

Los Osos Wastewater Project
Status Update
March 15, 2011

Prepared by San Luis Obispo County
Department of Public Works

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SUMMARY OF CURRENT ISSUES

With the approval of the Project's Coastal Development Permit (CDP) in June 2010, and funding approvals by the United States Department of Agriculture (USDA) in August 2010 and the State Water Board (SWB) in March 2011, the Project is poised to enter its design and construction phases. The CDP and funding approvals include conditions that must be satisfied before construction can proceed.

The State Water Board's (SWB) approval of construction funding on March 1, 2011 provides for the remainder of the Project's construction costs that are not covered by the USDA funding. The SWB financing package includes \$7.5 million of "principal forgiveness," which is essentially a grant and \$78.7 million in loan at 2.6% interest for a 30 year term.

The Central Coast Regional Water Board (RWB) released the draft Waste Discharge Requirements (WDR), a key regulatory permit, on February 9, 2011 and has scheduled a date of May 5, 2011 for a public hearing to consider approval. The draft WDR is consistent with what was expected for the Project and will be feasible to comply with, based on the Project components approved in the CDP.

The approval of the funding packages for the entire Project cost, as well as recent regulatory approvals, effectively completes the County's due diligence process for considering formal acceptance of the Project. Staff is recommending that your Board adopt the "Due Diligence" resolution declaring the County's intent to proceed with the Project. Adoption of the Due Diligence resolution will allow the County to obtain interim financing, secured by property assessments, and repay the \$8.2 million County General Fund loan used for Project development to date.

Interim financing is needed on a short-term basis because USDA and SWB disbursements do not begin until construction. The amount of interim financing needs to be sufficient to cover upcoming design, condition compliance, right-of-way acquisition, and other pre-construction efforts, and to repay the County for its funding of preliminary costs.

Overall, numerous Project tasks must be pursued concurrently to satisfy the pre-construction conditions of the permitting and funding agencies prior to award of the construction contracts. The following is a list of issues and milestones discussed in this Project Update:

- Establish Sewer Service Rates and Charges
- Complete Project Design
- Obtain Interim Financing
- Consider the Due Diligence Resolution
- Budget Adjustment

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- Obtain Approval of the Project Waste Discharge Permit from the Regional Water Quality Control Board (RWB)
- Obtain Construction Funding Approvals from the State Water Board
- Satisfy the following conditions of the CDP (required before construction):
 - Final design
 - Habitat Management Plan
 - Others
- Satisfy the conditions of the USDA and SWB (required before construction)
- Advertise the construction contracts for the collection system, obtain low-bids and award the construction contract(s)

The Project timeline for construction is most dependent on the collection system design engineer and the final scope of the design services agreement. Staff is currently negotiating the final scope of work and preparing a design services agreement for your Board's consideration. In general, it is expected that construction bids will be received and authorized by the end of 2011.

ESTABLISHING SEWER SERVICE RATES AND CHARGES (Service Charges)

Background:

The adoption of the Service Charge Ordinance was necessary to meet the conditions for Project financing and provide for annual costs of providing sewer service. The Service Charges were adopted on December 14, 2010, upon completion of the Proposition 218 protest process.

Significant Tasks/Milestones/Status:

- Litigation has been filed, challenging the established Service Charges. A resolution of the litigation will be considered by the court in April 2011.
- Service Charges were established with an initial rate structure, and a reduced rate structure to be implemented upon the direction to collect assessments from undeveloped properties.
- Service Charges include a usage based component of the charges.
- Since adoption in December 2010, the estimated Service Charges have been reduced by the extended term financing and principal forgiveness secured from the State Water Board.
- Additional grants, favorable financing terms, construction cost savings, and collection from undeveloped properties will help reduce the Service Charges from the current estimates.

COMPLETING PROJECT DESIGN

Background:

The Collection System design is the most critical task to be completed prior to construction. Design elements are also needed to meet certain pre-construction conditions established in the Project CDP. (It is noteworthy that completing the treatment facility design and construction is not on the Project's critical path, since the estimated construction duration for the treatment plant is one year less than the collection system. As a result, the treatment plant design-build procurement process continues to be on hold. Staff intends to return to your Board in the near future for direction on proceeding with the treatment plant design and construction.)

Significant Tasks/Milestones/Status:

- Board cancelled collection system design-build process to meet USDA funding conditions.
- Request for Proposals released to three pre-qualified engineering firms.
- Collection system design proposal submitted by Camp Dresser & McKee, Inc. (CDM).
- Final scope of work and agreement being prepared for Board consideration in near future.

