegetation include hydro-mulching, or the planting of rye grass, barley or other seed with equivalent germination rates. Where lawn or turf grass is to be established, lawn grass seed or other appropriate landscape cover is to be sown at not less than four pounds to each 1,000 square feet of land area. Other revegetation methods offering equivalent protection may be approved by the Building Official. Plant materials shall be watered at intervals sufficient to assure survival and growth. Native plant materials are encouraged to reduce irrigation demands. Where riparian vegetation has been removed, riparian plant species shall be used for revegetation.*
 - (3) *Timing of revegetation measures: Permanent revegetation or landscaping should begin on the construction site as soon as practical and shall begin no later than six months after achieving final grades and utility emplacements.*



Section 23.05.064: Tree Removal Standards. Applications for tree removal in accordance with Section 23.05.062 are to be approved only when the following conditions are satisfied: ...

- d. *Tree removal within public view corridors.* Tree removal within public view corridors (areas visible from collector or arterial roads) shall be minimized in accordance with Visual and Scenic Resources Policy 5.
- e. *Preservation of trees and natural vegetation.* New development shall incorporate design techniques and methods that minimize the need for tree removal.

Los Osos Valley Scenic Corridor Areawide Standard - B. Irish Hills Scenic Backdrop Critical Viewshed and Los Osos Valley Road Scenic Corridor. The Irish Hills Scenic Backdrop Critical Viewshed and the Los Osos Valley Road Scenic Corridor (see Figure 7-7) are established with the primary purpose of protecting the following: important views of scenic backdrops, background vistas and foreground areas from Los Osos Valley Road; important plant and animal habitats; and watershed resources. All applicable standards in the Coastal Zone Land Use Ordinance apply within this area (e.g. those in Chapter 23.04).

Thus, the LCP requires protection of unique landscapes and restoration of visually degraded areas. New development is to be sited in such a way as to direct it out of public view corridors and minimize visual intrusions, minimize landform alterations and blend contours with natural terrain, including with respect to the treatment plant site visible from along the LCP designated Los Osos Valley Road Scenic Corridor Sensitive Resource Area (SRA).

2. Public View Analysis

The LCP visual and scenic resource protection policies protect public views, including through limiting landform alteration, ensuring development is subordinate to its setting, requiring screening for development unavoidably sited in public view corridors, and requiring a minimum 100-foot setback from the right-of-way of designated scenic corridors, like the designated Los Osos Valley Road Scenic Corridor near the site (Visual Policies 1, 2, 4, 5, 7, and; CZLUO 23.05.034).

The Los Osos Valley Road Scenic Corridor consists of important views of scenic backdrops, background vistas, and foreground areas from Los Osos Valley Road, including unique plant and animal habitats and watershed resources. Although it is located further away than the required 100-foot LCP minimum for a scenic corridor (and is in fact approximately 1,600 feet away from the road itself, with the cemetery in between), the treatment plant site can be seen from Los Osos Valley Road. Westbound travelers have a view of the site from approximately 4,000 feet away at 45 degrees, but because the site is at a slightly lower elevation than the road from this perspective (with about 20 feet of topography change and intervening vegetation) only the tops of the higher treatment plant buildings would be visible. Eastbound travelers would not be able to see the facility until at a right angle to the site where it is closest to the road (again, approximately 1,600 feet away as seen looking through the cemetery). This same view would be available to westbound travelers as well.



In short, the proposed wastewater treatment plant is intermittently visible within the public viewshed and if not designed properly could have significant impacts on the rural agrarian character of the project site. In particular, the new treatment plant has the potential to introduce large scale modular type buildings into the area that would conflict with existing rural agrarian visual resource values. Traffic, including with construction and ongoing operations, would only exacerbate such problems. In addition, night lighting could result in light and glare affecting the night sky.

The project includes numerous measures related to the design of structures and the screening of structures intended to ensure that the wastewater treatment facility does not adversely impact public views (see County conditions 49, 50, 51, 52, 53, and 55, Exhibit 2). For example, County condition 49 requires building to be constructed in colors and tones compatible with the surrounding environment. Under County condition 52, buildings are to be designed to appear as barns or other farm related structures. County condition 55 requires the landscaping plan for the site to include sufficient planting to screen views of the project from nearby roads and residential developments, with an emphasis on the use of native plant materials.

The project is consistent with the character of the immediate neighborhood and does not run contrary to its orderly development. There are a variety of land uses (public facilities, agriculture, suburban and rural residential uses) and existing industrial development (the project would be located adjacent to an existing utility corridor with high voltage transmission lines) in the immediate vicinity. The treatment plant would also be screened from public views and will incorporate rural agrarian features into its design. Additionally, the project includes a number of design elements aimed to address the concerns of neighborhood compatibility. Onsite storage ponds will be located so as to screen the treatment facility from surrounding uses and to provide additional buffer area from these uses. Requirements for landscape screening, building design, and nighttime lighting are addressed through County conditions (see, for example, County conditions 49 through 55 in Exhibit 2). With regard to odors associated with the treatment plant site, County condition 40 requires approval of an Odor Control Plan by the Air Pollution Control District (APCD) prior to commencement of grading activities. Condition 89 also requires the operator to comply with Health and Safety Code Section 41700 related to nuisance odors.

Finally, it is worth noting the County moved the treatment plant site from the Tonini site to the Giacomazzi site in order to, among other reasons, avoid the significant visual impacts that would have occurred at that initially-proposed location.⁷⁴

3. Project Modifications to Result in an Approvable Project

To minimize the project's impact on the visual character of the area, special conditions are included that require the use of appropriate designs and materials that blend with the surrounding agricultural nature of the area. The design and appearance of the development must reflect a rural agricultural theme (i.e., simple and utilitarian lines and materials, including use of board and bats, corrugated metal, muted earth

⁷⁴ During the project review process, Commission staff advised the County that the visual impacts of the proposed siting at the Tonini site did not appear consistent with the LCP, particularly given the feasible alternative of the Giacomazzi site.



tone colors, etc.) with all new buildings to be designed to appear as agricultural structures. Special conditions also require implementation of a comprehensive landscape plan including the use of native shrubs and trees adjacent to new structures to provide visual screening and softening of the view of such development as seen from Los Osos Valley Road. In addition, special conditions require that all exterior lighting be shielded to the maximum extent possible and be of the lowest intensity feasible in order to avoid artificial light pollution into adjacent areas, including adjacent to restoration and enhancement areas. See Special Conditions 1(b), 1(c), 1(g), and 1(h).

