SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

August 31, 2009

Keith Wimer
Los Osos Sustainability Group
1101 14th Street
Los Osos, CA 93402

County Of San Luis Obispo
Department Of Public Works
Attn: John Waddell
INTEROFFICE

SUBJECT: APPEAL OF DRC2008-00103 – COUNTY OF SLO - LOWWP
HEARING DATE: August 13, 2009 / PLANNING COMMISSION

We have received your request on the above referenced matter. In accordance with County Real Property Division Ordinance Section 21.04.020, Land Use Ordinance Section 22.70.050, and the County Coastal Zone Land Use Ordinance 23.01.043, the matter has been scheduled for public hearing before the Board of Supervisors. A copy of the appeal is attached.

The public hearing will be held in the Board of Supervisors' Chambers, County Government Center, 1055 Monterey Street, Room D170,San Luis Obispo. The project has a hearing date of **Tuesday, September 29, 2009**. All items are advertised for 9:00 a.m. If you have any questions, you may contact your Project Manager, **Murry Wilson**. A public notice will be sent out and you will receive a copy of the notice.

Please feel free to telephone me at 781- 5718 if you have any questions.

Sincerely,

Nicole Retana

Nicole Retana,
County Planning and Building Department

CC: Murry Wilson, Project Manager
Jim Orton, County Counsel

#1789

COASTAL APPEALABLE FORM

SLO CNTY PLANNING/BUILDING DEPT

San Luis Obispo County Department of Planning and Building 7/25/08 2009 AUG 27 PM 4:06

Please Note: An appeal should be filed by an aggrieved person or the applicant at each stage in the process if they are still unsatisfied by the last action.

PROJECT INFORMATION Name: LOWWP File Number: DRC 2008-00103

Type of permit being appealed:

☐ Plot Plan ☐ Site Plan ☐ Minor Use Permit ☒ Development Plan
☐ Variance ☐ Land Division ☐ Lot Line Adjustment ☒ Other: EIR certification (CEQA Findings)

The decision was made by:

☐ Planning Director (Staff) ☐ Building Official ☐ Planning Department Hearing
☐ Subdivision Review Board ☒ Planning Commission ☐ Other _____

Date the application was acted on: August 13, 2009

The decision is appealed to:

☐ Board of Construction Appeals ☐ Board of Handicapped Access
☐ Planning Commission ☒ Board of Supervisors

BASIS FOR APPEAL

☒ INCOMPATIBLE WITH THE LCP. The development does not conform to the standards set forth in the Certified Local Coastal Program of the county for the following reasons (attach additional sheets if necessary).

Explain: see attached LOSG Appeal (pp.1-10) + LOSG letter (pp.1-5)

☐ INCOMPATIBLE WITH PUBLIC ACCESS POLICIES. The development does not conform to the public access policies of the California Coastal Act - Section 30210 et seq of the Public Resource Code (attach additional sheets if necessary).

Explain: _____

List any conditions that are being appealed and give reasons why you think it should be modified or removed.

Condition Number 1 Reason for appeal (attach additional sheets if necessary)

See attached

APPELLANT INFORMATION

Print name: Keith Wimer (Los Osos Sustainability Group)

Address: 1101 14th St. Los Osos, CA 93402 Phone Number (daytime): 528-2027

I/We are the applicant or an aggrieved person pursuant to the Coastal Zone Land Use Ordinance (CZLUO) and are appealing the project based on either one or both of the grounds specified in this form, as set froth in the CZLUO and State Public Resource Code Section 30603 and have completed this form accurately and declare all statements made here are true.

Signature _____ 8/27/09 Date

OFFICE USE ONLY

Date Received: 8/27/09 By: Chris Macen, Secretary

Amount Paid: 0 Receipt No. (if applicable): N/A

SLO CNTY
PLANNING/BUILDING
DEPT

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Signature _____ 8/24/09 Date

OFFICE USE ONLY
Date Received: 8/27/09 By: Wismacen, Secretary
Amount Paid: 0 Receipt No. (if applicable): _____

SLO COUNTY
PLANNING/BUILDING
DEPT

Basis for Appeal:

As planned (by the San Luis Obispo County Public Works Department) and conditioned (by the County Planning Commission), the Los Osos Wastewater Project (LOWWP) does not conform to key provisions of the Local Coastal Program (LCP) and it violates related sections of the Coast Zone Land Use Ordinance (CZLUO), in part due an inadequate environmental review for the project. Therefore, the Coastal Development permit should be denied pending further environmental review, modification of the project and/or planned phasing of the project.

Fails to adequately assess, mitigate and/or avoid impacts to groundwater, and provide for orderly coastal development

Need for assessment of SWI and sustainability of the basin: The LOWWP's potential negative impacts on SWI have been recognized from the beginning of the project review process. The preferred alternative (before Planning Commission changes) provided mitigation for the project with Broderson leach fields and 10% conservation by 2020. Broderson is supposed to replace the basin recharge benefits of about 1000 AFY of septic return flows with 250-450 AFY of recycled water discharged in one location.

The Planning Commission recognized the need for a safer level of SWI mitigation for the project, adding conditions for stronger indoor conservation and beneficial reuse programs, among other conditions (e.g., 1, 97, 100, 103 & 108) The Coastal Commission and Regional Water Board have supported stronger conservation and reuse programs for the project.