OBTAINING INTERIM FINANCING

Background:

Interim financing will be needed to fund the project costs needed to advance the project to construction, at which time the construction financing provided by the USDA will repay the interim financing. As an option to obtaining interim financing, the County could continue to fund these costs from the General Fund, however, the costs are significant. Estimated costs to advance the project to construction are approximately \$20 million and would include but not be limited to collection system design, permit compliance, land acquisitions, grant application work, preliminary engineering on the treatment plant, Mid-town restoration, and repayment of the County General Fund for costs expended to date.

Significant Tasks/Milestones/Status:

- Establish Rates and Charges Ordinance – Completed
- Obtain balance of construction financing for project – Completed
- Adopt “due diligence” resolution – Considered at this meeting
- Complete assessment prepayment period – Estimated April 2011
- Revise deadline for construction start date with USDA – By May 2011
- Adopt resolutions approving Interim Financing – May 2011
- Close Interim Financing – June 2011
- Repay County for costs to date – June 2011

DUE DILIGENCE

Background:

Adoption of a due diligence resolution declaring the intent to proceed with the Project is necessary under AB 2701 for the County to collect property assessments, and therefore obtain Project funding that is secured by assessments. The adoption of the due diligence will allow the County to proceed with the 30-day assessment prepayment period and, subsequently, to secure interim financing for the Project. The due diligence resolution is also a requirement of USDA and SWB funding.

Significant Tasks/Milestones/Status:

- Major due diligence issues have been resolved, such as:
 - Key regulatory permits, including CDP, have been issued
 - Property owner funding sufficient to cover all Project costs has been approved under Prop. 218 processes
 - Draft Waste Discharge Requirements have been released
 - Litigation risks have been evaluated
 - All construction funding and long-term financing has been obtained from the USDA and SWB.
- The Due Diligence Resolution authorizes the Director of Public Works to conduct the 30-day assessment prepayment period, which is necessary before collecting assessments on the property tax roll.
- After the 30-day prepayment period, staff will return to your Board for approval of the interim financing, which will facilitate the following:
 - Reimbursement to the County General Fund of the amounts provided for preliminary Project costs
 - Pay for design and other preconstruction costs, such as permit compliance, necessary before USDA and SWB funds are disbursed.
- While adoption of the due diligence resolution is recommended, the following risks remain:
 - County may become subject to RWB enforcement actions
 - Final WDR has not been adopted
 - Current and potential litigation.

BUDGET ADJUSTMENT

Background:

To provide the capital project budget in order to complete construction of the Los Osos Wastewater Project. The existing budget should be sufficient to fund efforts through the end of March 2011. Once the “due diligence” resolution is adopted, the County will have the legal authority per AB 2701 to collect the assessments passed in 2007. The County can then begin using prepayments to fund efforts as they are received. To date approximately \$300,000 in prepayments have been held in trust pending adoption of the “due diligence” resolution. In addition, now that both USDA and SRF have committed funds to finance the project, these are available to appropriate for the project.

Significant Tasks/Milestones/Status:

- Adopt “due diligence” resolution – Considered at this meeting
- Auditor/Controller to establish appropriate funds and accounts to record assessments and other funding for appropriation – March 2011
- Return to Board with formal budget adjustment – April 2011

OBTAINING APPROVAL OF THE WASTE DISCHARGE PERMIT FROM THE REGIONAL WATER BOARD

Background:

Waste Discharge Requirements (WDR) from the Regional Water Board (RWB) are a key regulatory permit and a condition of Project financing. The RWB released the draft WDR on February 9, 2011 and has scheduled a date of May 5, 2011 for a public hearing to consider approval.

In comparison to the LOCSD's 2005 project, the requirements are more stringent in order to meet the reuse standards for Title 22 tertiary recycled water. These additional requirements were expected, since urban and agricultural reuse is required by the Project CDP. Overall, the draft WDR is consistent with what was expected for the Project and will be feasible to comply with, based on the Project components approved in the CDP.

Significant Tasks/Milestones/Status:

- Draft WDR is consistent with staff expectations, based on the LOCSD project and this Project's CDP.
- Staff has been working with the RWB to understand requirements for recycled water users, especially agriculture, and how agricultural reuse can be conducted in a manner that protects water quality, while remaining attractive for reuse by the agricultural community.
- The RWB has scheduled a hearing date on May 5, 2011 to consider approval.