4. Public View Conclusion

In conclusion, the Los Osos wastewater treatment project has been sited and designed to avoid impacts on coastal views, and to minimize those that are unavoidable. The project will provide landscaping, habitat restoration, visual screening of the treatment facility, it will be sited and designed to emulate agricultural buildings as much as possible, and other visual resource protection measures that will preserve views of scenic coastal areas consistent with the LCP. In addition, project elements are included to ensure that the project does not adversely impact neighborhood character, including in terms of the designated Los Osos Valley Road Scenic Corridor. As conditioned, the project can be designed to address public view issues, and can be found consistent with the LCP public view policies as cited in this finding. As conditioned, the project is consistent with the LCP with respect to public views.

G. Archaeology

As discussed below, the proposed project complies with LCP policies protecting archaeological resources, and no additional special conditions are needed to bring the project into conformance with the LCP in this respect.

1. Applicable LCP Policies

The LCP protects archaeological and cultural resources. Applicable LCP policies and ordinances include:

***Policy 1: Protection of Archaeological Resources.** The County shall provide for the protection of both known and potential archaeological resources. All available measures, including purchase, tax relief, purchase of development rights, etc., shall be explored at the time of a development proposal to avoid development on important archaeological sites. Where these measures are not feasible and development will adversely affect identified archaeological or paleontological resources, adequate mitigation shall be required. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

***Policy 4: Preliminary Site Survey for Development within Archaeologically Sensitive Areas.** Development shall require a preliminary site survey by a qualified archaeologist knowledgeable on Chumash culture prior to a determination of the potential environmental impacts of the*



project. [THIS SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.106⁷⁵ OF THE CZLUO.]

Policy 5: Mitigation Techniques for Preliminary Site Survey before Construction. Where substantial resources are found as a result of a preliminary survey before construction, the county shall require a mitigation plan to protect the site. ... [THIS SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.106 OF THE CZLUO.]

CZLUO Section 23.07.104: Archaeologically Sensitive Areas. To protect and preserve archaeological resources, the following procedures and requirements apply to development within areas of the coastal zone identified as archaeologically sensitive.

- a. *Archaeologically sensitive areas. The following areas are defined as archaeologically sensitive:*
 - (1) Any parcel within a rural area which is identified on the rural parcel number list prepared by the California Archaeological Site Survey Office on file with the county Planning Department.
 - (2) Any parcel within an urban or village area which is located within an archaeologically sensitive area as delineated by the official maps (Part III) of the Land Use Element.
 - (3) Any other parcel containing a known archaeological site recorded by the California Archaeological Site Survey Office.
- b. *Preliminary site survey required. Before issuance of a land use or construction permit for development within an archaeologically sensitive area, a preliminary site survey shall be required. The survey shall be conducted by an archaeologist knowledgeable in Chumash Indian culture and approved by the Environmental Coordinator. The purpose of the preliminary site survey is to examine existing records and to conduct a preliminary surface check of the site to determine the likelihood of the existence of resources. The report of the archaeologist shall be submitted to the Planning Department and considered in the evaluation of the development request by the applicable approval body.*
- c. *When a mitigation plan is required. If the preliminary site survey determines that proposed development may have significant effects on existing, known or suspected archaeological resources, a plan for mitigation shall be prepared by the archeologist. The purpose of the plan is to protect the resource. The plan may recommend the need for further study, subsurface testing, monitoring during construction activities, project redesign, or other actions to mitigate the impacts on the resource. The mitigation plan shall be submitted to and approved by the Environmental Coordinator, and considered in the evaluation of the*

⁷⁵ References to CZLUO Section 23.07.106 are a typographical error in the Coastal Plan Policies document. The applicable ordinance is 23.07.104.



development request by the applicable approval body.

- d. *Required finding. A land use or construction permit may be approved for a project within an archaeologically sensitive area only where the applicable approval body first finds that the project design and development incorporates adequate measures to ensure protection of significant archeological resources.*
- e. *Archeological resources discovery. In the event archeological resources are unearthed or discovered during any construction activities, the standards of Section 23.05.140 of this title shall apply*

Los Osos is a particularly rich archeological resource area, and the LCP provides protection for any such resources that may be within the proposed project area. Thus, the LCP ensures that any proposed development would be designed and located to minimize its impacts to archaeological resources. These provisions define the identification of archaeological resources as well as how to handle archaeological resources discovered during construction or other activities.

2. Archaeology Analysis

Impacts to coastal resources from the construction of the collection system, treatment system, and disposal system were evaluated by the project EIR by investigating records for the project area, interviewing archaeological experts, and conducting site surveys. According to these reviews, the Giacomazzi site contains known cultural resources. The LCP requires that such resources be protected, including through a mitigation plan if a project might significantly effect existing, known or suspected archaeological resources (Archeology Policy 1, 4, 5and CZLUO 23.07.104).

From review of the approved site plan for the treatment plant, it appears clear that the treatment plant could be located on the site and avoid cultural resources (see Exhibit 2). The County findings state that the “identification and preservation of archaeological resources will be met by implementation of the required Cultural Resource Treatment Plan and other conditions associated with the protection and preservation of cultural resources” (see County Finding B.10, Exhibit 3). As approved by the County, additional cultural resource investigations will be required to determine the more exact boundaries of the site and significance of the cultural resources on the Giacomazzi site. If the resources are determined to be significant (per the Office of Historic Preservation criteria) then impacts to the identified resource would only be allowed when accompanied by project specific mitigation in compliance with applicable state laws (see County conditions 28 through 31).

Given these measures, the project conforms to the applicable LCP requirements as summarized below:

The extent of excavation required to install a wastewater collection system makes the avoidance of impacts to archaeological resources infeasible. The County has developed an adequate mitigation plan, in coordination with the State Historic Preservation Office, to address unavoidable impacts (Policy 1). In addition, site surveys have been conducted at both the treatment plant site and the primary disposal site by qualified archaeologists, consistent with Policy 4. Although site surveys were not conducted for the



entire collection system due to its location beneath roadways, potential impacts to cultural resources have been anticipated and appropriately addressed. Consistent with Policy 5, a cultural mitigation program has been crafted. Finally, ordinance requirements for mitigating impacts to archaeological resources are implemented by special conditions included as part of the project (see conditions 28-31 and 71-74, Exhibit 2). Condition 28 is explicit in its requirement that avoidance of cultural resources is the primary and preferred mitigation measure. Only when avoidance is determined to be infeasible can construction continue. Then, the work can move forward in a manner consistent with the Cultural Resources Treatment Plan (CRTP). This plan is comprehensive in that it requires subsurface testing and possible project redesign, to name but a few of the measures included to mitigate potential impacts to cultural resources. With the CRTP requirement included, the project is consistent with LCP Policy 5 and 23.07.104.