Even with Planning Commission conditions, the basin's ability to sustain the project remains in question. Recent water quality tests from the Palisades Well (a main community drinking supply well) show SWI has reached the middle of Los Osos and might be accelerating. Data from the 2005 SWI Assessment (Cleath and Associates—Figure 5) show very low water levels at the Palisades location, extending through much of the lower aquifers. These facts raise the question of whether it is possible to stop SWI before it contaminates the remainder of the lower aquifers in the Urban Compartment (about two-thirds of the freshwater basin). Adding to concerns, SWI has been progressing through the lower aquifers unchecked since the 1980's despite a Level of II severity declared in 1992, various purveyor cooperative efforts, and a Level of III designation in 2007.

Recently, new basin studies have emerged from the adjudicated basin planning process involving water purveyors. The process is proceeding under a cooperative arrangement known as an interlocutory stipulated judgment or ISJ. According to Rob Miller, consultant to the purveyors (who presented the studies on July 30 at a combined meeting of the LOCSD and LOCAC), the studies show SWI can be stopped if most of the pumping from the lower aquifer is shifted to the upper aquifer (about 900 AFY). Mr. Miller also said the studies indicate the basin can be balanced without the project.

However, the ISJ studies assume pumping from the upper aquifer can exceed safe yield levels identified in the 2007 *Resource Capacity Study* by 40% (1600 AFY versus 1150 AFY). The 2005 SWI assessment indicates the upper aquifer is only "relatively stable," subject to seawater intrusion during periods of extended drought (p.27). Also, the LOWWP will have its greatest impacts on the upper aquifer (and upper water zones). With the purveyor plan, substantial increased pumping from the upper aquifer will occur as the aquifer undergoes major impacts from the project. Finally, private well use (residential and farming)—amounting to one-third or more of basin water use—is

based on estimated use, rather than actual monitoring. This is inconsistent with LCP Policy 3 (see below). A letter from the Coastal Commission to County Public Works dated July 15 expresses doubt that purveyor plans will adequately address SWI. These studies will not dispel that concern. They appear to be very preliminary, raising many questions about assumptions, data, and parameters used; also, the studies do not considered alternatives (e.g., scenarios applying conservation and reuse options).

Not only will the LOWWP cause significant impacts on upper and lower aquifers, but it will cause impacts on limited water supplies during construction (e.g., dust control) and for collection system maintenance (e.g., flushing lines). The project will also significantly reduce groundwater flows to environmentally sensitive ecosystems and may lead to additional water use in Los Osos property owners attempt to maintain landscaping and vegetation once septic flows are stopped (see below).

All assumptions about the progress of SWI, adequate project mitigation, and the basin's ability to sustain the project were made prior to the Palisades test sample. Assessing whether the Los Osos Valley Water can sustain the LOWWP, whether the basin is sustainable at all, and whether the project is viable (i.e., can achieve its water quality objectives) require further assessment using current and complete well test data, as well as a thorough analysis of all water resource impacts from the project. This is necessary for deciding the most appropriate capital improvements and orderly coastal development consistent with the County General Plan (Chapter 3 "Relationship to Planning Policies and Programs") and LCP Public Works Policies 1, 5, and 6. It is also necessary for compliance/conformance with the following CZLUO section and LCP policies:

> CZLUO 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.
>
> LCP Coastal Watershed 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."
>
> LCP Coastal Watershed 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 data base for the Resource Management System and shall be supplemented by all available private and public water resources 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 optimum populations of marine organisms, and for the protection of human health."

LCP Coastal Watershed 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.

LCP Coastal Watershed 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."

Need for a basin-wide management plan and accurate water use monitoring: As the above LCP policies state, a basin-wide water management program is essential to protect Los Osos groundwater resources. This should include monitoring all water use. Prohibition Zone property owners use about one-half of the water in the basin. Purveyors supply all the water for Prohibition Zone use, but control only about two-thirds of the pumping in the basin. Private well use (residential and farm) accounts for the other one-third. Usage for the latter category is not well-documented due to a lack of monitoring. To effectively address the SWI requires a basin-wide solution. For it to be effective in the near future, a basin-wide plan implemented with a basin-wide ordinance is needed—and it must be a condition of project approval.

The LCP (*Coastal Plan Policies*) states "In the critical groundwater basins, management programs must be completed" (9-8) (emphasis added). The Level II of Severity resource deficiency declared in 1992 and the above LCP policies, in place since 1995, have given ample time for these critical management measures to be implemented. Thorough resource assessment and monitoring—along with a basin-wide management program—are essential to basin sustainability, the viability of the project, and orderly coastal zone development. The promotion of orderly development is a key purpose of the CZLOU: "To regulate land use in a manner that will encourage and support the orderly development and beneficial use of lands within the county..." [(Section 23.01.010 "Title and purpose" (4)].

Need for consideration of other project alternatives and options: Based on the results of a SWI assessment and monitoring of water use, the project may need to be decentralized and/or phased to enable the basin to support the project and optimize limited public funding. The ultimate goal is to provide a sustainable water supply to support area ecosystems and the community. How this can be accomplished cost-effectively requires further assessment and analysis. At the end of this appeal, we suggest consideration of a decentralized system collecting from homes near the bay and in high groundwater, with many upgraded septic systems left in place. This, we believe, will achieve virtually all the ground water quality benefits of a centralized system while maintaining ground water flows to sensitive habits and vegetation in the area, at about one-third the cost. A basin-wide

management program emphasizing and integrated water use efficiency program (including intense indoor-outdoor conservation, LID recharge, ag exchange, and urban reuse) should be a condition of any project approved (see "Project Conditions Needed").

