



State Water Resources Control Board



Division of Financial Assistance

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Linda S. Adams
Secretary for

Environmental Protection

JAN 30 2009

Arnold Schwarzenegger
Governor

Mr. Mark Hutchinson
County of San Luis Obispo
Department of Public Works
1050 Monterey, County Govt. Center, Room 207
San Obispo, CA 93402

RECEIVED

FEB - 4 2009

COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PUBLIC WORKS

Dear Mr. Hutchinson:

DRAFT ENVIRONMENTAL IMPACT REPORT (EIR) FOR THE COUNTY OF SAN LUIS OBISPO (COUNTY); LOS OSOS WASTEWATER PROJECT (PROJECT); CLEAN WATER STATE REVOLVING FUND (CWSRF) NO. C-06-5230-110; STATE CLEARINGHOUSE (SCH) NO. 2007121034

Thank you for the opportunity to review the Draft EIR. We understand that the County is pursuing funds from the Clean Water State Revolving Fund (CWSRF) Program for the Project. As a funding agency and a State agency with jurisdiction by law to preserve, enhance, and restore the quality of California's water resources, the State Water Resources Control Board (State Water Board) is providing the following information for the California Environmental Quality Act (CEQA) document prepared for the Project.

Please provide State Water Board with the following documents applicable to the proposed Project: (1) eight copies of the draft and final EIR, (2) the resolution certifying the EIR, making CEQA findings, and adopting a Statement of Overriding Considerations, if applicable, (3) all comments received during the review period and the County's responses to those comments, (4) the adopted Mitigation Monitoring and Reporting Program, and (5) the Notice of Determination filed with the Governor's Office of Planning and Research. In addition, we would appreciate notices of any hearings or meetings held regarding environmental review of any project to be funded by the State Water Board.

The CWSRF Program is partially funded by the U.S. Environmental Protection Agency (USEPA) and requires additional "CEQA-Plus" environmental documentation and review. The State Water Board is required to consult directly with agencies responsible for implementing federal environmental laws and regulations. Any environmental issues raised by federal agencies or their representatives will need to be resolved prior to State Water Board approval of a CWSRF funding commitment for the proposed Project. Please note the State Water Board has included additional information for the CWSRF Program and CEQA process (enclosures).

It is important to note that prior to a CWSRF funding commitment, projects are subject to provisions of the Federal Endangered Species Act and must obtain Section 7 clearance from the U.S. Fish and Wildlife Service (USFWS), and/or National Marine Fisheries Service (NMFS) for any potential effects to special status species. Please be advised that the State Water Board will consult informally with USFWS, and/or NMFS regarding all federal special status species the Project has the potential to impact if the Project is to be funded under the CWSRF Program. USEPA will initiate formal consultation with USFWS and NMFS when necessary. The County will need to identify whether the Project will involve any direct effects from construction activities or indirect effects, such as growth inducement, that may affect federally listed threatened, endangered, or candidate species that are known, or have a potential to occur on-site, in the surrounding areas, or in the service area, and to identify applicable conservation measures to reduce such effects.

California Environmental Protection Agency

In addition, CWSRF projects must comply with federal laws pertaining to cultural resources, specifically Section 106 of the National Historic Preservation Act. USEPA has delegated to the State Water Board responsibility for ensuring compliance with Section 106 for the CWSRF Program. The State Water Board's Cultural Resources Officer (CRO) must consult directly with the California State Historic Preservation Officer (SHPO). SHPO consultation is initiated when sufficient information is provided by the CWSRF applicant. Please contact the CRO, Ms. Cookie Hirn, at (916) 341-5690, to find out more about the requirements. Note that the County will need to identify the Area of Potential Effects (APE), including construction, staging areas, and depth of any excavation. The APE is three-dimensional and includes all areas that may be affected by the Project. The APE includes the surface area and extends below ground to the depth of any Project excavations.