3. Archaeology Conclusion

Cultural resource issues associated with the construction of the wastewater project have been addressed by the project design and the terms of permit approval. As proposed, the project is designed to address archaeological resources issues, and can be found consistent with the LCP archaeology policies as cited in this finding. As proposed, the project is consistent with the LCP with respect to archaeology.

H. Hazards

As discussed below, the proposed project complies with LCP policies addressing hazards, and no additional special conditions are needed to bring the project into conformance with the LCP in this respect.

1. Applicable LCP Policies

Like the Coastal Act, the LCP is premised on hazard avoidance, and requires that new development be sited and designed to ensure long-term structural stability and security.

Policy 1: New Development. All new development proposed within areas subject to natural hazards from geologic or flood conditions (including beach erosion) shall be located and designed to minimize risks to human life and property. ... [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD]

Policy 2: Erosion and Geologic Stability. New development shall ensure structural stability while not creating or contributing to erosion or geologic instability. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD ABD PURSUANT TO SECTION 23.07.086 OF THE CZLUO.]

CZLUO 23.08.288: Public Utility Facilities. The requirements of this section apply to Public Utility Facilities where designated as S-13 uses by Coastal Table 'O', Part I of the Land Use Element. ...

b. Application contents. In addition to the application materials required by Chapter 23.02



(Permit applications), permit applications shall also include descriptions of: ...

- (4) An oil and hazardous material spill contingency plan, including a demonstration that all materials can be contained on-site.*

2. Hazards Analysis

The LCP requires that development be sited and designed to minimize hazards and attendant risks to life and property, and to ensure long-term stability. In this respect, concerns have been raised that the County approved project does not adequately address the impact of subsurface disposal of treated wastewater on geologic stability (e.g., increased liquefaction potential) and could thus threaten project utility as well as nearby homes. However, the County completed substantial geotechnical site work and there are no indications in the project record to suggest that use of the Broderson site as approved by the County would threaten nearby homes or lead to project implementation problems in this respect.⁷⁶ Additionally, conditions of approval are included to ensure that the project is designed and constructed to provide the level of seismic safety required by the LCP.

Concerns have also been raised regarding the public health hazards associated with sludge disposal. According to the County's and the RWQCB's analysis, there is nothing inherent in the sludge produced from the wastewater treatment process that would result in it being classified as a hazardous material (i.e., a substance that has an excessively low or high pH, heavy metals, or toxic chemical above thresholds established by the EPA). Since Los Osos is a primarily residential community with some commercial establishments and virtually no industry, it is unlikely that hazardous materials will be found within the wastewater or sludge. In the unlikely instance there was such materials, the hazards associated with the trucking of sludge would be no different than the ongoing hazards associated with the transportation and disposal of septic tanks.

3. Hazards Conclusion

As proposed, the project is designed to address hazards issues, and can be found consistent with the LCP hazards policies as cited in this finding. (See findings regarding Coastal Water Quality for an analysis of potential hazards associated with drainage, discharges, and sewage spills). As proposed, the project is consistent with the LCP with respect to hazards.

I. Public Recreational Access

As discussed below, the proposed project does not comply with LCP policies protecting public recreational access, and special conditions are needed to bring the project into conformance with the LCP in this respect.

1. Applicable Coastal Act and LCP Policies

⁷⁶ See, for example, EIR Appendix F: Expanded Geology Analysis and Viable Project Alternatives Fine Screening Analysis, August 2007.



Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea includes a specific finding that the development is in conformance with the public access and recreation policies of Chapter 3 of the Coastal Act. Portions of this project are located between the first public road and the sea, and thus the Coastal Act's access and recreation policies are applicable to the proposed project. Protection of public recreational access opportunities is a fundamental Coastal Act objective. Moreover, the Act speaks to the need to maximize public recreational access to and along the coast, and prohibits development from interfering with the public access. The Act also protects recreational opportunities and land suitable for recreational use. Public access and recreational opportunities in the coastal zone are essential to the Los Osos residents' quality of life, as well as to the providing such opportunities for visitors. Applicable Coastal Act policies include:

Section 30210. *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211. *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization...*

Section 30212 (a) *Pubic access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety...or the protection of fragile resources, (2) adequate access exists nearby...*

Section 30213: *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...*

Section 30220. *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30221. *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Section 30222. *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

Section 30223. *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*



Section 30240(b). *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Section 30253. *New development shall: ... (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.*

The LCP likewise reflects and implements the Coastal Act's mandate with respect to public recreational access. Applicable LCP policies and ordinances include:

Policy 1: Protection of Existing Access. *Public prescriptive rights may exist in certain areas of the county. Development shall not interfere with the public's right of access to the sea where acquired through historic use or legislative authorization. These rights shall be protected through public acquisition measures or through permit conditions which incorporate access measures into new development. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.04.420 OF THE CZLUO.]...*

Policy 2: New Development. *Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development. Exceptions may occur where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as those accessways that provide for public access and use along the shoreline. Vertical access is defined as those accessways which extend to the shore, or perpendicular to the shore in order to provide access from the first public road to the shoreline. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.420 a. AND c. OF THE CZLUO.]...*

Policy 4: Provision of Support Facilities and Improvements. *Facilities necessary for public access shall be provided. This may include parking areas, restroom facilities, picnic tables or other such improvements. The level of these facilities and improvements should be consistent with the existing and proposed intensity and level of access use and provisions for on-going maintenance. Requirements for coastal access and improvements are identified in the specific Planning Area Standards and the Land Use Ordinance for the coastal zone. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.420 h. OF THE CZLUO.]...*

Policy 7: Development of Uniform Access Signs. *A uniform signing system PROGRAM should be developed. Such signs would assist the public in locating and recognizing access points. Where agriculture and sensitive habitats are located, signs may be posted indicating the permitted level of access, the restrictions on access and a description of the sensitive habitat resource. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.420i. OF THE CZLUO.]*



Once accessways are accepted by a public agency, they shall be signed and posted to indicate any restrictions or presence of sensitive habitats or hazards.