Also further analysis is needed of Broderson leach fields as a water management option. This option is costly and causes many impacts to environmentally sensitive habit, requiring a considerable amount of mitigation. It is also energy intensive (i.e., for pumping the water up to the site. Additional, assessment of basin water supplies and water management options may determine SWI can be stopped more effectively using other options. According to the *Fine Screening Report* and EIR, conservation, ag exchange, and urban are more than twice as effective in stopping SWI (i.e., Broderson leach fields assigned a .22 mitigation factor and conservation, ag exchange, and urban reuse have .55 mitigation factors). If money can be spent more effectively to reduce SWI support sensitive ecosystems with other water management options, Broderson leach fields should not be developed.

Need for accurate flow estimates and treatment phasing: To enable orderly development, which does not put a strain on coastal resources, flow estimates for the project must reflect accurate current usage and accurate usages with planned conservation. None of the conditions set in the Development Permit identify and/or limit flows to reasonable projections for the project. This is needed to avoid unnecessary costs for Prohibition Zone Property owners and to avoid growth inducement from the project. During Planning Commission review of the project on June 30, John Waddell, Project Engineer, used the figure of 960 AFY for total current flows within the Prohibition Zone. This may be high, given reductions in water use recently. However, with indoor use limited to 50 gallons per capita per day (gpcd) (i.e., Condition 1), the total flows are under 800 AFY, well under the approximately 1150 AFY estimated in EIR and the 960 used by Mr. Waddell.

Additionally, construction of treatment facilities to accommodate build out flows should not occur until the sustainability of the basin is confirmed. In fact, development over the basin should not be assumed or planned until a sustainable water source is confirmed. This is consistent with the LDP and CZLUO (e.g., LCP Public Works Policies 1, 2, 5; and CZLUO Section 23.04.430).

Impacts from sludge disposal: Despite uncertainties about the future of sludge disposal in the County and the potential impacts to the health and safety of the public from hauling sludge and/or recycling it (e.g., air quality impacts), the Planning Commission did not condition the project on having pond treatment. Pond treatment is needed to greatly reduce sludge production and to ensure protection of coastal zone resources (e.g., air quality and crop land, if land disposal becomes the only viable option). The closest facility for sludge disposal outside of the County is Santa Maria (about 100 miles round trip) and the next closest facility (per County Staff during Planning Commission review) is Kern County several hundred miles away. The current project proposal is to use Biolac treatment, which requires weekly sludge removal and hauling. Pond systems require sludge removal every 20 years or so, and STEP systems reduce sludge and bio solids by about 75-90%.

(In addition to the LCP/CZLUO policies/sections cited in the above section, the project fails to conform to /comply with LCP Public Works Policies 1, 2, 5, 6 and 8-10; LCP Groundwater Watersheds Policy 11; CZLUO Sections 23.04.430, 23.04.432, and 23.08.288

Fails to avoid and/or adequately mitigate for impacts to environmentally sensitive habitats

Impacts from Reduced Groundwater Flows: The Coastal Develop Permit finds that there are no impacts to environmentally sensitive ecosystems—or that impacts have been reduced to insignificance with the mitigations provided in the Development Plan and Plan Conditions. However, mitigations are inadequate to protect and maintain coastal wetlands, riparian habitat, and other environmentally sensitive habitats in the area. Spencer Harris, consultant for the LOWWP EIR, stated at the Planning Commission meeting on June 30, 2009, that hundreds of acre feet of flows to Willow Creek Drainage (a riparian habitat) would dry up when the project is implemented and that the area would revert to conditions closer to predevelopment. This was reiterated by Commissioner Christianson on August 13, 2009, and Rob Miller (a consultant for the LOWWP, Los Osos water purveyors, and the LOCSD) at a LOCSD meeting on July 30. .

Willow Creek Drainage supports Willow Creek, Eto Lake, Los Osos Valley Creek, Los Osos Valley Creek Estuary, and Morro Bay Estuary. Other sensitive ecosystems potentially impacted include Third Street Marsh, Baywood Marsh, and Third Street Point Spring. Broderson leach fields are not likely to supply subsurface flows to these systems. Furthermore, Permit Conditions 56-70, 86, 87, 88, and 101 designed to mitigate for biological impacts and address the reduction in groundwater flows fail to conform to mitigation/protection standards as provided in the following policies and sections

> LCP Environmentally Sensitive Habitat Policy #2 "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.
>
> LCP Environmentally Sensitive Habitat Policy #7: "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."
>
> CZLUO Section 23.07.174 "Streams and riparian vegetation"
> The provisions of this section apply to development proposed within or adjacent to (within one hundred feet of the boundary of) an environmentally sensitive habitat as defined by Chapter 23.11 of this title, and as mapped by the land use element combining designation maps.
> (1) Application Content. A land use permit application for a project on a site located within or adjacent to an environmentally sensitive habitat shall also include a report by a biologist approved by the environmental coordinator that:
> (A) Evaluates the impact the development may have on the habitat, and whether the development will be consistent with the biological continuance of the habitat. The report shall identify the maximum feasible mitigation measures to protect the resource and a program for monitoring and evaluating the effectiveness of the mitigation measures;
> (B) Recommends conditions of approval for the restoration of damaged habitats, where feasible...

The applicant has not demonstrated that there will be no significant impact on sensitive habitats or that activities will be consistent with the biological continuance of these habitats. Sites have not been evaluated nor have maximum mitigation measures been determined. To determine the potential impacts on these systems and the effectiveness of mitigations requires measuring and analyzing how

much groundwater is flowing to the systems and the most effective options for replacing these flows. Condition 87 provides for a "Groundwater Level Monitoring and Management Plan," but the plan will be implemented after project installation. Avoiding harm to ecosystems requires putting effective measures in place prior to impacts. Groundwater movement is slow, and avoiding impacts to these vital systems requires proactively replacing flows. The LOSG recommends an integrated system of strategically located community and on-site LID systems, which can be implemented with a water-use efficiency program. We also suggest consideration of a decentralized system leaving many septic systems in place with upgrades.