OBTAINING FUNDING APPROVAL FROM THE STATE WATER BOARD

Background:

SWB funding was identified as critical to the Project in your Board's initial Project policy established in June 2006 and has been an important consideration in the due diligence process. The low interest financing offered by the SWB helps address Project affordability and in recent years, with the collapse of credit markets, it is likely that the Project would have been infeasible without SWB funding. The Preliminary Funding Commitment approved by the SWB on March 1, 2011 completes the second half of the Project funding package, the other half of Project costs being funding by the USDA.

Significant Tasks/Milestones/Status:

- The approved financing terms include \$7.5 million of principal forgiveness (essentially a grant) and \$78.7 million loan at 2.6% interest for a 30 year term.
- A Project financing agreement must be signed by June 30, 2011. The resolution designating the Public Works Director as signatory for the agreement is necessary to comply with this condition.
- A notice-to-proceed with construction must be issued by June 30, 2012.
- The \$6.2 million loan default by the LOCSD must be refinanced and included in this financing agreement.
- The SWB directed their staff to return, prior to December 2011, for consideration of options for reducing the interest rate on the loan.
- The Preliminary Funding Commitment established a number of conditions that be satisfied prior to construction and the disbursement of funds.

SATISFYING ENVIRONMENTAL AND FUNDING CONDITIONS, INCLUDING
THOSE ESTABLISHED BY THE COASTAL DEVELOPMENT PERMIT, USDA,
AND STATE WATER BOARD

Background:

Pre-construction conditions have been applied to the project from both the environmental permitting agencies and the funding agencies. Environmental regulatory processes include the California Environmental Quality Act, National Environmental Policy Act, California Coastal Act, National Historic Preservation Act, and federal Endangered Species Act. In addition to completing and obtaining approval of final design elements, several of the conditions require preparation of environmental plans that will require approval by the regulatory agency(s) prior to beginning construction. Funding agencies that have established pre-construction conditions are the USDA and State Water Board. Table "A" provides a summary of the pre-construction conditions applied to the Project.

Significant Tasks/Milestones/Status:

- Evaluating and prioritizing critical path work tasks that must be completed before initiating construction.
- Utilizing previous Project documents prepared by the LOCSO that successfully responded to similar regulatory conditions.
- Received a revised Biological Opinion from the US Fish and Wildlife Service to address project changes as a result of the Coastal Permit on February 9, 2011.
- Retained consultants and in progress on the Habitat Management Plan (Coastal Condition 3) and the Recycled Water Management Plan (Coastal Condition 5).
- Actively working with Coastal Commission staff to satisfy project coastal conditions.
- Retained consultants and in progress on property appraisals and acquisitions with requested approvals from your Board planned for May through July, 2011.

ADVERTISING CONSTRUCTION PLANS AND SPECIFICATIONS, OBTAINING
LOW BIDS, AND AWARDING THE CONSTRUCTION CONTRACTS
(COLLECTION SYSTEM)

Background:

In the coming year, through the design process, the Project team will be considering a number of pre-construction issues and, as appropriate, seek Board direction for final determinations. As the County proceeds, these items will be developed in greater detail in future Project Status Updates.

Significant Tasks/Milestones/Status:

- Low pressure collection system: through value engineering and design optimization identify areas of the community where low pressure collection may be more cost effective
- Number of construction bid packages: strategy to increase competition, reduce bid prices, allow for local contractor participation
- Timing of construction bidding: staggered bids to increase price competition
- Approach to road rehabilitation: include in the pipeline contracts versus by County forces or separate contract
- Construction management approach
- Staffing Requirements

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Exhibits and Tables

EXHIBIT "A"	SUMMARY OF SIGNIFICANT MILESTONES COMPLETED
EXHIBIT "B"	UPDATES ON THE GROUNDWATER BASIN MANAGEMENT PLAN, THE COMMUNITY HABITAT CONSERVATION PLAN, AND THE LOS OSOS LOCAL COASTAL PLAN
TABLE "A"	SUMMARY OF PRE-CONSTRUCTION REQUIREMENTS

EXHIBIT "A"

