

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works		(2) MEETING DATE July 17, 2007		(3) CONTACT/PHONE Paavo Ogren, Deputy Director of Public Works (805) 781-5252	
(4) SUBJECT Consideration of Policy Direction on Proposition 218 Property Owner Votes for the Los Osos Wastewater Project					
(5) SUMMARY OF REQUEST Pursuant to Assembly Bill 2701 (Blakeslee), the County must conduct a Proposition 218 property owner vote to develop assessment funding for a community wastewater project if the County is going to implement the project. Distinguishing how project issues differ between developed versus undeveloped properties, and appropriate policy direction, is needed for overall project planning and development.					
(6) RECOMMENDED ACTION It is our recommendation that your Honorable Board adopt the proposed policy in Exhibit "A" regarding Proposition 218 Property Owner votes for the Los Osos wastewater project.					
(7) FUNDING SOURCE(S) General Fund		(8) CURRENT YEAR COST N/A		(9) ANNUAL COST N/A	
(10) BUDGETED? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A					
(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): Central Coast Regional Water Quality Control Board, Los Osos Community Services District, Monarch Grove Homeowners Association, California Coastal Commission					
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____					
(13) SUPERVISOR DISTRICT(S) <input type="checkbox"/> 1st, <input checked="" type="checkbox"/> 2nd, <input type="checkbox"/> 3rd, <input type="checkbox"/> 4th, <input type="checkbox"/> 5th, <input type="checkbox"/> All			(14) LOCATION MAP <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A		(15) Maddy Act Appointments Signed-off by Clerk of the Board <input checked="" type="checkbox"/> N/A
(16) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Hearing (Time Est. _____) <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Board Business (Time Est. 45 MIN.)			(17) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions (Orig + 4 copies) <input type="checkbox"/> Contracts (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input checked="" type="checkbox"/> N/A		
(18) NEED EXTRA EXECUTED COPIES? <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A			(19) BUDGET ADJUSTMENT REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A		
(20) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A			(21) W-9 <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		(22) Agenda Item History <input type="checkbox"/> N/A Date: June 12, 2007
(23) ADMINISTRATIVE OFFICE REVIEW					

Reference: 07JUL-17-BB-1



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PUBLIC WORKS

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TO: Board of Supervisors

FROM: Paavo Ogren, Deputy Director of Public Works

VIA: Noel King, Director of Public Works

DATE: July 17, 2007

SUBJECT: Consideration of Policy Direction on Proposition 218 Property Owner Votes for the Los Osos Wastewater Project

Recommendation

It is our recommendation that your Honorable Board adopt the proposed policy in Exhibit "A" regarding Proposition 218 Property Owner votes for the Los Osos wastewater project.

Discussion

On January 1, 2007, Assembly Bill 2701 (Blakeslee) went into effect and transferred the sole authority to develop a community wastewater project in Los Osos from the Los Osos Community Services District (LOCSO) to the County. On October 3, 2006 your Board approved a \$2.0 million appropriation from the General Fund budget for the Public Works Department to undertake efforts needed to conduct a Proposition 218 assessment vote of property owners, which was prescribed by AB 2701. At this time, it is necessary for your Board to consider which property owners may submit ballots pursuant to requirements of Proposition 218 so that the assessment engineer's report can be prepared for your consideration in the near future.

Staff is currently following the Board direction established on June 19, 2006. At that time, your Board adopted "key elements" of a legislative platform, which provided direction while AB 2701 was moving through the legislative processes of the State Assembly and State Senate – ultimately leading to approval by Governor Schwarzenegger on September 20, 2006. Also on June 19, 2006, your Board adopted project related policies for the Public Works Department to follow. Those policies are generally broad-based in nature. Now that the project's "Fine Screening" report has been released for public review, it is also important to begin considering more detailed project policies in anticipation of future steps.