Recreation Policy 1: Recreation Opportunities. Coastal recreational and visitor-serving facilities, especially lower-cost facilities, shall be protected, encouraged and where feasible provided by both public and private means. ... [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

CZLUO Section 23.04.420: Coastal Access Required. Development within the Coastal Zone between the first public road and the tidelands shall protect and/or provide coastal access as required by this section. The intent of these standards is to assure public rights of access to the coast are protected as guaranteed by the California Constitution. Coastal access standards are also established by this section to satisfy the intent of the California Coastal Act. ...

Thus, the LCP requires the protection of existing access and requires that new development provide maximum public access to and along the shoreline, consistent with public safety needs and the rights of private property owners. To carry out these policies, the LCP requires accessways to be established and specifies how to acquire, measure, and establish accessways. It requires that support facilities and improvements shall be included and states that a uniform signing system program should be developed, including with respect to maximizing the ability of the project to provide the public with educational and interpretive access.

2. Public Recreational Access Analysis

The development of a wastewater treatment facility is essential to protect the water quality of Morro Bay, and thereby is also necessary to preserve water-oriented access and recreation opportunities. However, traffic and circulation delays due to project construction can be expected and could result in some temporary impacts to coastal access and recreation opportunities. Concerns have also been raised that traffic impacts will extend through the life of the project, as a result of ongoing treatment plant operations.

3. Project Modifications to Result in an Approvable Project

Although the project could result in some limited impacts to public access and recreation, special conditions of approval are included in the project that require the County to prepare and implement a sign plan prior to issuance of the CDP. The signs are to be sited and designed to provide information without impacting public views or the character of the area in which they are located. At least three public educational/interpretation signs and/or displays related to the project have to be installed at appropriate locations easily accessible by the public. Commission staff has evaluated the project and suggests that the signs could be installed at Broderson, Midtown (or in the park across the street), and at the Giacomazzi site. These three sites seemed to be high profile locations with substantial public accessibility. This condition will serve as a public education/interpretation element and can be done consistent with the visual and scenic resource protection provisions of the LCP.



4. Public Recreational Access Conclusion

The LOWWP will help in the protection of the community's groundwater resources as well as the water quality of Morro Bay and surrounding surface waters, and thereby preserve coastal access and recreation opportunities. The project includes measures to avoid potential public access and recreation impacts, and to develop and implement a sign plan to educational and interpretive access. As conditioned, the project can be designed to address public recreational access issues, and can be found consistent with the Coastal Act and LCP public recreational access policies as cited in this finding. As conditioned, the project is consistent with the Coastal Act and the LCP with respect to public recreational access.

J. Conclusion

In conclusion, the Commission recognizes that the LOWWP has been conceived and designed to help improve currently impaired ground and surface water health and sustainability, including through maximizing the productive reuse of recycled water effluent in the Los Osos basin. Furthermore, the Commission believes that, as conditioned, there is no feasible, less-environmentally damaging wastewater treatment project, including with respect to plant siting and to collection and effluent disposal methodologies and siting, as required by the LCP. In short, the project as conditioned is a much needed and well-conceived beneficial coastal resource project that is essential to protect ground and surface waters in and near Los Osos, including the Morro Bay National Estuary and related habitats and resources, and to provide essential public services to the Los Osos area. Significant local and state resources have been dedicated towards addressing these needs over a period of more than 30 years, and environmental impacts and project alternatives have been thoroughly considered. The resultant project represents an important environmental enhancement project of statewide importance that will greatly improve environmental health and safety associated with ground and surface water in and around Los Osos, including in Morro Bay, and including with respect to its related habitat resources. It is clear that the project itself includes certain impacts, but it is hard to conceive of a treatment project at this scale for this area that would not have such impacts. As conditioned, the LOWWP appropriately avoids such impacts where feasible, and appropriately mitigates for unavoidable impacts. In terms of the latter, the project includes a significant mitigation package that includes: over 100 acres of habitat restoration, enhancement, management, and protection; includes provisions to ensure appropriate and sustainable buildup through further LCP and habitat planning for Los Osos; and that includes an overall Los Osos basin recycled water management plan designed to ensure that implementation of the project maximizes long-term ground and surface water and related resource health and sustainability, including through adaptive management over time.

Even so, the Commission recognizes that the project has long been controversial and the subject of much debate, particularly in the community of Los Osos where a variety of differing opinions abound. Although the Commission is optimistic that the community will rally around the LOWWP and facilitate the County's efforts to bring it online so that the serious environmental impacts associated with existing septic discharges can finally be addressed, there remains the possibility that that will not happen. Based on the past history of Los Osos wastewater treatment projects, including this one and prior ultimately doomed attempts, it seems likely that at the least there will be some who will continue to question and



challenge the LOWWP. Toward that end, Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), the Commission imposes Special Condition 8 requiring reimbursement for any costs and attorneys fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit.

As conditioned, the project is consistent with the LCP and with the Coastal Act's access and recreation policies and the CDP is approved.

5. Coastal Development Permit Conditions of Approval

A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

- 1. Final Project Plans.** PRIOR TO CONSTRUCTION, the Permittee shall submit two copies of Final Project Plans to the Executive Director for review and approval. The Final Project Plans shall include and shall be substantially in conformance with the plans associated with the proposed project description (see Section B.3. of this report) except that they shall be revised and supplemented to comply with the following requirements:



- a. **Treatment Plant Site Approved Development Envelope.** All development (including but not limited to buildings, tanks, infrastructure, parking, walkways, fences, etc.) shall be located within the development envelope and in the general configuration shown on Exhibit 2 (*Exhibit 1-3, Treatment Plant Site Plan*; last dated revised on April 13, 2010, and dated received in the Commission's Central Coast District Office on April 19, 2010). Development shall be prohibited outside of the approved development envelope except for habitat restoration and enhancement related development (see special condition 3(b) below) and access road related development (see special condition 1(b) below). Development shall be arranged so that activity and direct light that may be visible from outside of the development envelope is limited to the maximum extent feasible, and so that any activity that is unavoidably visible is minimized in its intensity. All development shall be identified on the Final Project Plans.
- b. **Treatment Plant Site Access Road.** The access road shall be located along the existing unpaved access road alignment extending from Los Osos Valley Road to the approved development envelope along the eastern property line of the Los Osos Mortuary and Memorial Park site and the western property line of the Andre site in such a manner as to limit its width and overall length as much as possible. The access road shall include measures to effectively screen noise and activity associated with access road traffic and activity from adjacent properties so long as such screen does not itself degrade public views from along Los Osos Valley Road. If the Permittee conclusively demonstrates that the above access road location is infeasible, then the access road shall be located as shown on Exhibit 2 (*Exhibit 1-2 Overall Project Site Plan*, New Access Road, last dated revised on April 13, 2010, and dated received in the Commission's Central Coast District Office on April 19, 2010) subject to all the same siting and design criteria, and subject to the additional requirement that a mitigation plan for impacts to the agricultural use and development of the property located between the access road, Los Osos Valley Road, and the Los Osos Mortuary and Memorial Park site shall be submitted for Executive Director review and approval.
- c. **Treatment Plant Site Design.** The design and appearance of all development shall reflect a rural agricultural theme (i.e., simple and utilitarian lines and materials, including use of board and bats, corrugated metal, muted earth tone colors, etc.). The plans shall clearly identify all measures that will be applied to ensure such design aesthetic is achieved, including with respect to all structures and all other project elements within view of Los Osos Valley Road (including the access road itself, all drainage facilities, curbs, landscaping, screens, signs, etc.). Development shall be sited and designed so as to reduce its visibility from Los Osos Valley Road to the maximum extent feasible. At a minimum, the plans shall clearly identify all structural elements, materials, and finishes (including through site plans and elevations, materials palettes and representative photos, product brochures, etc.).
- d. **Pump Station and Related Development.**
 1. **Pump Station Design.** All pump stations and all related development, including all power boxes and buildings, shall be sited and designed to limit impacts on habitat areas and public



views, including through limiting their footprint and proximity to habitat areas as much as possible, siting elements below ground where feasible, minimizing the scale of above ground elements as much as possible, limiting above-ground access components (including manhole/hatch entries) as much as possible, using surface treatment and structural design consistent with and compatible with the immediately surrounding environment, limiting lighting to that necessary for public safety, and removing non-native invasive plant species on each site and landscaping with appropriate native plant materials (see also special condition 3(d)) including so that landscaping can help soften the appearance of any elements that are unavoidably above ground and to ensure seamless connectivity to surrounding habitat and vegetation as much as possible.

2. **Midtown Pump Station.** The Midtown pump station shall be sited and designed to limit its footprint and depth (from the road). The Midtown pump station power building shall be relocated across Palisades Avenue to an already disturbed area of Los Osos Community Park in a location where it will have the least impact on Park use and aesthetics.
3. **Lupine Street Pump Station.** The Lupine Street pump station and standby power building shall be set back a minimum of 75 feet from the edge of wetlands located to the south and west of the pump station site.
- e. **Lupine Street Force Main.** The force main that conveys sewage from the Lupine Street Pump Station towards the treatment plant shall be routed from the Lupine Street Pump Station east on Lupine Street, then south on Fearn Avenue, then east on Binscarth Road, and then south on Pine Avenue, terminating at Los Osos Valley Road.
- f. **Recycled Water Re-use Infrastructure.** All recycled water reuse pipelines and related development shall be clearly identified, including all such development noted on the overall project site plan submitted to the Commission (titled *Exhibit 1-2, Overall Project Site Plan*, last dated revised April 13, 2010; dated received in the Commission's Central Coast District Office April 19, 2010) and also including connecting segments to each of the receiver sites identified there.
- g. **Lighting.** All interior lighting shall be located so as to minimize the potential for light and glare to be visible from within adjacent habitat areas, including adjacent restoration and enhancement areas. All exterior lighting shall be shielded and be of the lowest intensity feasible in order to avoid artificial light pollution from project facilities into adjacent areas and the night sky. All exterior lighting elements adjacent to habitat areas, including adjacent to restoration and enhancement areas, shall be avoided where possible and where unavoidable for safety purposes shall be the minimum necessary to meet safety requirements, shall be shielded, and shall be directed downward and away from such habitat areas.
- h. **Landscaping.** Final Plans shall include landscape and irrigation parameters that shall identify all plant materials (size, species, quantity), all irrigation systems, and all proposed maintenance for



landscaping at both the treatment plant site (including along the access road) and at all pump station locations. All plant materials shall be native and non-invasive species selected to be complimentary with the mix of native habitats in the project vicinity, prevent the spread of exotic invasive plant species, and avoid contamination of the local native plant community gene pool. The landscape and irrigation plans shall be designed to protect and enhance native plant communities on and adjacent to the development locations, including required restoration and enhancement areas, and to provide a transitional buffer between native habitat areas and authorized development. Landscaping (at maturity) shall also be capable of partial/mottled screening and softening the appearance of new development as seen from public viewing areas as much as possible. All landscaped areas shall be continuously maintained by the Permittee in a litter-free, weed-free, and healthy growing condition. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a ‘noxious weed’ by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist at the treatment plant site (including along the access road) and at all pump station locations.

- i. **Sign Plan.** All signs associated with the approved project and identifying any component of it as seen from public viewing areas shall be identified and details showing the location, materials, design, and text of all signs shall be provided. The signs shall be sited and designed so as to provide clear information without adversely impacting public views and/or the character of the area in which the sign is located. At least three public education/interpretation signs and/or displays related to the project shall be installed at appropriate locations (e.g., at the Broderson site, at the Midtown site, and at the Giacomazzi site) easily accessible by the public, including in relation to the treatment plant site and at individual pump stations with significant above ground features.
- j. **Street Reconstruction.** The Plans shall require that all public roadway work, including and up to complete roadway reconstruction, following installation/construction of approved project elements that impact public roadways shall be conducted in a manner that incorporates low impact development (LID) techniques and water quality protection systems to the maximum amount feasible.
- k. **Walker Site.** The 6-acre Walker site (see Exhibit 2), although restoration of this area is not required until after it is no longer being used as the primary construction staging site for the approved project, shall be to be returned to its pre-project condition, or better (from a habitat perspective).
- l. **Construction.** All construction staging and related areas shall be identified, and all development associated with such areas shown on a site plan. All such areas within which construction staging are to take place shall be minimized to the maximum extent feasible in order to minimize impacts on resources (e.g., terrestrial habitat, wetlands, creeks, riparian areas, or other sensitive resource areas, etc.). All measures to be taken to minimize impacts associated with construction



staging and related areas shall be identified, including but not limited to screening, fencing, landscaping, signage, and designation of various activity and storage areas on the site. If additional construction staging and related areas are needed following approval of Final Plans, such areas shall be identified in a plan and submitted for Executive Director review and approval. The Final Plans shall require that copies of the signed CDP be maintained in a conspicuous location at the construction staging area at all times, and that such copies be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP, and the public review requirements applicable to them, prior to commencement of construction. The Final Plans shall also require that a primary construction coordinator be designated for public inquiries regarding the construction, and that their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number available 24 hours a day for the duration of construction, be conspicuously posted at the construction staging area and at individual construction sites where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

The Permittee shall undertake development in accordance with the approved Final Project Plans.