Other federal requirements pertinent to the Project under the CWSRF Program include the following:

- A. Compliance with the federal Clean Air Act (CAA): (a) Provide air quality studies that may have been done for the Project; and (b) if the Project is in a nonattainment area or attainment area subject to a maintenance plan; (i) provide a summary of the estimated emissions (in tons per year) that are expected from both the construction and operation of the Project for each federal criteria pollutant in a nonattainment or maintenance area, and indicate if the nonattainment designation is moderate, serious, severe, or extreme (if applicable); (ii) if emissions are above the federal de minimis levels, but the Project is sized to meet only the needs of current population projections that are used in the approved State Implementation Plan for air quality, quantitatively indicate how the proposed capacity increase was calculated using population projections.
- B. Compliance with the Farmland Protection Policy Act: Identify whether the Project will result in the conversion of farmland. State the status of farmland (Prime, Unique, or Local Statewide Importance) in the Project area and determine if this area is under a Williamson Act Contract.
- C. Compliance with the Wild and Scenic Rivers Act: Identify whether or not any Wild and Scenic Rivers would be potentially impacted by the Project and include conservation measures to minimize such impacts.

As a responsible Agency under CEQA, State Water Board staff may have further comments in addition to the comments below. Please continue to consult with State Water Board staff through the CEQA process.

Following are specific comments on the Draft EIR:

1. Page 5.5-73 of Appendix G-2 Biological Resources states "This section analyzes proposed projects 1 through 4 as described in detail in Section 5.1 of the Draft EIR." Section 5.1 of the Draft EIR does not describe proposed projects 1 through 4 in detail. Section 5.1 contains a "how to read and understand" section as well as a land use and planning section. Please clarify where in the EIR proposed Projects 1 through 4 are described in detail.
2. Page 5.5-73 of appendix G-2 states "mitigation measures for all proposed projects 1 through 4 are provided on pages 5.5-54 though 5.5-62 and pages 5.5-78 and 5.5-79 of this section of the Draft EIR." Section 5.5 of Draft EIR includes pages 5.5-1 through 5.5-52. Please clarify where mitigation measures for the proposed Projects are located in the Draft EIR.

3. Mitigation Measure 5.5-A1 states "The proposed project results in a take of federally listed species and their habitat. Prior to project approval, **the County shall enter into formal consultation with the USFWS and NMFS**. A Biological Opinion (BO) will be prepared by the USFWS and NMFS for any proposed action that may result in the potential take of a listed species and its habitat." For CWSRF-funded Projects the State Water Board initiates informal consultation with USFWS and/or NMFS, or will request the USEPA initiate formal consultation. Please submit any completed biological assessments for the Project to the State Water Board.
4. Mitigation Measure 5.5-A14 states "The proposed project should minimize to the maximum extent feasible any potential impacts to non-listed plant and lichen species designated as sensitive by the CNPS, including Blochman leafy daisy, saint's daisy, San Luis Obispo wallflower, curly-leafed monardella, dune almond, spiraled old man's beard, Los Osos black and white lichen, long-fringed parmotrema, and splitting yarn lichen." Please change "should" to "shall" or "must," since "should" is defined in the CEQA Guidelines (Article 1, Section 15005) as an advisory element, whereas "shall" or "must" identifies a mandatory element. For more information on CEQA terminologies refer to CEQA guidelines (Article 1, Section 15005). Please make this correction for all mitigation measures listed for the proposed Project.
5. Page 5.11-6 states "Depending on the final design and siting of the facility, approximately 20 acres of Prime Agricultural Land and or Farmland of Statewide Importance as defined by the FMMP as well as the California Coastal Commission would be affected." CEQA Guidelines Article 7, Section 15093, states "CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project." If the County plans to continue with the Project with a significant and unavoidable impact, a Statement of Overriding Considerations (SOC) needs to be prepared. For CWSRF funding, provide a copy of the SOC to the State Water Board.
6. Page 5.5-104 of Appendix G-2 Biological Resources states "All construction access and staging would be restricted to existing disturbed upland areas. Implementation of avoidance measures and construction BMPs would reduce potential impacts to this species to less than significant." Please identify Project specific BMPs and avoidance measures that will reduce potential impacts to the California red-legged frog.
7. Page 5.3-23 of Appendix E states that "the Project would include excavating a trench to place pipelines across the Los Osos Creek drainage." The EIR then mentions that "the implementation of measures described in the Stormwater Pollution Prevention Plan, the Sedimentation and Erosion Control Plan, and the Stormwater Management Plan would ensure that construction activities would not violate water quality standards or waste discharge requirements" and therefore, no mitigation measures are listed under Section 5.3 (Drainage). However, Biological Resources Mitigation Measures 5.5-A6 and 5.5-A7 directly mitigate the impacts caused by excavating trenches in Los Osos Creek. Clarify if these mitigation measures should also be listed under Drainage since they address potential water quality impacts.