At this time, identifying property owners who may submit ballots on the Proposition 218 vote is important to provide the assessment engineer with direction in preparing the assessment engineer's report. That report is required by Proposition 218, and it includes the method used to determine special benefits for properties and to calculate the assessments proposed on those properties. As with many issues with Los Osos, the topic is complex and involves legal, engineering, finance and regulatory issues associated with overall project efforts. A more detailed review of those issues is covered in the attached report entitled "Proposition 218 – A Property Owner Vote".

The following is a summary of the primary issues reviewed in the attached report and considered by staff while developing the recommended policies in Exhibit "A."

- AB 2701 stipulates that the County will conduct a Proposition 218 assessment vote of property owners.
- A community wastewater project benefits both developed and undeveloped properties.
 - Developed Properties:
 - The owners of developed property located within the "prohibition zone"¹ established by the Central Coast Regional Water Quality Control Board (Regional Water Board) are currently subject to, or threatened with, regulatory enforcement actions as a result of existing septic discharges.
 - Undeveloped Properties:
 - The owners of undeveloped property that remain within the prohibition zone are not subject to the same regulatory actions affecting owners of developed property but they are impaired from developing their property due to the non-existence of required wastewater infrastructure and other issues.
 - The existing Coastal Development Permit establishes specific conditions that must be satisfied before owners of undeveloped properties can develop their properties, even if the wastewater project is completed.
 - Allowing the owners of property responsible for discharging, and facing or threatened with regulatory enforcement action, to decide on the outcome of the Proposition 218 vote required by AB 2701 creates a direct relationship between those facing regulatory actions and those who decide on whether the County may proceed with development of a community wastewater project.

¹ See Attachment "A" to the attached report entitled "Proposition 218 – A Property Owner Vote"

- The result of the Proposition 218 vote by owners of developed properties is independent of providing service to undeveloped properties and in no way precludes the owners of undeveloped properties from participating in the wastewater project.

Several special cases also exist within the prohibition zone, which are further discussed in the attached report. While final direction on those cases is not needed at this time, staffs' recommendation included in Exhibit "A" includes allowing the individual owners of developed properties affected by those special cases to also cast ballots in the upcoming Proposition 218 vote. Your Board's final decision on those cases will be reflected in actions at the time that your Board is considering the assessment engineer's report and providing staff with direction to conduct the actual Proposition 218 vote, which is currently scheduled for August 28, 2007.

Other Agency Involvement/Impact

The Regional Water Board established the wastewater prohibition zone pursuant to Resolution No. 83-13, adopted on September 16, 1983. The Los Osos Community Services District currently operates wastewater facilities for the Bayridge Estates and Vista de Oro septage collection systems. The Monarch Grove Homeowners Association currently operates the Monarch Grove wastewater treatment facilities. The California Coastal Commission established permit conditions on the project. Numerous other agencies are involved in permitting and funding efforts.

Financial Considerations

The proposed policy recommendations do not have financial implications at this time. Instead, the policies recognize that the multiple steps and decisions by constituents with diverse interests will be needed for a County implemented wastewater project in Los Osos.

Results

The proposed policy recommendations would allow those owners of properties that are currently subject to, or threatened with, enforcement actions by the Regional Water Board to make the decision on whether they want the County to implement a community wastewater project on their behalf by supporting the Proposition 218 assessments that will be proposed in the near future for funding of a project.

Attachments: Exhibit "A" – Policy Recommendation regarding Proposition 218 Property Owner votes for the Los Osos wastewater project
Report entitled – "Proposition 218 – A Property Owner Vote"
Vicinity Map