- 2. Septic System Decommissioning Plan.** PRIOR TO ANY CONNECTION TO THE APPROVED WASTEWATER PROJECT, the Permittee shall submit two copies of a Septic System Decommissioning Plan to the Executive Director for review and approval. The Septic System Decommissioning Plan shall clearly identify all measures to be taken to appropriately decommission existing septic tank systems and to connect such users to the approved project. The Plan shall provide a process for evaluating septic systems for possible on-site reuse, including for on-site filtration and percolation of stormwater to the degree feasible and appropriate, and a process for implementing such conversion or for implementing appropriate abandonment measures depending on which measure property owners choose. The Permittee shall undertake development in accordance with the approved Septic System Decommissioning Plan.
- 3. Habitat Management Plan.** PRIOR TO CONSTRUCTION, the Permittee shall submit two copies of a Habitat Management Plan to the Executive Director for review and approval. The Habitat Management Plan shall provide for restoration and enhancement of the following areas to self-sustaining natural habitat states, and for management and protection of such areas as habitat areas in perpetuity:
 - a. Broderson Site.** The 80-acre Broderson site, of which up to 8 acres is allowed to be used for the project leach field provided this area too is subject to Plan requirements designed to ensure habitat value in this 8-acre area as much as possible while recognizing the underlying leach field infrastructure and its ongoing use and maintenance requirements.



- b. **Giacomazzi Site.** The 8.3 acres of the Giacomazzi site that is located outside of the approved development envelope and that includes identified wetland and related resources and their buffer (see Exhibit 8).
- c. **Midtown Site.** The 12.24-acre Midtown site (see Exhibit 2), of which a small area (approximately 0.10 acres, subject to special condition 1 requirements) is allowed to be used for the Midtown pump station and related development, provided this area, too, is subject to Plan requirements designed to ensure habitat value at the pump station location as much as possible while recognizing the underlying pump station infrastructure and its ongoing use and maintenance requirements.
- d. **Pump Station Sites.** The roughly 0.1-acre Sunny Oaks site, the 0.4-acre Solano site, and the 0.3-acre East Ysabel site (see Exhibit 2), a total of almost one acre, of which a small area at each site (approximately 0.32 total acres, subject to special condition 1 requirements) is allowed to be used for pump station and related development, provided these areas, too, are subject to Plan requirements designed to ensure habitat value at the pump station locations as much as possible while recognizing the underlying pump station infrastructure and its ongoing use and maintenance requirements.

The Habitat Management Plan shall require and provide for the Broderson site to be acquired prior to construction and granted by June 10, 2012 to an appropriate agency or conservation organization approved by the Executive Director, where such grant shall include funding adequate to implement the Habitat Management Plan over time. The Habitat Management Plan shall require and provide for the use of the Broderson, Giacommazi, Midtown, and Pump Station sites each to be restricted through recordation of a deed restriction, prohibiting all non resource-dependent development on each site, other than that associated with the approved project and consistent with the approved Habitat Management Plan. The required deed restriction shall be in a form and content acceptable to the Executive Director and recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the enforcement of the deed restriction.

The Habitat Management Plan shall be prepared by qualified restoration ecologists, shall be submitted with evidence of USFWS and CDFG review (or evidence that no review is required), and shall take into account the specific condition of each restoration and enhancement site (including soil, exposure, water flows, temperature, moisture, wind, etc.), as well as restoration and enhancement goals and success criteria. The Habitat Management Plan shall explicitly allow for potential public access interpretive facilities (including trails, signs/displays, etc.) even if such facilities are not part of initial Habitat Management Plan implementation activities, but rather will be a part of subsequent Plan implementation. At a minimum, the Plan shall provide for the following:

- a. **Baseline.** A baseline assessment, including photographs, of the current physical and ecological condition of the restoration and enhancement areas. All existing topography, habitat types, and vegetation shall be depicted on a map.



- b. **Goals.** A description of the goals of the plan, including in terms of topography, hydrology, vegetation, sensitive species, wildlife usage, and potential public interpretive access.
- c. **Planting and Invasive/Non-Native Plant Provisions.** Except that the mature eucalyptus trees, and the mature cypress trees on the Broderson site shall remain and be managed as part of the Plan, all invasive and/or non-native plant species shall be removed from all restoration and enhancement areas, and native species of local stock appropriate to the habitats and the Los Osos area shall be planted,. A planting plan including the planting palette (seed mix and container plants), planting design, source of plant material, plant installation, erosion control, irrigation, and remediation shall be included. The planting palette shall be made up exclusively of native taxa that are appropriate to the habitats and the Los Osos region. Seed and/or vegetative propagules shall be obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural varieties shall not be used. Non-native and/or invasive plant species shall be prohibited. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a ‘noxious weed’ by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist in the restoration and enhancement areas.
- d. **Hydrology.** Ensuring that existing hydrological inputs, if applicable (e.g. for wetland areas at the Giacomazzi site), are maintained and if possible improved in favor of enhanced habitat value. To the extent there may be hydrological issues related to the habitat that is being restored and monitored overtime, these issues shall be considered and dealt with appropriately.
- e. **Success Criteria.** A description of the measurable success criteria of the plan, including, at a minimum, the requirement that success be determined after a period of at least three years in which the sites have been subject to no remediation or maintenance activities other than weeding, and that this condition be maintained in perpetuity. Success criteria shall be defined for each habitat type, including in terms of species diversity, percent cover, invasive control, wildlife usage, and hydrology, and for potential public interpretive access. Interim and long-term success criteria shall be identified, with final success criteria required to be maintained in perpetuity.
- f. **Monitoring.** Monitoring and maintenance provisions including a schedule of the proposed monitoring and maintenance activities to ensure that interim and long-term success criteria are achieved, and including a plan for documenting and reporting the physical and biological “as built” condition of the restoration and enhancement areas within 30 days of completion of the initial Habitat Management Plan implementation activities (i.e., a simple report to describe field implementation of the approved plan in narrative and photographs, and to report any implementation problems and their resolution). Monitoring shall be appropriate to habitat type, and shall at a minimum include identification of field sampling protocols (including specific field sampling techniques to be employed), study sites (including experimental/revegetation sites and reference sites), data analysis methods (including descriptive and inferential statistics with specified acceptable variance and significance levels to examine sample size, univariate and



multivariate comparisons, and/or other parameters as appropriate and necessary to assess progress toward and meeting of success criteria), and assessment of progress toward meeting identified success criteria.