Impacts from the collection system: The collection system selected for the project does not provide the "maximum feasible mitigation measures" for protecting environmentally sensitive habitats, including Morro Bay Estuary, a protected State Marine Reserve. Thus, this component of the project does not conform not to CZLUO 23.08.288 and other sections cited below.

The *Fine Screening Report* and EIR assume the "hybrid gravity" collection system selected for the project will allow about 100 AFY of water into the system per year more than the system it was compared to (STEP). This is due to leaks in the system which become worse over time. The leaks allow what is known as inflow and infiltration or I/I. The Planning Commission added Condition 98 (sealing portions of the system in high ground water and near the bay) recognizing the need to reduce I/I into the system, which results in increased wastewater flows, increased treatment needs, incomplete treatment, contamination of effluent with seawater (preventing its beneficial reuse), and reduced ground water recharge. I/I, especially during storms, is a leading cause of overflows and pollution of aquatic ecosystems. Exfiltration, or leaks out of a non-sealed system, is also a major cause of pollution of beaches and other marine environments.

STEP will completely eliminate I/I and related problems when laterals are sealed (as called for in Condition 98) and it avoids the need to locate pump stations near sensitive ecosystems as required with the hybrid gravity system (e.g., at Third Street and Pismo Streets). STEP pipelines are installed entirely in shallow, narrow trenches or by horizontal drilling, rather than deep open trenching as needed for gravity line installation. This significantly reduces impacts to soils, existing infrastructure, areas of archeological significance, and water resources. (Deep trenching in roadways requires more water for dust control and soil compaction, and it causes greater impacts to water resources from dewatering, e.g., removal and disposal of groundwater.). STEP reduces or alleviates the need for many conditions on the project designed to mitigate for the gravity system (e.g., 10, 24, 25, 46, 76, and 98). STEP also reduces sludge handling and hauling by 75-90% reducing associated problems (see below).

Furthermore, John Waddell, Project Engineer, indicated (at a Planning Commission meeting on July 24) that the hybrid gravity system is designed for 70-80 gpcd flows, and requires redesign of the system to accommodate conservation flows. On August 13, Mr. Waddell said redesign could be performed as part of a request for proposal (RFP) process. However, design review and analysis of potential impacts for a redesigned system is required to ensure the system protects resources. Impacts from a poorly designed system could include 1) installation impacts due to very deeper trenching, 2) greater blockage and overflows due to inadequate slope or pipe diameters, 3) large amounts of water needed to flush and clean the system, and/or 4) persistent odors. These potential impacts are inconsistent with LCP provisions and violate the CZLUO (e.g., Section 23.08.288). The collection system must perform optimally (e.g., with conservation flows) to protect and maintain sensitive ecosystems and other valuable resources.The STEP system maintains optimal performance with low flows from conservation, so it protects and preserves scarce water resources and provides

maximum protection for environmentally sensitive habitat and other coastal resources consistent with LCP policies and CZLUO requirements.

(In addition to the LCP/CZLUO policies/sections cited in the above section of this appeal, the project fails to conform/comply with LCP Environmentally Sensitive Habitats Polices 1-8, 11, 12, 16, 17-23, 26-30, 36-39; LCP Coastal Watersheds Policies 1-3, 5, 10, 11; LCP Public Works Policies 1, 2, 5, 6 and 8-10; CZLUO Sections 23.01.010, 23.04.403, 23.07.172, 23.07.174, 23.07.176, 23.07.178, 23.08.288).

Fails to avoid and/or adequately mitigate for impacts to scenic and visual qualities

As discussed above, the visual character of the Los Osos will change with the project due to reduced groundwater flows supporting environmentally sensitive habitat and area vegetation. Conditions closer to predevelopment post-project will mean fewer trees and less vegetation in general. The project must protect and maintain the scenic qualities of the community to conform and/or comply with the LCP (e.g., "Visual and Scenic Resource Policies" 1, 2, 6, and 7).

The LCP identifies South Bay (Los Osos, Baywood Park and Cuesta-by-the-Sea) as a small-scale community with special scenic values (*Coastal Plan Policies*, 1988, rev. 1995, p. 10-6-10-7). It states, "The purpose of the special communities, small-scale neighborhood designations is to identify areas with unique, visually pleasing characteristics and to set standards and guidelines for new development that will not detract from these features." *Coastal Plan Policies* also note that South Bay has "... a few visually unattractive elements (that) have detracted from high scenic quality" identifying "...the lack of natural vegetation or landscaping for single-family homes, as well as street landscaping."

As reduced groundwater flows impact natural vegetation and landscaping, property owners will very likely increase watering to maintain and restore it. This will increase project impacts on scarce water supplies and negate the Planning Commission's efforts to mitigate for SWI impacts with conservation and reuse (e.g., Conditions 1, 100, and 103). This potential impact has not been evaluated or mitigated. The outdoor conservation component of the integrated water use efficiency program we recommend (including xeriscape, rainwater harvesting, and graywater reuse) would address this issue (see "Project Conditions Needed").

The unique scenic qualities of South Bay rely also on the continuance of environmentally sensitive ecosystems. Thus, the area has a combined designation under the Coastal Act, providing for a more intense level of project review.