File: 310.85.02

Reference: 07JUL17-BB-1

Exhibit "A"
Los Osos Wastewater Project
Proposition 218 Property Owner Votes

1. That the Proposition 218 vote required by AB 2701 is conducted for developed parcels subject to, or threatened with, regulatory enforcement action by the Central Coast Regional Water Quality Control Board (Regional Water Board).
2. Staff shall prepare a report on options for undeveloped properties, both within the boundaries of the "prohibition zone" developed by the Regional Water Board, as well as undeveloped parcels outside of the prohibition zone but within the Los Osos Urban Services line, including but not limited to the following considerations:
 - a. Wastewater infrastructure needed for those undeveloped parcels before they can be developed.
 - b. Water supply infrastructure needed for those undeveloped parcels before they can be developed, which shall include consultation and possible development of conceptual terms of agreements with the water purveyors of Los Osos.
 - c. Habitat Conservation Resource issues that may need to be resolved before those undeveloped parcels can be developed.
 - d. General Plan issues that may need to be resolved before those undeveloped properties can be developed.
 - e. Options for a second Prop 218 vote for owners of undeveloped parcels, including but not limited to the following:
 - i. "Availability" assessments pursuant to the Uniform Standby Charge Procedures Act (Chapter 12.4 (commencing with Section 54984) of Part 1 of Division 2 of Title 5).
 - ii. A "resource project" that would cover proportional special benefits for those undeveloped parcels, including wastewater infrastructure, water supply infrastructure, and/or habitat conservation resources that may be needed for those undeveloped parcels before they can develop.
 - f. Options for development of wastewater and water supply infrastructure capacity for undeveloped parcels, and provisions for habitat conservation, with the imposition of development related fees which would be paid at the time of the development of those undeveloped parcels in lieu of a second Prop 218 vote.
 - g. Other considerations that may be identified during the preparation of the report.

Proposition 218 – A Property Owner Vote

Summary

In November 1996, California voters approved Proposition 218 (Prop 218), commonly referred to as the “right to vote on taxes act.” It is incorporated into the California State Constitution as Article XIII D, which establishes requirements for local agencies relating to property related assessments. Under the authority of Assembly Bill 2701 (AB 2701), the County of San Luis Obispo must propose assessments to support funding of the Los Osos wastewater project. If the Prop 218 vote is successful and authorizes the imposition of assessments, then AB 2701 establishes a “due diligence” period to provide the County with the opportunity to work on additional project details and determine whether the County Board of Supervisors will direct the implementation of a project.

The importance of the order of first, the Prop 218 vote and then second, the due diligence period includes the legislative recognition that a successful Prop 218 vote is not the only factor that could affect a successful project. Environmental review and permitting, which have always been envisioned during the due diligence process since prior to the approval of AB 2701, are some of the additional factors that have significant influence on public works projects. Nevertheless, the Prop 218 vote is an important “first step” because it will determine the answer to the single greatest question...

Do Los Osos property owners want the County of San Luis Obispo to implement a community wastewater project?

Several requirements exist under Article XIII D, including the following:

“An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed.”

This is an especially important provision because it creates the question...

Which parcels will the County propose to impose assessments upon?

On this matter, staff is recommending that your Board provide the following direction:

1. That the Proposition 218 vote required by AB 2701 is conducted for developed parcels subject to, or threatened with, regulatory enforcement action by the Central Coast Regional Water Quality Control Board (Regional Water Board).
2. Staff shall prepare a report on options for undeveloped properties, both within the boundaries of the “prohibition zone” developed by the Regional Water Board, as well as undeveloped parcels outside of the prohibition zone but within the Los Osos Urban Services line, including but not limited to the following considerations:

- a. Wastewater infrastructure needed for those undeveloped parcels before they can be developed.
- b. Water supply infrastructure needed for those undeveloped parcels before they can be developed, which shall include consultation and possible development of conceptual terms of agreements with the water purveyors of Los Osos.
- c. Habitat Conservation Resource issues that may need to be resolved before those undeveloped parcels can be developed.
- d. General Plan issues that may need to be resolved before those undeveloped properties can be developed.
- e. Options for a second Prop 218 vote for owners of undeveloped parcels, including but not limited to the following:
 - i. "Availability" assessments pursuant to the Uniform Standby Charge Procedures Act (Chapter 12.4 (commencing with Section 54984) of Part 1 of Division 2 of Title 5).
 - ii. A "resource project" that would cover proportional special benefits for those undeveloped parcels, including wastewater infrastructure, water supply infrastructure, and/or habitat conservation resources that may be needed for those undeveloped parcels before they can develop.
- f. Options for development of wastewater and water supply infrastructure capacity for undeveloped parcels, and provisions for habitat conservation, with the imposition of development related fees which would be paid at the time of the development of those undeveloped parcels in lieu of a second Prop 218 vote.
- g. Other considerations that may be identified during the preparation of the report.

Discussion

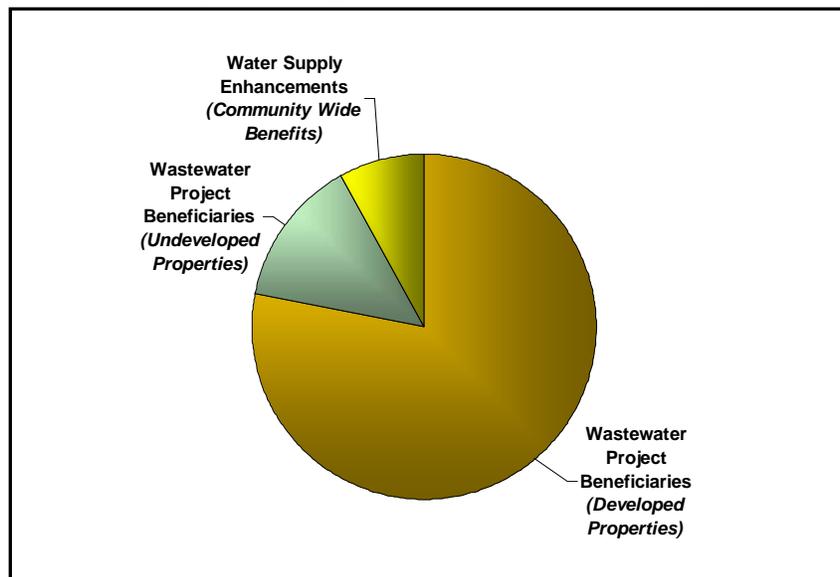
The distinction between developed parcels and undeveloped parcels is important because the issues facing owners of developed parcels and the owners of undeveloped parcels are significantly different.

- o Owners of developed parcels are subject to, or threatened with, significant enforcement actions. Staff recommendations are based on a policy position that the owners of the parcels subject to, or threatened with, enforcement action should make the decision on whether the County can proceed with the development of a community wastewater project under the authority of AB 2701.

- Owners of undeveloped parcels within the prohibition zone will need more than the development of wastewater infrastructure before they may develop their parcels. Although the proposal and imposition of wastewater “availability assessments” pursuant to Prop 218 may not require those other issues to be resolved, the water supply issue is a significant community-wide issue, including all undeveloped parcels, and separate treatment of undeveloped parcels is warranted from the public policy position that assessments should not be imposed on undeveloped parcels prior to resolution of infrastructure issues needed for those parcels to develop.

The adjacent chart illustrates the costs identified in the draft Fine Screening report prepared by the project team and their approximate relationship to overall benefits (special and general) of wastewater and water supply infrastructure. It is important to recognize that actual dollar amounts and percentages have been intentionally omitted from the chart since analysis has not been completed and the chart is intended for overall illustrative purposes only.

It is also important to recognize that the water supply enhancements identified in the draft report only include those that could be directly developed with the wastewater project, which would be insufficient to mitigate existing sea water intrusion, nor would they



be sufficient to meet water supply at build-out. Consequently, resolution of water supply needs for undeveloped parcels will require involvement with the water purveyors and is not the sole purview of the County – further limiting the County’s ability to assure owners of undeveloped parcels that they can in fact develop once a community wastewater project is constructed and operational.