- g. Reporting.** Provision for submission of annual monitoring reports (two copies each time) to the Executive Director for review and approval beginning the first year after completion of initial Habitat Management Plan implementation activities and shifting to an every five-year reporting cycle once long-term success criteria have been achieved. Each report shall document the condition of each restoration and enhancement area based on monitoring data (including with photographs taken from the same fixed points in the same directions), shall describe the progress towards reaching and/or maintaining the success criteria of the plan, and shall make recommendations, if any, on changes necessary to achieve success. Necessary changes, including identified remediation steps, shall be completed per the timetable identified in any approved report, or within 30 days of report approval where no such timetable is specified.

The Habitat Management Plan shall be implemented concurrent with construction of the approved project, shall be directed by qualified restoration ecologists, and initial Habitat Management Plan implementation activities (including at a minimum initial planting and non-native/invasive plant removal pursuant to the Plan) shall be completed prior to commencement of operation of the approved project.

The Permittee shall undertake development in accordance with the approved Habitat Management Plan.

- 4. Agricultural Property Protection.** PRIOR TO CONSTRUCTION OF THE TREATMENT PLANT, the Permittee shall submit evidence to the Executive Director for review and approval indicating that an agricultural conservation easement(s) burdening off-site agricultural property have been granted in perpetuity to the County or another qualifying entity approved by the Executive Director along with adequate funding to compensate for reasonable administrative costs incurred by the easement holder. The easement shall provide agricultural conservation acreage at a ratio of at least 2:1 for the loss of agricultural land associated with the approved project, shall apply to agricultural land within reasonable proximity of the project site that is of a quality that is reasonably similar to that of the agricultural land lost, and shall be submitted with evidence clearly showing and calculating the amount of agricultural land lost due to the project in closed polygons on site plans and all supporting documentation demonstrating compliance with the requirements of this condition.

- 5. Los Osos Basin Recycled Water Management Plan.** PRIOR TO CONSTRUCTION, the Permittee shall submit two copies of a Los Osos Basin Recycled Water Management Plan (Basin Plan) to the Executive Director for review and approval. The objective of the Basin Plan shall be to ensure that implementation of the project, including the sites designated for disposal of the treated effluent, is accomplished in a manner designed to maximize long-term ground and surface water and related resource (including wetlands, streams, creeks, lakes, riparian corridors, marshes, etc.) health and sustainability, including with respect to offsetting seawater intrusion as much as possible, within the



Los Osos Groundwater Basin. The Basin Plan shall be structured so as to allow its programs to be developed, and any physical development underlying the implementation of such programs constructed, concurrent with construction of the approved project, and for it to be implemented concurrent with commencement of operation of the approved project. The Basin Plan may be structured to allow phasing if necessary to better achieve Basin Plan objectives. The Basin Plan shall include the following main components:

- a. **Recycled Water Reuse Program.** As reflected in County condition 97, the Recycled Water Reuse Program shall ensure that all tertiary treated recycled water is disposed of in locations within the Los Osos Groundwater Basin that will maximize its ability to meet Basin Plan objectives, where the highest priority for reuse shall be replacing existing potable water use with recycled water use where feasible and appropriate, including with respect to both urban and agricultural reuse. The Reuse Program may include recycled water application at the Broderson leach field (not to exceed 448 afy on an average annual basis) and at the Bayridge leach field (approximately 33 afy or the amount shown to be necessary for maintaining Willow Creek and downstream resources in their pre-project state or better), but it shall prioritize beneficial reuse through (a) developing and installing recycled water connections and entering into delivery/use agreements with urban and agricultural property owners as much as possible, and (b) developing and installing other recycled water delivery systems, in both cases with a priority for locations where such beneficial reuse will go the furthest toward meeting Basin Plan goals. The Reuse Program may include other areas that may be beneficial to the Los Osos Groundwater Basin.
- b. **Water Conservation Program.** The Water Conservation Program required by the County project, which limits indoor water use to no more than 50 gallons per person per day on average within the Basin, shall be incorporated into the Recycled Water Management Plan. The Program shall be designed to help Basin residents to reduce their potable water use as much as possible through measures including but not limited to retrofit and installation of low water use fixtures, and grey water systems. The Program shall include enforceable mechanisms designed to achieve its identified goals, including the 50 gallons per person per day target, and shall include provisions for use of the \$5 million committed by the Permittee to initiate water conservation measures pursuant to the Basin Plan as soon as possible following CDP approval. The Permittee shall coordinate with water purveyors to the maximum extent feasible to integrate this conservation program with purveyor implemented outdoor water use reduction measures.
- c. **Monitoring Program.** The Monitoring Program shall be designed to quantitatively and qualitatively assess the effectiveness of the Basin Plan over time to ensure its objectives are achieved, and shall include: a baseline physical and ecological assessment of ground and surface water and related resources to be monitored; measurable goals and interim and long-term success criteria for those resources, including at a minimum clear criteria that demonstrate that the health and sustainability of Plan area resources are steadily improving over time, including with respect to seawater intrusion; monitoring provisions, including identification of appropriate representative resource monitoring locations and data types (e.g., groundwater levels and quality;



wetland, stream, creek, riparian, and marsh plant and animal abundance, hydrology, and water quality; etc.) and a schedule for proposed monitoring activities. The Monitoring Program shall also include measures to clearly document the manner in which recycled water is being reused and water is being conserved pursuant to the Recycled Water Reuse and Water Conservation Programs.