(In addition to the LCP/CZLUO policies/sections cited in the above section of this appeal, the project fails to conform to/comply with LCP Environmentally Sensitive Habitats Polices 1-8, 11, 12, 16, 17-23, 26-30, 36-39; LCP Coastal Watersheds Policies 1-3, 5, 10, 11; LCP Public Works Policies 1, 2, 5, 6 and 8-10; CZLUO Sections 23.01.010, 23.04.403, 23.07.172, 23.07.174, 23.07.176, 23.07.178, 23.08.288).

Fails to avoid and/or adequately mitigate for impacts on social and economic coastal resources

Impacts due to project costs
The LCP states:

> "Special coastal communities and neighborhoods are an integral part of the experience of the coast, and are often built on the most scenically-desirable areas. Coastal neighborhoods with distinctive qualities are a value to both local residents as well as visitors. Maintaining their present qualities will often require retaining the present scale and mix of development: (p. 10-7).

As discussed above, the LCP identifies South Bay (the location of the project) as a small-scale community with special scenic and visual qualities. The above paragraph from the LCP—in keeping with the Coastal Act and its emphasis on maintaining viable coastal communities—recognizes the importance of sustaining the community of Los Osos with its distinctive neighborhoods and present mix of development. A main purpose of the CZLUO is "To protect and enhance the significant natural, historic, archeological and scenic resources within the county as identified by the county general plan" ["Title and purpose" Section 23.01.010 (4)]

The most obvious area in which the County Project Team and Board of Supervisors have failed to pursue project affordability in order to protect the social and economic resources of Los Osos is with the decision to eliminate the STEP option from the design-build process. The STEP alternative not only avoids many of the environmental impacts mentioned above, but it substantially reduces project costs. The low, average, and upper cost estimates for a STEP alternative in the fine screening analysis were all substantially lower than for the gravity system, despite a 30% contingency added to STEP and a 10% contingency added to gravity. In retrospect the 10% contingency for gravity was not justified since the gravity system requires redesign to accommodate conservation flows and sealing the system.

When the Lyles Group presented the STEP proposal to the County, it guaranteed a bid for the collection system 20% lower than competing bids. The group made the commitment prior to the Planning Commission's decision to set a condition on the gravity system to seal much of the system, which adds considerable cost to the system. Including the Lyles team in the design build process would also help ensure a cap on costs, and it would allow decision makers to know true costs and actual system designs to make the best decisions for the environment and community. Excluding the STEP option from the process will add millions to the cost of the LOWWP, further draining the limited resources of a small-scale, low to middle income community. The decision is inconsistent with the LCP because it jeopardizes the viability of a coastal community and it undermines orderly coastal development by draining resources for other publics works projects.

Depending upon the outcome of a SWI assessment, a decentralized and/or phased project may be needed to ensure orderly development and make the best use of scarce public funding. The decentralized alternative we recommend would be about one-third the cost. (see "Project Conditions Needed").(In addition to the LCP/CZLUO policies/sections cited in the above section of this appeal, the project fails to conform/comply with LCP Environmentally Sensitive Habitats Polices 1-8, 11, 12, 16, 7-23, 26-30, 36-39; LCP Coastal Watersheds Policies 1-3, 5, 10, 11; LCP Public Works Policy; CZLUO Sections 23.01.010, 23.04.403, 23.07.172, 23.07.174, 23.07.176, 23.07.178, 23.08.288).

Project Conditions Needed (All of the following are needed for conformance/compliance with the LPC and CZLUO):

1. Further environmental review, testing, and peer-reviewed analysis of the following:
   - the status of seawater intrusion SWI using current data, to determine the potential for a sustainable basin, safe yields with adequate margins of safety, and water supply/ basin management options
   - the status of the upper aquifer using current data
   - flows to environmentally sensitive ecosystems (and water quality)
   - the amount of water pumped from the basin using on-site inspections and monitoring of actual use (including private wells)

2. Based on the above, an analysis of the best use of limited public funding to establish a sustainable water supply for Los Osos. This includes an analysis of how limited funds can achieve maximum water quality/supply benefits, whether the LOWWP (the centralized project proposed) can achieve intended water quality objectives, and options. If the sustainability of the water basin is unlikely, desalination or imported water is needed, and/or the benefits of the upper aquifer can be achieved without an LOWWP project (as suggested by recent purveyor studies); then the LOWWP should be designed, sized, or phased to make the best use of limited public funds necessary to secure a sustainable water supply, while protecting, preserving, and restoring, where feasible, the natural environment, the community, and the economy of the area. This will require at least a 5-year capital improvements plan and longer-term planning with an eye to how coastal zone objectives (protection and enhancement of area resources) can best be achieved.

3. A basin-wide management program to aggressively reduce SWI, implemented by the County, in cooperation with other key agencies (e.g., the Coastal Commission and Regional Water Board). This would be implemented with one year of project approval, aimed at stopping at least 900 AFY of pumping from the lower aquifer within two years. On-going basin assessments and monitoring programs would be implemented to establish safe pumping levels (with ample margins of safety), along with an intensive water-use efficiency program, integrating indoor-outdoor conservation (including graywater and rainwater reuse) with LID recharge and other reuse programs (ag exchange and urban reuse). A well-designed, intensive conservation program (with the elements described) should achieve about two-thirds of 900 AFY reduction, more cost effectively than other options. Shifting pumping to the upper aquifer would achieve the remainder within two years, while minimizing impacts and maximizing benefits to the basin. The County, in cooperation with the Regional Water Board, would implement and enforce the program with a basin-wide ordinance and applicable laws.