Coastal Development Permit (CDP) Requirements

The existing Coastal Development Permit from the California Coastal Commission for a Los Osos wastewater project, dated January 19, 2005 (Permit Application No.: A-3-SLO-03-113) includes some important conditions that relate to undeveloped parcels and are unrelated to the location of a treatment facility or the technologies utilized in treating and disposing of wastewater and related solids. The following list of those conditions is included in this report to substantiate the policy position of staff – i.e. that the development of a community wastewater project will not be sufficient for undeveloped properties to be developed, that additional issues will need to be resolved, and that those issues are not the sole purview of the County of San Luis Obispo. Since the

coastal permit was issued to the Los Osos Community Services District, the references to the District may change to the County under a County implemented project. In addition, conditions may be subject to change.

CDP Condition #34

Prior to operation, the Los Osos Community Services District shall prepare and implement a comprehensive water management plan for the Los Osos groundwater basin that identifies management strategies for achieving a sustainable water supply. To prevent the wastewater treatment system from inducing growth that cannot be safely sustained by available water supplies, the District is prohibited from providing service to undeveloped parcels 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.

Notwithstanding any contrary provision of the Commission's regulations, including Section 13166, the District may apply for, and the Commission shall consider, an application for amendment to this permit condition at, or prior to the time that the treatment plant is operational, to authorize the District to issue Will Serve letters to properties that would otherwise qualify.

CDP Condition #76

Prior to providing wastewater treatment service to undeveloped parcels, the LOCSO, in coordination with the California Department of Fish and Game (CDFG), the US Fish and Wildlife Service (USF&WS), San Luis Obispo County and the California Coastal Commission shall prepare and implement a Habitat Conservation Plan (HCP) for the long-term preservation of habitat remaining with the Los Osos Greenbelt, including habitat remaining on individual vacant lots. The HCP shall:

- identify the habitat resources and the quality of those resources on the remaining vacant properties within the South Bay Urban Area and Los Osos Greenbelt;
- specify measures to avoid and minimize impacts to ESHA from buildout of the Service area, and to mitigate unavoidable impacts through acquisition, protection, and/or restoration of equivalent habitat within the planning area;
- implement such measures through one or more amendments to the Estero Area Plan that integrates the HCP, as approved by the US Fish and Wildlife Service and Department and Fish and Game, with LCP standards for development in the South Bay Urban Area. This LCP amendment must become fully effective, and all permits required by state and federal Endangered Species Acts shall be issued, before LOCSO makes any final commitment to provide wastewater treatment service to undeveloped properties.

The range of potential conservation programs to be considered in the HCP shall include, but not be limited to the following:

- a) New development programs and standards that maximize preservation of sensitive biological resources in the Los Osos through:
 - i) Transfer of development credits
 - ii) Clustering
 - iii) Avoidance of sensitive resources in site design
 - iv) Changes in density and land use
 - v) Incorporation of open space into the design of new development
- b) Programs aimed at facilitating coordination among agencies and organizations involved in management and conservation/preservation of sensitive resources, including USF&WS, CDFG, California Coastal Commission, San Luis Obispo County, the LOCSD, MEGA, NEP, Land Conservancy of San Luis Obispo County, and others;
- c) The creation of a land bank program to facilitate the purchase, restoration, and management of properties with high quality habitat within the Greenbelt, to be repaid over time from fees on new building permits; and,
- d) Programs for the acquisition, restoration, and management of properties within the Greenbelt with significant habitat resources.

Notwithstanding any contrary provision of the Commission's regulations, including Section 13166, the District may apply for, and the Commission shall consider, an application for amendment to this permit condition at, or prior to the time that the treatment plant is operational, to authorize the District to issue Will Serve letters to properties that would otherwise qualify.