- d. **Reporting and Adaptive Management Program.** Annual reports (two copies) documenting implementation and effectiveness of the Basin Plan shall be submitted to the Executive Director for review and approval by December 31st of each year that the project operates. Each report shall include all monitoring data (including documenting all recycled water reuse for the preceding year, all water conservation efforts and effects, and all resource changes identified), shall describe the progress towards achieving the success criteria of the plan, and shall make recommendations, if any, on changes necessary to better meet Basin Plan objectives and achieve success. On the latter, the annual reports shall be premised upon the concept of adaptive management that responds to information developed and effects better understood over time in association with the project, and is intended to allow for project changes covered by this CDP, unless the Executive Director determines that a CDP amendment is necessary, through the annual report approval process provided that such changes result in better resource protection and better means to achieve Basin Plan objectives over the long-term. Changes, including identified remediation steps, shall be completed per the timetable identified in any approved annual report, or within 30 days of report approval where no such timetable is specified.

The Permittee shall undertake development in accordance with the approved Los Osos Basin Water Recycling Management Plan.

6. **Wastewater Service to Undeveloped Properties.** Wastewater service to undeveloped properties within the service area shall be prohibited unless and until the Estero Area Plan is amended to identify appropriate and sustainable buildout limits, and any appropriate mechanisms to stay within such limits, based on conclusive evidence indicating that adequate water is available to support development of such properties without adverse impacts to ground and surface waters, including wetlands and all related habitats.
7. **Amendment.** All future changes to the approved project, including changes in service area, shall be processed as amendments to this CDP. Any such amendment shall clearly demonstrate the manner in which the amendment would lead to better coastal resource protection, including at a minimum the manner in which it would help to better achieve the goals and meet the success criteria of the approved Los Osos Basin Resource Management Plan (see special condition 5).
8. **Conflict Resolution.** Any differences, conflicts, and/or questions of interpretation between elements of the proposed project description and these conditions shall be resolved in favor of the these conditions and in the manner most protective of coastal resources as determined by the Executive Director.



- 9. Liability for Costs and Attorneys Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and (2) required by a court) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

6. California Environmental Quality Act (CEQA)

Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit or amendment to be supported by a finding showing the permit or permit amendment, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The County, acting as the lead CEQA agency, certified an Environmental Impact Report for this project on September 29, 2009. The EIR included a substantial alternatives analysis as summarized above in this report. The County concluded that, with the incorporation of various avoidance, minimization and mitigation measures, the project would not have significant environmental impacts. The County incorporated such measures into the project proposal that it submitted to the Commission. Although the County's certification of its EIR was subject to legal challenge, those lawsuits have been resolved in the County's favor.

As described above, the proposed project has been conditioned to avoid adverse environmental impacts. Mitigation measures include submittal of revised plans showing revised treatment plant and pump station layout to avoid habitat issues, revised treatment plant access road to avoid agricultural impacts, and details on measures to be taken to ensure project landscaping is done using only native and non-invasive species; a habitat management plan defining restoration, enhancement, management, and protection of the 80-acre Broderson site, the 12-acre Midtown (Tri-W) site, the roughly 8-acre habitat/buffer area at the Giacomazzi site, and a total of about an acre at the various pump stations sites (a total habitat management plan area of about 100 acres); agricultural easements (2:1) and deed restrictions to address agricultural impacts at the treatment plant site; a septic system decommissioning plan to identify measures to appropriately decommission existing septic tank systems and to connect users to the approved project; a restriction on service to undeveloped Los Osos properties absent an LCP amendment that identifies appropriate and sustainable buildout limits; and an overall Los Osos basin recycled water management plan designed to ensure that implementation of the project maximizes long-term ground and surface water and related resource health and sustainability, including with respect to



offsetting seawater intrusion as much as possible, through aggressive recycled water reuse, water conservation, monitoring, and adaptive management. These conditions will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.



the commission removes the item to the regular calendar or schedules the revised item for a subsequent consent calendar.

§ 13103. Public Hearings on Consent Calendar.

At the public hearing on the consent calendar items, any person may ask for the removal of any item from the consent calendar and shall briefly state the reasons for so requesting. If any three (3) commissioners request that an item be scheduled for public hearing on the regular permit calendar, the item shall be removed from the consent calendar. If any item is removed from the consent calendar, the public hearing on the item shall be continued until it can be scheduled on the regular permit calendar.

ARTICLE 16. REVOCATION OF PERMITS

§ 13104. Scope of Article.

The provisions of this article shall govern proceedings for revocation of a coastal development permit previously granted by a regional commission or the commission.

§ 13105. Grounds for Revocation.

Grounds for revocation of a permit shall be:

- (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.

§ 13106. Initiation of Proceedings.

Any person who did not have an opportunity to fully participate in the original permit proceeding by reason of the permit applicant's intentional inclusion of inaccurate information or failure to provide adequate public notice as specified in Section 13105 may request revocation of a permit by application to the executive director of the commission specifying, with particularity, the grounds for revocation. The executive director shall review the stated grounds for revocation and, unless the request is patently frivolous and without merit, shall initiate revocation proceedings. The executive director may initiate revocation proceedings on his or her own motion when the grounds for revocation have been established pursuant to the provisions of Section 13105.

§ 13107. Suspension of Permit.

Where the executive director determines in accord with Section 13106, that grounds exist for revocation of a permit, the operation of the permit shall be automatically suspended until the commission votes to deny the request for revocation. The executive director shall notify the permittee by mailing a copy of the request for revocation and a summary of the procedures set forth in this article, to the address shown in the permit application. The executive director shall also advise the applicant in writing that any development undertaken during suspension of the permit may be in violation of the California Coastal Act of 1976 and subject to the penalties set forth in Public Resources Code, Sections 30820 through 30823.

§ 13108. Hearing on Revocation.

- (a) At the next regularly scheduled meeting, and after notice to the permittee and any persons the executive director has reason to know would be interested in the permit or revocation, the executive director shall report the request for revocation to the commission with a preliminary recommendation on the merits of the request.
- (b) The person requesting the revocation shall be afforded a reasonable time to present the request and the permittee shall be afforded a like time for rebuttal.
- (c) The commission shall ordinarily vote on the request at the same meeting, but the vote may be postponed to a subsequent meeting if the commission wishes the executive director or the Attorney General to perform further investigation.
- (d) A permit may be revoked by a majority vote of the members of the commission present if it finds that any of the grounds specified in section 13105 exist. If the commission finds that the request for revocation was not filed with due diligence, it shall deny the request.

§ 13108.5. Finality of Regional Commission Decision. - Repealed

ARTICLE 17. RESERVED

§ 13109. Reapplication. - Repealed

ARTICLE 18. RECONSIDERATION

§ 13109.1. Scope of Article.

The provisions of this article shall govern proceedings for reconsideration of terms or conditions of a coastal development permit granted or of a denial of a coastal development permit by the commission.