4. Conservation and reuse programs for the project, designed to be an integral part of the basin-wide program with the following
   - an integrated indoor-outdoor program maximizing water-use efficiency, including a full ranges of high-efficiency retrofits xeriscape, rainwater harvesting, and graywater options), along LID recharge, leak detection, and water auditor services. (The LID program would be designed, in part, to support the areas environmentally sensitive habitat.)
   - provisions to pursue grant funding and ample funding set aside to implement the program, as necessary (e.g., about $10 million without grants)

- indoor-outdoor water use targets of no more than 60 gallons per capita per day (gpcd) of potable water use, with the goal of zero use of potable water for outdoor purposes
- an ordinance or ordinances to enact the program and provide incentives

5. A reuse program which specifies recycled water will be used to support only current development within the Urban Services Line, except as otherwise required by law (per LCP policies, e.g., Public Works Policies 1 & 9). The program should also specifically call for ag exchange and urban reuse options to be maximized. (These provisions amend/add to Conditions 97 and 103.) They are needed to ensure beneficial reuse will not induce unsustainable growth between the Urban Services and Urban Reserve lines. The parenthetical phrase in Condition 103 should also be eliminated:"(as identified in the "Effluent Re-use and Disposal Tech Memo, July 2008)." The phrase might be construed to limit onsite urban reuse.)

6. Pond treatment, either an Advanced Integrated Pond System (AIPS) or an Air Diffusion (Nelson Pond) System (ADS). The AIPS requires 14 and 12 acres for gravity collection and STEP respectively, and the ADS requires 25 and 21 acres respectively, according to the LOWWP TM entitled "Partially Mixed Facultative Pond Options" (Carollo Engineers, March 2007). (Note: The *Fine Screening Report*, and septage and biosolids TMs, overestimate the treatment needs, sludge and bio-solids production of a STEP system. The size of a pond required for a STEP system treatment, sludge disposal needs (trips to land fills, etc.), and GHC impacts are likely to be significantly smaller or less than the report/TMs estimate.)

7. Thorough design and environmental review of the "hybrid-gravity" system, once it is redesigned for conservation flows.

8. The inclusion of the STEP option in the design build process. The design build process must also allow innovative and cost-saving designs, e.g., plans that integrate all elements of the project (collection, treatment, and water management), also . It should also require bids for fully maintaining the systems in compliance with Water Board requirements for 10 years or more. These provisions are needed to keep costs as low as possible and to identify long-term best value.

9. Appropriate sizing of the treatment system with conservation of at least 20%. This would mean the treatment facility is designed for current flows of about 800 AFY of flows. Treatment for future development would be phased in (if basin sustainability is established) (per LCP policies, e.g., Public Works Polices 1 & 9).

(Note: The above conditions would be new condition to strengthen conditions set by the Planning Commission, or they can be additional conditions. Please also see the attached LOSG letters to the Planning Commission for further details, e.g., for a brief description of the LOSG's recommended decentralized option.)

August 10, 2009

San Luis Obispo County Planning Commission
County Government Center,
San Luis Obispo, California

Subject: LOSG request for further conditions on LOWWP EIR Certification/Development Permit approval—and request for a supplemental and/or subsequent EIR

Dear Commissioners:

The LOSG sincerely appreciates the many improvements to the proposed LOWWP you will be including as conditions of the LOWWP. They will move the project much closer to an environmentally responsible project. We are especially thankful for your recognition that the LOWWP must do all it can to mitigate for SWI to avoid destabilizing the basin further. SWI is moving rapidly through the basin destroying an irreplaceable coastal resource. As a result, the future viability of a wastewater project is uncertain. The project will cause major disruptions in the basin's equilibrium established over 30 years by removing septic return flows. To help ensure it does not do more harm than good (e.g., make SWI worse and harm sensitive ecosystems), the project must have a very strong water management element—and your Commission will be requiring a much stronger one. This improvement is consistent with integrated watershed management recognized by all authorities as essential for sustainable resources. It is especially important to the sustainability of the Los Osos Valley Water Basin, a relatively small coastal basin, under the multiple pressures of rapid SWI, a serious drought, rising sea levels, and the major hydrological impacts of a centralized wastewater project.

We also applaud your decision to move the treatment site to Giacomazzi (closer to town off prime farmland) and to minimize sludge production from the project. As staff pointed out, the local landfill will not accept sludge and the future of sludge disposal is uncertain. Therefore, the sustainability of the project—in fact, its viability from start up—requires minimizing sludge production.

We continue to have three major concerns and believe further conditions are needed for the project to have a chance of doing more good than harm.

1. **First, we believe EIR Certification and Development Permit approval should be conditioned on STEP going forward as part of the design build process.** We continue to believe it is environmentally superior to the hybrid-gravity system proposed. Even with the gravity system upgrades your Commission proposes (sealing it is high groundwater and along the bay), the STEP system will have fewer problems related to I/I (e.g. serious overflows, exfiltration, contamination from seawater, and reduced groundwater recharge). Also, STEP installation causes significantly fewer impacts because it can be installed via lateral boring at much shallower depths with less disruption to infrastructure and much less dewatering and shoring. STEP also produces 70% less sludge. In fact, the gravity system (even as upgraded) might undo some of the benefits your conditions achieve. John Waddell, County Project Engineer, stated on July 24 that the design of the gravity system would need to be "revisited" to determine if it can operate properly with conservation flows. A redesigned gravity system (e.g., to achieve needed flow speeds and scouring) could mean major new environmental impacts and costs (deeper trenching, more dewatering, more pumps stations, etc.) and/or it could