8. Mitigation Measure 5.5-A6 states that "all Project work areas within and around Los Osos Creek shall be restored to pre-existing contours upon completion of the work." Include the methods that will be implemented to restore the pre-existing conditions of the creek and how the disturbed area of the creek will be monitored to ensure the success of the reestablishment of the creek and surrounding areas.
9. Page 5.6-13 states that "Pumps associated with the collection system, including grinder pumps and pump stations will be constructed with a design/build alternative" and that "Depending upon location, some of these could have the potential to impact historic architectural structures." Please discuss how the placement of these pumps and pump stations may potentially affect historic architectural structures.
10. Page 5.6-18 Impact 5.6-E states that "The project would conflict with the California Coastal Act of 1976, Section 30244." This Section of the Act states that "Where development would adversely impact archeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required." Please discuss how the Project would conflict with Section 30244 of the California Coastal Act.
11. Page 5.6-36 states that "The placement of the treatment plant would have an effect on the prehistoric and historic era archeological site (SLO-2569) situated on the Giacomazzi parcel." Please discuss the effects that the treatment plant placement will have on SLO-2569.
12. Page 5.6-36 states that "it is unknown whether there would be effects to previously recorded archeological sites SLO-13 or SLO-25." The County will need to further assess these sites and associated information and discuss the potential effects to archeological sites SLO-13 or SLO-25 as a result of Project operation and construction.
13. Page 5.6-36 states that "Sprayfields proposed for the Tonini parcel would affect three prehistoric sites (SLO-2571, SLO-2572, and SLO-2573) and one historic-era site (SLO-2574H)." Please discuss how construction and operation of the sprayfields will affect the four sites and the extent to which these sites will be impacted.
14. The County has stated that SLO-1212, SLO-1795, SLO-2007 are "Recorded sites that would not be significantly affected based on prior evaluation." Please discuss the evaluations that were used to determine that these sites would not be impacted by Project construction and operation. Identify how the conclusion was made.
15. Page 5.9-23 states that "The County has been designated as a nonattainment area for the State PM₁₀ standard. The County achieved ozone attainment status in January 2004." However, table 5.9-6: SLOAPCD Attainment Status states that both Ozone and PM₁₀ are in nonattainment, which contradicts the previous statement of the County's attainment status for Ozone. Please specify whether or not Ozone is in attainment for state standards within the document and make the narrative and table 5.9-6 consistent with each other.
16. Page 5.9-39 states "Proposed Project 2 would result in a potential significant NO_x and PM₁₀ emissions impacts during construction of the collection system." Please specify which mitigation measure will mitigate any potential significant impacts due to NO_x and PM₁₀ emissions.



Thank you once again for the opportunity to review the County's environmental document. If you have any questions or concerns, please feel free to contact me at (916) 341-5690, or by e-mail at MHirn@waterboards.ca.gov

Sincerely,


 Cookie Hirn
Cultural Resources Officer

Enclosures (4)

cc: State Clearinghouse
(Re: SCH# 2007121034)
P. O. Box 3044
Sacramento, CA 95812-3044

Ms. Julie Vanderwier
U.S. Fish and Wildlife Service
Ventura Field Office
2493 Portola Road # B
Ventura, CA 93003-7726



ENVIRONMENTAL COMPLIANCE PROCESS GUIDELINES

These guidelines detail the steps that applicants must take in complying with environmental requirements for the Clean Water State Revolving Fund (CWSRF) Program administered by the State Water Resources Control Board (State Water Board), Division of Financial Assistance (Division).