SUMMARY OF SIGNIFICANT MILESTONES COMPLETED

- **June, 2006** – Your Board held the first public hearing on the Project and adopted a) policies in support of Assemblyman Blakeslee's efforts to develop special legislation for the Los Osos Wastewater Project, and b) project strategies to provide initial direction for staff on Project efforts.
- **September, 2006** - California State Governor Arnold Schwarzenegger signed Assembly Bill 2701 (Blakeslee)
- **January, 2007** – Effective date of AB 2701 and beginning of formal County efforts.
- **August, 2007** – Completed Rough Screening and Fine Screening alternatives analysis and to establish the basis of cost estimates for the Proposition 218 assessment proceedings.
- **August, 2007** – The Project's Technical Advisory Committee, consisting of 12 community members, completed a Pro/Con analysis of Project alternatives after holding approximately 35 public meetings.
- **August, 2007** – Initiated Proposition 218 ballot proceedings to propose assessments on developed properties where septic waste discharge is occurring in violation of the waste discharge prohibition established by the Central Coast Regional Water Quality Control Board in 1983.
- **December, 2007** – Conclusion of Proposition 218 assessment proceedings with approval by property owners on an 80% yes / 20% no vote.
- **September, 2008** - Completed an Aerial Photo Survey in which each property owner was sent an aerial photo of their individual property and asked to indicate their preference for locating a STEP tank, and whether they support a STEP collection system.
- **December, 2008 – January, 2009** – Public Comment period for draft Environmental Impact Report
- **March, 2009** - Completed a Community Advisory Survey, developed by a professional public opinion research firm, in which all members of the community were asked to indicate preferences for a variety of project related issues.
- **April, 2009 – August, 2009** – County Planning Commission hearings to approve project EIR and Coastal Development Permit

- **August, 2009** - Completed and certified the Final Environmental Impact Report which included a co-equal analysis of multiple project options.
- **August, 2009** – Obtained approval of a Coastal Development Permit from the San Luis Obispo County Planning Commission.
- **September, 2009** – On appeal, obtained a Coastal Development Permit from your Board.
- **November, 2009** – Your Board reconsidered Coastal Development Permit Condition #97, based on appeals filed by two members of the Coastal Commission, and approved Coastal Commission recommended modifications.
- **January, 2010** – On a 7-5 vote, the California Coastal Commission determined that substantial issues existed warranting a de-novo hearing.
- **June, 2010** – On an 11-0 vote, the Coastal Commission approved the Project's Coastal Development Permit.
- **June, 2010** – Completed an \$80 million final application to the United States Department of Agriculture for Project funding, including:
 - Environmental requirements under the National Environmental Policies Act and the Endangered Species Act
 - Cultural resource requirements under Section 106 of National Historic Preservation Act
 - Other federal requirements.
- **September, 2010** – The USDA announces \$87 million in Project funding, including a \$4 million grant and an \$83 million loan at 3.25% interest for a 40 year term.
- **December, 2010** – Adopted the Service Charges Ordinance through the Proposition 218 process to establish the remaining revenue needed for construction and operation of the Project.
- **February, 2011** – Received the final Biological Opinion from the U.S. Fish and Wildlife Service, a key regulatory approval.
- **February, 2011** – Draft Waste Discharge Requirements issued by Regional Water Board.
- **March, 2011** – Received a Preliminary Funding Commitment from the State Water Board for \$86 million in Project funding, which includes \$7.5 million of principle forgiveness (grant) and \$78.7 million of 30-year extended term financing at 2.6% interest.

EXHIBIT "B"

UPDATES ON THE BASIN MANAGEMENT PLAN, THE HABITAT CONSERVATION PLAN AND THE LOCAL COASTAL PLAN

Los Osos Groundwater Basin Management Plan

Efforts to reach a settlement under existing groundwater litigation are proceeding under the Interlocutory Stipulated Judgement (ISJ) process to develop a basin management plan to balance the basin for existing and build-out demand. The ISJ group, which consists of the County and the three community water purveyors (Golden State Water Company, Los Osos CSD, and S&T Mutual Water Company), released a basin update in May 2010, which includes the following:

- Estimates of the safe yield of the basin water supply were updated in 2009. The current demand, from all users, is theoretically within the safe yield according to Basin modeling. However, under the model the water purveyors need to redistribute their well pumping between the upper and lower aquifers and from west to east in order to balance the basin, and the model results need to be confirmed for actual Basin conditions.
- Recent monitoring has found that the rate of seawater intrusion has accelerated following three years of drought, particularly through advance "fingers".
- A peer review has found that the technical groundwater analysis and modeling provides usable results and can reasonably be used to implement a Basin Management Plan, provided there is ongoing monitoring and analysis.
- The Los Osos Wastewater Project will include several actions that benefit the water supply in the community and be complementary to other basin management actions currently being considered.
- The water purveyors, through the ISJ efforts, are investigating many potential actions to incorporate into the Basin Management Plan in order to balance the basin and stop seawater intrusion.

The ISJ group intends to release a draft Basin Management Plan within the next few weeks. As stated in the May update, the overall basin yield is within the current demand and planned wastewater actions will provide additional benefit to the water supply through conservation and reuse. The result will be some additional supply for new development and, while not yet certain, it is hopeful that through the planning process and careful allocation of water resources there will be sufficient supply to meet build-out demand for the community.