CDP Condition #82

No guarantees of Development Approvals. Approval of this permit, or any method of financing the project utilized by the LOCSD (e.g., the established assessment program), does not guarantee Coastal Commission or local government approval of any new or intensified uses within the service area. All new development proposals must be reviewed for consistency with the San Luis Obispo County certified Local Coastal Program (and/or the California Coastal Act, as applicable); such review shall consider, among other issues, the environmental impacts of the new development, including the impacts associated with the installation of lateral connections necessary to tie into the approved collection system. **WASTEWATER TREATMENT SERVICE SHALL ONLY BE PROVIDED TO DEVELOPMENTS THAT HAVE OBTAINED THE REQUIRED COASTAL DEVELOPMENT APPROVALS IN A MANNER CONSISTENT WITH SUCH APPROVALS.**

PRIOR TO THE ISSUANCE OF THE PERMIT, the permittee shall submit, for the Executive Director review and approval, the public notice to all property owners of record within the service area that includes a copy of this condition, and an explanation of its effect upon the ability to obtain wastewater treatment service for future development.

PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, said notice shall be mailed to all property owners within the service, or noticed in three local newspapers and included in public information handouts provided by the County.

Developed Properties – Special Cases

The policy recommendations included in this report are proposed to provide distinction between developed and undeveloped parcels, but do not at this time create a distinction between the types of developed parcels subject to regulatory enforcement actions, or special cases. Those issues will be specifically addressed in the assessment engineers' report. That report is required by Article XIID of the Constitution, and it will be part of your Board's future consideration on the current project efforts leading to the Prop 218 vote. Nevertheless, it is noteworthy to provide preview of developed parcels within the prohibition zone that fall within special cases. Attachment "A" provides a vicinity map and identifies the following:

- Parcels currently served by the Monarch Grove Homeowners Association
- Parcels currently served by the Los Osos Community Services District
- Parcels within the Martin Tract and Bayview Heights Tract, which had not been included in previous wastewater project proposals, but are nevertheless subject to enforcement actions by the Regional Water Board.

Monarch Grove

Monarch Grove was approved on June 10, 1993. A condition of its development was the construction of a wastewater reclamation facility. The LOCSD has excluded the properties from proposed assessments, and had developed a separate agreement with the homeowners association to provide service to its properties.

LOCSD Service Areas – Vista de Oro and Bayridge Estates

The \$6+ million in fines imposed by the Regional Water Board against the LOCSD were for compliance failures specifically relating to these two centralized septic systems. The individual property owners do not have septic tanks. Instead, wastewater flows through a gravity system to large septic tanks and leach fields that are centralized for those neighborhoods. The individual properties have been included in prior assessment districts, which is again anticipated for the upcoming Prop 218 vote under the authority of the County.

Martin Tract and Bayview Heights Tract

These tracts are unique within the prohibition zone from a regulatory standpoint. The average lot size exceeds one (1) acre and they have historically been excluded from assessment proceedings since, provided a community wastewater project is constructed, the Regional Water Board would not require connection of these properties. In 2000, by Order No. 00-12, the Regional Water Board approved some additional development within these tracts, subject to certain conditions, and exempted those recently developed parcels from future regulatory actions. The previously developed properties do not, however, have exemptions.

Discussions with staff of the Regional Water Board have indicated that future exemptions are being withheld pending development of a community wastewater project. As a result, parcels within the Martin and Bayview Heights tracts may benefit from the development of a community wastewater project, but whether that benefit is a "special benefit" of a wastewater project is a subject of your Board's future consideration.