Applicants for State Water Board financial assistance must comply with the California Environmental Quality Act (CEQA). Additionally, the State Water Board is required to comply with CEQA when funding a project. The Division's Regional Programs Unit (RPU) fulfills the State Water Board's responsibility by reviewing the CEQA documents provided by the applicant to develop the State Water Board's findings. Applicants also may be required to comply with additional federal cross-cutting environmental regulations. *Refer to the attachments following these guidelines, which include: CEQA Process Flow Chart, CEQA Checklist for the Applicant, Evaluation Form for Environmental Review and Federal Coordination, and Basic Criteria for Cultural Resources Reports.*

Since each project is unique, applicants should contact the Division's RPU early in the project planning process. Please contact **Ms. Michelle Jones at (916) 341-6983** for more information on the CWSRF environmental compliance process and the Division's Cultural Resources Officer, **Ms. Cookie Hirn at (916) 341-5690** for compliance with Section 106 of the National Historic Preservation Act.

It is important for the State Water Board to receive the CEQA document during the draft stage for review and comment. This helps ensure that the State Water Board's comments are addressed during the draft stage rather than after the CEQA document has been adopted or certified by the Lead Agency. Applicants are strongly encouraged to submit the draft CEQA document to the State Water Board's Project Manager before or during the State Clearinghouse review period. Administrative draft CEQA documents may also be submitted to the State Water Board's Project Manager for review and comment by the RPU before the State Clearinghouse review period begins. *Refer to the attached CEQA Process Flowchart for when Responsible Agency and Lead Agency coordination is necessary.*

The CEQA and CEQA Guidelines can be accessed at: <http://ceres.ca.gov/ceqa/>.

Additional guidance can be obtained from the *CEQA Deskbook 1999 Edition with 2001 Supplement*, published by Solano Press Books. This book provides a step-by-step guide on how to comply with CEQA and may explain information in a more straight-forward manner than the CEQA Guidelines.

Note: If the applicant is not the Lead Agency under CEQA (i.e., a responsible agency under CEQA that is using another agency's CEQA document), the applicant will need to:

1. Make its own CEQA findings and approve the mitigation measures applicable to the proposed funded project and any applicable Statement of Overriding Considerations;
2. File the Notice of Determination (NOD) with the Governor's Office of Planning and Research (OPR) and;
3. Provide to the State Water Board's Project Manager a copy of the resolution or meeting minutes approving the project and adopting or certifying the CEQA document and the date-stamped copy of the NOD filed with the OPR.

If the applicant uses a Notice of Exemption (NOE), the applicant files the NOE with the County Clerk of each county in which the project will be located. Since the project is being funded by the State Water Board, the applicant also must file the NOE with the OPR. This reduces the statute of limitations from 180 days to 35 days, and notifies other state agencies and the public that the applicant determined the project was exempt from the CEQA requirements. There is no cost for filing an NOE with the OPR.

State Water Resources Control Board (State Water Board)
Clean Water State Revolving Fund Program

Evaluation Form for Environmental Review and Federal Coordination

1. **Federal Endangered Species Act, Section 7:**

Does the project involve any direct effects from construction activities, or indirect effects such as growth inducement that may affect federally listed threatened or endangered species that are known, or have a potential, to occur on-site, in the surrounding area, or in the service area?

No. Discuss why the project will not impact any federally listed special status species:

Yes. Include information on federally listed species that could potentially be affected by this project and any proposed avoidance and compensation measures so that the State Water Board can initiate informal/formal consultation with the applicable federally designated agency. Document any previous ESA consultations that may have occurred with the project.

Attach project-level biological surveys, evaluations analyzing the project's direct and indirect effects on special-status species, and a current species list for the project area.

2. **National Historic Preservation Act, Section 106:**

Identify the Area of Potential Effects (APE), including construction, staging areas, and depth of any excavation. (Note that the APE is three dimensional and includes all areas that may be affected by the project, including the surface area and extending below ground to the depth of any project excavations.)

Attach a current records search with maps showing all sites and surveys drawn in relation to the project area, and records of Native American consultation.

3. Clean Air Act: Is the project subject to a State Implementation Plan (SIP) conformity determination?

No. The project is in an attainment or unclassified area.

Yes. The project is in a nonattainment area or attainment area subject to maintenance plans. Include information to indicate the nonattainment designation (e.g. moderate, serious or severe), if applicable. If estimated emissions (below) are above the federal de minimis levels, but the project is sized to meet only the needs of current population projections that are used in the approved SIP for air quality, then quantitatively indicate how the proposed capacity increase was calculated using population projections.