mean the system requires considerably more maintenance (flushing and cleaning) placing greater demands on limited water. This could offset the benefits of conservation regardless of whether recycled water is used. Recycled water can be used to offset pumping of the lower aquifer and stop SWI, so it provides similar SWI benefits to conservation. If the gravity system is not properly redesigned, it is guaranteed to overflow more often and cause more environmental damage than a STEP system. Further, the design of the proposed gravity system design has to be revisited with or without your Commission's conservation conditions (20% reduction upon project approval). On July 24, an LOCSD representative stated that current indoor use was about 63 gallons per capita per day and 60 gpcd is likely to be closer to the true use. This means the proposed gravity system design is inadequate at current use rates. Conservation is essential to effectively mitigate for SWI. It will occur naturally over time as people replace appliances. More relaxed graywater laws will also lead to reduced flows. Thus, the gravity system as designed is not safe or adequate. **It must be redesigned, and the only possible way (short of a supplemental or subsequent ERI) for a fair comparison of STEP and redesigned gravity system is to move STEP forward to the design build process. This provides decision makers some basis on which to make informed decisions about the relative environmental adequacy and benefits of the two systems and their cost effectiveness.**

(Note: The currently-planned LOWWP—without STEP in the design build process—could seriously harm a community in the midst of a severe economic recession. In a worse-case scenario, cost overruns for redesigning a gravity system (e.g., deeper trenching or greater dewatering) might prevent the project from being completed. A poorly-designed gravity system may also be cost-prohibitive to operate. For example, the maintenance needed to avoid blockages and harmful overflows may exceed the community's ability to cover these costs. Including the STEP option in the design build process helps ensure maximum competition and a cap on project costs (no change orders). We believe the LOWWP with gravity collection will cost residents at least 30% more than a system with STEP collection (i.e., $40 to 50 million). This is supported by the statements of Dana Ripley on July 24. (Mr. Ripley is an expert on STEP systems and consultant to one of the design-build teams.) A 30% unnecessary premium on costs equals $40 to 50 per month for each homeowner in the Prohibition Zone, in most cases, for the remainder of his or her life.

2. **Second, we strongly recommend you set a condition that the project has pond treatment.** Although your Commission indicated it intends to reduce sludge, you have apparently not set a condition that treatment is with a pond system. Pond treatment will reduce sludge by several orders of magnitude compared to a Biolac system, the recommended treatment alternative. Biolac or Oxidation Ditch treatment systems apparently require weekly removal, hauling, and disposal of sludge. We heard on July 24 that the local landfill is not accepting sludge, and your Commission voted against land application. *Therefore, sludge must be minimized to the extent possible for the project to be viable. This is consistent with the Coastal Commission's input to the County in a letter dated July 15.* It may well be that Biolac and Oxidation Ditches are infeasible under current conditions. The finding in the EIR that Biolac is environmentally superior to ponds is simply not accurate, especially with the need for frequent trips to distant landfills and the future uncertainties of disposal. Furthermore, with the newly calculated reduced flows for the LOWWP, a treatment pond will easily fit on the Giacomazzi site. On July 24, Mark Hutchinson said a storage pond is not needed with the reuse options

your Commission is recommending. Finally, pond treatment plus a storage pond may fit on Giacomazzi if a STEP system is chosen since the STEP system reduces sludge by 70%.

3. **Third, we strongly recommend that low impact development (LID) on-site and community systems are added as a condition to help mitigated for impacts to ecosystems. We recommend they are added to the conservation program per our integrated sustainable basin plan—and we recommend more funding is allocated for an integrated program (e.g., for administration, outdoor strategies, and LID).** We remain very concerned that the impacts to ecosystems in the area have not been adequately mitigated. The EIR claimed no impacts will occur when septic flows are removed with the project, despite acknowledging they provide a substantial portion of the subsurface flows to ecosystems in the area (e.g., marshes and creeks) We appreciate your efforts to mitigate for Willow Creek Drainage but remain doubtful 33 AFY of recycled water discharged at Bayridge Estates will mitigate for about 430 AFY of reduced flows. Willow Creek Drainage supplies Willow Creek, Eto Lake, and Los Osos Valley Creek. Furthermore, no mitigation has been provided for marshes and springs along the bay; even though Spencer Harris, author of one of the EIR hydrologic reports, acknowledged potential impacts at your June 30 meeting—and they were identified and mitigated with the previous project. Broderson leach field disposal, as suggested in the EIR, will not reasonably mitigate the impacts to systems some distance from the site (e.g., Third Street Marsh, Baywood Marsh, Eto Lake, and Los Osos Valley Creek). When upper zone water tables drop significantly with the project, these ecosystems will undoubtedly experience negative impacts, possibly severe ones. Note that it may not be possible to fully mitigate for impacts if the project uses centralized collection (i.e., stops all septic flows within the Prohibition Zone). The LOSG proposes a decentralized option as the most sustainable system overall—see below. We believe the failure to identify and mitigate for negative impacts to ecosystems is another obvious flaw in the EIR and reason for a supplemental or subsequent EIR.