Los Osos Wastewater Prohibition Zone



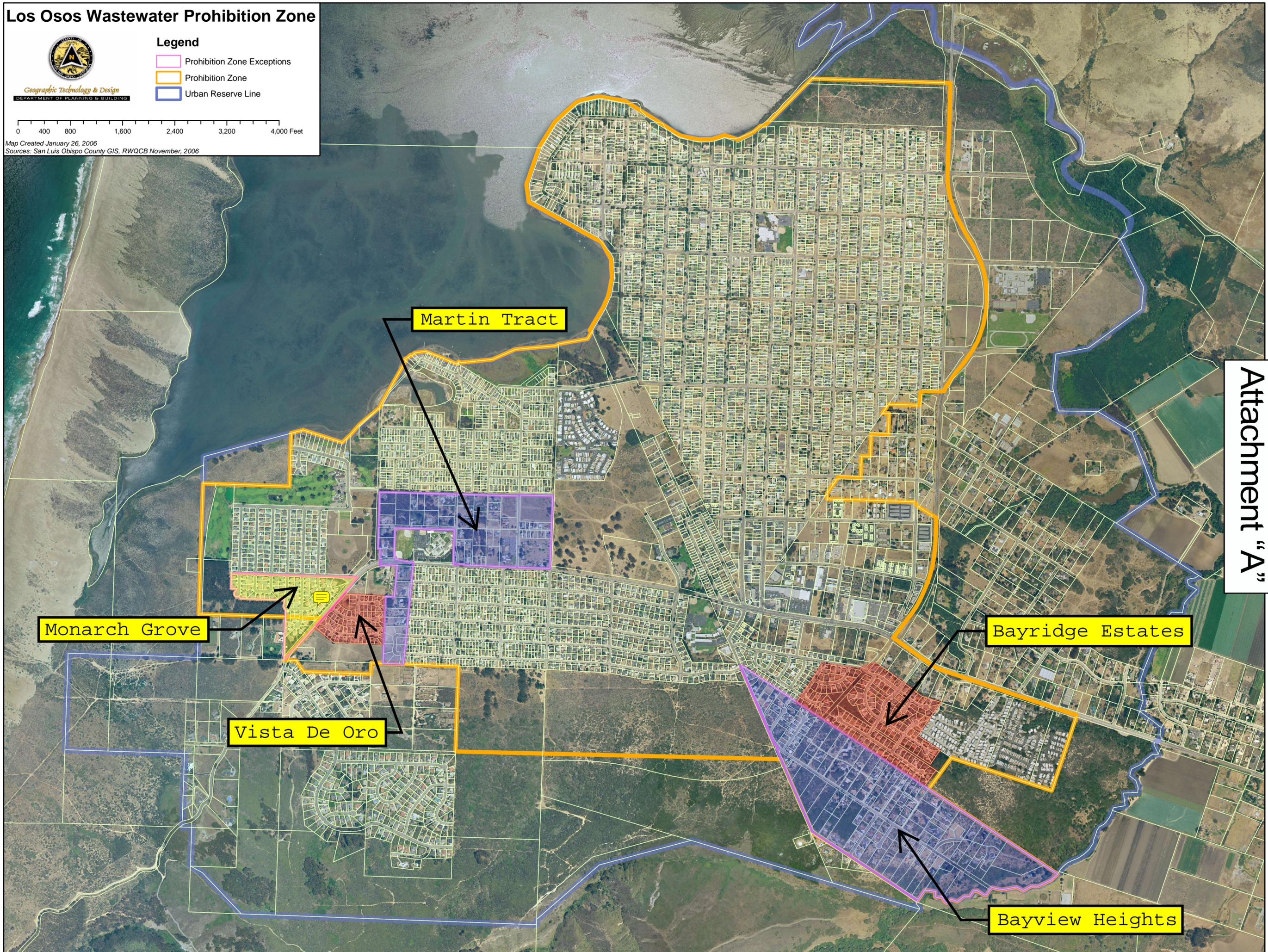
Geographic Technology & Design
DEPARTMENT OF PLANNING & BUILDING

Legend

- Prohibition Zone Exceptions
- Prohibition Zone
- Urban Reserve Line

0 400 800 1,600 2,400 3,200 4,000 Feet

Map Created January 26, 2006
Sources: San Luis Obispo County GIS, RWQCB November, 2006



Attachment "A"