Air Basin Name: _____

Provide the estimated project construction and operational air emissions (in tons per year) in the chart below.

Attach any air quality studies that may have been done for the project.

| Pollutant | Status (Attainment, Nonattainment or Unclassified) | Threshold of Significance for the Area (if applicable) | Construction Emissions (Tons/Year) | Operation Emissions (Tons/Year) |
|--|--|--|------------------------------------|---------------------------------|
| Carbon Monoxide (CO) | | | | |
| Ozone (O ₃) | | | | |
| Oxides of Nitrogen (NO _x) | | | | |
| Particulate Matter (PM ₁₀) | | | | |
| Reactive Organic Gases (ROG) | | | | |
| Sulfur Dioxide (SO ₂) | | | | |
| Volatile Organic Compounds (VOC) | | | | |

4. Coastal Zone Management Act: Is any portion of the project site located within the coastal zone?

No. The project is not within the coastal zone.

Yes. Describe the project location with respect to coastal areas, and the status of the coastal zone permit:

5. Farmland Protection Policy Act:

Is any portion of the project site located on important farmland?

No. The project will not impact farmland.

Yes. Include information on the acreage that would be converted from important farmland to other uses. Indicate if any portion of the project site is located within Williamson Act control and the amount of affected acreage:

6. Flood Plain Management – Executive Order Number 11988:

Is any portion of the project site located within a 100-year floodplain as depicted on a floodplain map or otherwise designated by the Federal Emergency Management Agency?

No. Provide a description of the project location with respect to streams and potential floodplains:

Yes. Describe the floodplain, and include a floodplain map and a floodplains/wetlands assessment. Describe any measures and/or project design modifications that would minimize or avoid flood damage by the project:

7. Migratory Bird Treaty Act:

Will the project affect protected migratory birds that are known, or have a potential, to occur on-site, in the surrounding area, or in the service area?

No.

Yes. Discuss the impacts (such as noise and vibration impacts, modification of habitat) to migratory birds that may be directly or indirectly affected by the project and mitigation measures to reduce or eliminate these impacts. Include a list of all migratory birds that could occur where the project is located:

8. Protection of Wetlands – Executive Order Number 11990:

Does any portion of the project area contain areas that should be evaluated for wetland delineation or require a permit from the U.S. Army Corps of Engineers?

No. Provide the basis for such a determination:

Yes. Describe the impacts to wetlands, potential wetland areas, and other surface waters, and the avoidance, minimization, and mitigation measures to reduce such impacts. Provide the status of the permit and information on permit requirements:

9. Wild and Scenic Rivers Act:

Is any portion of the project located within a wild and scenic river?

No. The project will not impact a wild and scenic river.

Yes. Identify the wild and scenic river watershed and project location relative to the affected wild and scenic river:

Identify watershed where the project is located: _____

10. Source Water Protection:

Is the project located in an area designated by the U.S. Environmental Protection Agency, Region 9, as a Sole Source Aquifer? (For more information, please visit <http://www.epa.gov/region09/water/groundwater/ssa.html>.)

No. The project is not within the boundaries of a sole source aquifer.

Yes. Identify the aquifer (e.g., Santa Margarita Aquifer, Scott's Valley, the Fresno County Aquifer, the Campo/Cottonwood Creek Aquifer or the Ocotillo-Coyote Wells Aquifer):

BASIC CRITERIA FOR CULTURAL RESOURCES REPORTS

FOR SECTION 106 CONSULTATION WITH THE STATE HISTORIC PRESERVATION OFFICER (SHPO) UNDER THE NATIONAL HISTORIC PRESERVATION ACT (NHPA)

CURRENT RECORDS SEARCH INFORMATION

- A current (less than a year old) records search from the appropriate Information Center is necessary. The records search must include maps that show all recorded sites and surveys in relation to the area of potential effects (APE) for the project.
- The APE is three-dimensional and includes all areas that may be affected by the project. The APE includes the surface area and extends below ground to the depth of any project excavations.
- The records search request should be made for an area larger than the APE. The appropriate area varies for different projects but must be drawn large enough to provide information on what types of sites may exist in the vicinity.