4. **Fourth, we continue to believe a basin-wide plan and ordinance must be a condition of the project.** The plan and ordinance should have the stated purpose of stopping SWI as soon as possible, emphasizing conservation, ag exchange, and urban reuse. Each of these has SWI mitigation factors of .55, with all other options less than half as effective. Thus, they offer the most certain ways to stop SWI by directly offsetting pumping of the lower aquifer and relying minimally on basin modeling. They also provide co-benefits (reduced energy and nitrate fertilizer use). The goal would be to stop at least 900 AFY of pumping from lower aquifer wells causing SWI. A comprehensive, basin-wide plan is needed because property owners served by the LOWWP use only about one-half of the water in the basin (about 1500 AFY of 3200 AFY). The ISJ/water purveyor basin planning process applies to only about two-thirds of the water pumped (2100 AFY of the 3200 AFY). A basin wide plan provides the best chance of stopping SWI, so it is necessary for minimal assurance of project viability (i.e., a sustainable water supply). As the Coastal Commission pointed out, safe mitigation for SWI cannot rely on the purveyor adjudication process with uncertain outcomes and timelines. Recently (July 30, 2009) a consultant for the purveyors presented a preview of the plan emerging from the ISJ process. It calls for shifting about 900 AFY of pumping from the lower aquifer to the upper aquifer. According to the February 2007 Los Osos Vater Supply *Resource Capacity Study*, which set the Level III of Severity for the basin, this much pumping of the upper aquifer exceeds the established safe yield by 40% (about 1600 AFY vs. 1150

AFY) (p. 9). The EIR states the upper aquifer is only "relatively" stable subject to SWI during extended droughts (Appendix D-2, p. 17). Thus, the ISJ plan would over pump the upper aquifer to stop over pumping the lower aquifer, negatively impacting the upper aquifer during a period when it experiences major impacts from a wastewater project. Cooperative arrangements among purveyors since 1994 have failed to implement effective conservation measures and resulted in SWI getting worse. Clearly, the purveyor ISJ process cannot be relied on to provide the level of conservation needed, safely mitigate for SWI, or protect and enhance vital resources.

Need for a supplemental or subsequent EIR

A supplemental or subsequent EIR is necessary to address the many documented deficiencies and omissions in the current EIR, and to consider new information. Some of the areas needing a fair and thorough review are the following:
1) the potential impacts of accelerating SWI (e.g., further analysis based on current well test data),
2) the potential impacts from reduced flows to ecosystems (e.g., testing and calculations of flows with safe mitigation)
3) the potential impacts of a redesigned gravity system (e.g., sealing, depths of trenches, dewatering, and pump stations)
4) the potential impacts of collection systems (e.g., I/I, clogging, reduced aquifer recharge, overflows, maintenance)
5) the potential impacts of sludge production and disposal (e.g., impacts/uncertainties of future disposal options)
6) the potential impacts of graywater use and reduced flows (e.g., impacts on collection system operation and maintenance)
7) the potential impacts of STEP (e.g., benefits of high-nitrate effluent and reduced sludge).

Further, we continue to request a supplemental/subsequent EIR to address the failures of the first EIR to provide adequate and accurate project scoping, purpose and needs, and objectives. The LOSG formally submitted scoping recommendations for sustainable project options to the Board of Supervisors in June of 2007 that were not addressed in the DEIR. SWI is a more serious threat to water quality in the Los Osos Valley Water Basin than nitrates and this should have been reflected. It is clear from the EIR and basin studies that nitrates in the upper aquifer have stabilized, but SWI is rapidly contaminating the basin.

We also again call for a fair and thorough analysis of a decentralized option with collection from up to 1000 homes near the bay and in high groundwater areas—with wetland or greenhouse treatment at an in-town location. This option, presented to the SLO Board of Supervisors in January of 2009 and to your Commission on July 23 of 2009, we believe is the most sustainable. It would keep most septic systems in place with upgrades. It would include a centrally-managed nitrate management program, septic system management program, and the sustainable water management plan recommended by LOSG. We believe the option achieves all project environmental objectives more effectively at about one-third the cost. It also provides the greatest possible benefits to all systems—environmental, social and economic. It eliminates septic system discharges posing the greatest threat to ground and surface waters, partly by lowering groundwater levels in areas where water is prone to surfacing. It minimizes disruption to basin hydrologic systems—recharge cycles and freshwater flows to ecosystems (e.g., Willow Creek). It speeds up water quality improvements by maximizing LID recharge (dilution of

nitrates in the upper aquifer) and slowing the rate of septic system discharge (via conservation). It alleviates all impacts to farmland and the Broderson site. It reduces disturbance of ESHA by 60% or more, and reduces GHG's by about that much. Finally, it provides enough recycled for water ag exchange and urban reuse within the basin to help stop SWI. Note that it would not comply with the Regional Water Board's current zero discharge prohibition and would require modifications to the order in the project's permit (Waste Discharge Requirement—WDR).

Summary

Again we thank you for addressing many of the proposed project's serious flaws. **If you approve the EIR and Development Permit with the conditions you've approved in "straw votes," we believe the additional conditions discussed above (and summarized below) are necessary for the project to have a chance of doing more good than harm.**

1. STEP in the design build process to reduce sludge, collection system groundwater impacts, and lower system cost—also to allow decision makers to know the true benefits and costs of competing systems necessary for good decision making.

2. A basin wide plan and ordinance to stop SWI as soon as possible, maximizing conservation.

3. A pond treatment system to reduce sludge production to the extent feasible.

4. LID options (e.g., for ecosystem support) added to the indoor/outdoor conservation measures as part of an integrated program, with additional funding earmarked (possibly offset by grants). (This assumes all indoor and outdoor options provided in the LOSG plan are already included in the condition approved by straw vote. Essentially, we are recommending the integrated LOSG water-use efficiency plan with adequate funding to achieve its potential benefits.)

Also, we continue to believe supplemental and/or subsequent EIR(s) are essential to provide adequate and appropriate scoping, purpose and needs, and objectives for the project—as well as to review the options and potential impacts we identify above.

Sincerely,
Los Osos Sustainability Group