The Los Osos Habitat Conservation Plan

The Los Osos Habitat Conservation Plan (HCP) is a voluntary community-wide endangered species protection program. The purpose of the HCP is to preserve habitat and protect sensitive biological resources within the community of Los Osos while allowing for public and private development. On June 23, 2009 your board authorized staff to accept the U.S. Fish and Wildlife Service Endangered Species Act Section 6 grant for the preparation of the Los Osos HCP, and authorize the Director of the Planning and Building Department or designee to execute any agreements necessary for implementation of the approved activities.

A draft HCP was prepared by the Los Osos Community Services District (LOCSO) in consultation with the County, pursuant to a Memorandum of Understanding adopted by the Board of Supervisors in 2002. Work on the Los Osos HCP stopped when the LOCSO stopped working on the wastewater project. With the passage of AB2701, which allowed transfer of wastewater authority from the LOCSO to the County, and as required by condition of approval #92 in the CDP for the Project, reinitiating work on the HCP has become a part of the County's responsibilities in Los Osos.

The County is now in the process of preparing the HCP for the community of Los Osos in consultation with Lisa Wise Consulting, Inc. The HCP will allow for the long-term preservation of sensitive habitats remaining within the Los Osos Greenbelt, including habitats remaining on individual vacant lots. The County will work with multiple resource agencies (California Department of Fish and Game, United States Fish and Wildlife Service, Morro Bay National Estuary Program and California Coastal Commission) to fund and approve the HCP. Utilizing grant funding allows the County to complete this necessary project while reducing the strain on other budget sources.

The County and its consultant have initiated work on the HCP by reviewing the previous work effort, updating any outdated information from the previous HCP, and engaging the resource agencies regarding their needs and requirements. Discussions with Coastal Commission staff have indicated a willingness to participate in the current effort of preparing the HCP to ensure their concerns are addressed. Monthly coordination meetings have been scheduled and are ongoing with the resource agencies to ensure all concerns and requirements are addressed in the proposed HCP.

The County, consultant, and resource agencies will be working closely together to adhere to the Project timeline, and allow the County to complete the HCP during the construction of the wastewater project and then initiate a Local Coastal Plan amendment to incorporate the requirements of the HCP into the Estero Area Plan for the community of Los Osos. The results of these efforts will be the protection of sensitive resources within the community during future construction on undeveloped parcels within Los Osos.

TABLE "A"

LOS OSOS WASTEWATER PROJECT – PRE-CONSTRUCTION REQUIREMENTS

Description	CDP	CC	USDA	SWB
Mid-Town Habitat Restoration Plan <ul style="list-style-type: none"> • Grading and drainage • Revegetation/Habitat • Coastal, DFG & USFWS review/consultation • Survey and final construction plans 	X	X		
Habitat Management Plan <ul style="list-style-type: none"> • Upland habitat management program (Broderson, Giacomazzi, Mid-town, pump stations) • Conservation deed restrictions (Broderson, Giacomazzi, Mid-town, pump stations) • Wetland habitat—GW level monitoring program • DFG and USFWS review 	X	X		
Recycled Water Management Plan <ul style="list-style-type: none"> • Water conservation program • Recycled water reuse program • Groundwater basin monitoring program • Water supply reporting program 	X	X		X X
Natural asbestos evaluation	X			
USFWS re-consultation	X		X	X
APCD mitigation notice and program	X			
Document ACOE, RWQCB, and DFG compliance	X			X
Cultural resources treatment plan/ MOA with SHPO	X		X	X
ESA worker education program	X			
Verify 75-foot wetlands setback from pump stations	X	X		
DFG creek crossing permits	X			
DFG K-rat "no take agreement"	X			
Walker (staging area) habitat restoration plan	X	X		
Preconstruction geo-archaeological testing	X			
Interim financing				
Rates and Charges Ordinance—Prop 218 protest hearing			X	X
SRF preliminary funding commitment			X	X
Create separate account for USDA funds			X	
Notice property owners—no guarantees	X			
Mandatory hook-up ordinance			X	
Recycled water use/purchase contracts			X	X
Secure Right of Way	X	X	X	X
Public Works encroachment permit	X			
Traffic Management Plan	X			
APCD odor control plan	X			
Spill response plan to EPA	X			
Develop final design/plans – Collection	X	X	X	X
Farmland conservation easement, 2:1 mitigation	X	X		
Ag easement on surplus TF land	X			
TF public lot	X			
TF access road & pipeline easement	X	X		
Roadway safety analysis—TF access road	X	X		
Develop final design-build RFP – Treatment Facility	X	X	X	X