NATIVE AMERICAN AND INTERESTED PARTY CONSULTATION

- Native American and interested party consultation should be initiated at the beginning of any cultural resource investigations. The purpose is to gather information from people with local knowledge that may be used to guide research.
- A project description and map should be sent to the Native American Heritage Commission (NAHC) when the applicant requests a check of their Sacred Lands Files. The Sacred Lands Files include religious and cultural places that are not recorded at the information centers.
- The NAHC will include a list of Native American groups and individuals with their response. A project description and maps must be sent to everyone on the list asking for information on the project area.
- Similar letters should be sent to local historical organizations and other interested parties.
- Follow-up contact should be made by phone, if possible, and a contact log must be included in the report.

REPORT TERMINOLOGY

- A cultural resources report used for Section 106 consultation should use terminology consistent with the NHPA.

- Being consistent with the NHPA does not mean that the report needs to be “filled” with passages and interpretations of the regulations; the SHPO reviewer already knows the law.
- If “findings” are made, they must be one of the four “findings” listed in Section 106. These include:
 - “No historic properties affected” (no properties are within the APE, including the below ground APE).
 - “No effect to historic properties” (properties may be near the APE but the project will not impact them).
 - “No adverse effect to historic properties” (the project may affect historic properties but the impacts will not be adverse).
 - “Adverse effect to historic properties.” *Note: the SHPO must be consulted at this point. If your consultant proceeds on his/her own, his/her efforts may be wasted.*

WARNING PHRASES IN ALREADY PREPARED CEQA REPORTS

- A finding of “**no known resources**” does not mean anything. The consultant’s job is to find out if there are resources within the APE or to explain why they are not present.
- “**The area is sensitive for buried archaeological resources,**” followed by a statement that “**monitoring is recommended as mitigation.**” Monitoring is not acceptable mitigation. A reasonable effort should be made to find out if buried resources are present in the APE.
- “**The area is already disturbed by previous construction.**” This statement may be true, but documentation is still needed to show that the new project will not affect cultural resources. As an example, an existing road can be protecting a buried archaeological site. Or, previous construction may have impacted an archaeological site that was never documented.
- No mention of “**Section 106.**” A report that gives adequate information for compliance with the California Environmental Quality Act may not be sufficient to comply with Section 106.

Please contact Ms. Cookie Hirn with any questions on cultural resources reports.

Cookie Hirn
State Water Resources Control Board
Cultural Resources Officer
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Mhirn@waterboards.ca.gov

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)
CHECKLIST FOR THE APPLICANT
What to Submit to your State Water Board's Project Manager

If project is covered under a **CEQA Categorical or Statutory Exemption**, submit a copy of the following:

- Notice of Exemption (filed with the Governor's Office of Planning and Research)**
- List of Best Management Practices (BMPs) and their locations, if project implements BMPs**

If project is covered under a **Negative Declaration**, submit a copy of the following:

- Draft and Final Initial Study/Negative Declaration**
(or Mitigated Negative Declaration, if applicable)
 - Comments and Responses to the Draft
 - Mitigation Monitoring and Reporting Plan (if using a Mitigated Negative Declaration)
- Resolution approving the CEQA documents**
 - Adopting the Negative Declaration
 - Making CEQA Findings
- Notice of Determination (filed with the Governor's Office of Planning and Research)**

If project is covered under an **Environmental Impact Report (EIR)**, submit a copy of the following:

- Draft and Final EIR**
 - Comments and Responses to the Draft
 - Mitigation Monitoring and Reporting Plan (MMRP)
- Resolution approving the CEQA documents**
 - Certifying the EIR and adopting the MMRP
 - Making CEQA Findings
 - Adopting a Statement of Overriding Considerations for any adverse impact(s) that cannot be avoided or fully mitigated if project is implemented
- Notice of Determination (filed with the Governor's Office of Planning and Research)**

If EIR is a joint CEQA/National Environmental Policy Act document (EIR/Environmental Impact Statement or EIR/Environmental Assessment), submit the applicable Record of Decision and/or Finding of No Significant Impact.

