

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Chuck Cesena

Mailing Address: 591 Ramona Avenue

City: Los Osos

Zip Code: 93402

Phone: (805) 534-1436

SECTION II. Decision Being Appealed

1. Name of local/port government:

San Luis Obispo County

2. Brief description of development being appealed:

Los Osos wastewater treatment project

3. Development's location (street address, assessor's parcel no., cross street, etc.):

Throughout the community.

4. Description of decision being appealed (check one.):

- Approval; no special conditions
 Approval with special conditions:
 Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-3-SLO-09-055

DATE FILED:

October 19, 2009

DISTRICT:

Central Coast

RECEIVED

OCT 19 2009

CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST AREA

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

I appeal this decision primarily because potentially significant impacts upon archaeological, biological and groundwater resources have not been mitigated to the maximum extent feasible, as claimed by the applicant. The specific LCP policy violations are detailed in the attached appeal that was first filed with the County of San Luis Obispo, and will be supplemented with additional material in a timely manner. I also appeal on the basis of the County's refusal to consider alternatives that would reduce biosolids (sludge) production, as requested in the Coastal Commission staff's guidance letters to County Public Works.

TO: San Luis Obispo County Board of Supervisors

RE: Appeal of Coastal Development Permit, Los Osos Wastewater Project, DRC2008-00103

CC: Sara Christie, Chair, SLO Planning Commission
Jonathan Bishop, California Coastal Commission

I, Chuck Cesena, a resident of the Los Osos "prohibition zone", do hereby appeal the August 13, 2009 decision of the SLO Planning Commission regarding the above referenced project. The basis for the appeal is as follows:

Development Plan/Coastal Development Permit Findings

B-6

One of the goals of Coastal Act watershed policies is to protect groundwater basins. The proposed project must include an agricultural exchange/reuse program as the primary means of effluent disposal for this finding to be true. The previously proposed spray fields were a criminal waste of water. As detailed in the appeal from the Los Osos Sustainability Group, reliance upon the Broderson leachfields and the water purveyors' existing groundwater adjudication will not provide a balanced basin.

B-8

The proposed project **does not** avoid Environmentally Sensitive Habitat (ESHA) to the extent feasible. The proposed gravity collection system requires waiving wetland setbacks for pump stations and would probably construct pump stations in ESHA. The extent of this impact was not detailed in the EIR. There is no definitive statement regards the exact locations of the pump stations and no calculations regarding impacts upon sensitive resources, only vague statements alluding to the minimization of impacts to the extent feasible. But the STEP/STEG collection system would not require wetland setback variances or ESHA destruction as there would be no pump stations required. Regarding ESHA resources, the STEP/STEG collection system is the Environmentally Superior option.

B-10

The proposed project **does not** avoid impacts to archaeological resources to the maximum extent feasible. The proposed mitigation for the installation of deep gravity collection system trenches in sensitive areas calls for monitoring of mechanical backhoe trenching through these areas. But according to CEQA and Local Coastal Plan policies, avoidance is the first mitigation strategy, not the careful recordation of the destruction of the resource. Micro-tunneling, as would be used for installation of a STEP/STEG collection system, allows for the avoidance of the resource as the grade and route of the pipe can be easily changed during construction. Since the system is under constant low-pressure, there is not need to maintain preset grades to ensure the functioning of the system. The grades (profiles) for pipes that rely on gravity for conveyance cannot be

easily changed when unexpected resources are encountered. It becomes necessary to destroy the resource by trenching through it and all the careful monitoring in the world will not avoid the impact upon Native American grave sites.

C – 3, 4

For the reasons given above the project is not in conformance with the following Sections of Title 23 of the County Code and Local Coastal Plan:

23.107.04 Protection of Archaeological Resources,

23.07.170 (4) (B) New development in ESHA must be resource dependant,

23.07.172 Wetland Setbacks

23.07.176 (1) Protection of Vegetation. Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Development shall be sited to minimize disruption of habitat,

23.07.176 (2) Area of Disturbance. The area to be disturbed by development shall be shown on a site plan. The area in which grading is to occur shall be defined on site by readily identifiable barriers that will protect the surrounding native habitat areas.

H-1, J

Again, the project **does not** avoid sensitive resources to the extent feasible as it favors a gravity collection system with pump stations within ESHA. The use of a STEP/STEG collection system would avoid these resources.

R-Y

There would be no need for a wetland setback variance for pump stations with a STEP/STEG collection system as there would be no pump stations.

Z

The proposed project **does not** acceptably and adequately provide for the protection of archaeological resources as it does not provide for the avoidance of those resources. It calls for the destruction of the resource and recordation of the destruction as mitigation.

Development Plan/Coastal Development Permit Conditions

24-26

Is it really possible to condition a project to prepare a report addressing geologic hazards and predetermine the findings of that report? What happens if the insignificant finding cannot be made? Isn't that why the EIR was written in the first place, to determine the risks?

A gravity collection system with bell and spigot connections is much more susceptible to rupture and displacement during a seismic event than a fuse-welded STEP/STEG collection system. Is it adequate to call for "soft-fixes" (a repair plan) rather than to require the construction of a collection system that would be better able to withstand seismic events in the first place?

These measures call for the careful recordation of the destruction of archaeological resources, not the avoidance of those resources.

98

This condition needs to be amended to require fusion welded collection system pipes in all areas of historic high groundwater. Groundwater levels such as those present during the winter of 1995 will be much higher than those present when the project is likely to be constructed. Allowing these determinations to be made in the field during construction will not provide adequate protection against unnecessary infiltration of the collection system, especially if construction occurs during the summer months of a drought cycle. And these field determinations open the door to expensive change orders, which the design build process was supposed to prevent. Suggested language is attached.

101

The disposal of 33 acre feet per year of treated effluent will not mitigate the effect upon sensitive habitat resources dependent upon the existing discharges from this leach field. The Willow Creek drainage supported by this leach field, and other neighborhood septic tanks, will be adversely affect by the removal of water from this leach field. Other sensitive habitats throughout the community will suffer the same fate.

Development Plan/Coastal Development Permit CEQA Findings

1.3.2 Findings For Determination of the Environmentally Superior Alternative

The findings that the Planning Commission approved project is the Environmental Superior Project can only be made if it is assumed that the gravity collection system is the environmentally superior collection system. It is not, for the reasons given in the Sierra Club appeal of this project and my comments on the DEIR. The County has failed to adequately compare the two collection system technologies with regard to ESHA destruction, infiltration and inflow issues, biosolids production and greenhouse gas production. Inconsistencies with ESHA policies alone should preclude the gravity system. All of the County documents have acknowledged STEP/STEG's superior performance with regard to I & I issues. The County has yet to seriously address the production of biosolids, as was requested in the July 15, 2009 letter from the California Coastal Commission. And they have yet to respond to the issues raised and data presented in the 5/27/09 letter to the Planning Commission from Michael Saunders of Orenco Systems, Inc., or to adequately analyze green house gas emissions associated with hauling of sludge to probable destinations outside of the County.

In 2006, then County Public Works Director Noel King stated that the LOWWP would feature a gravity collection system. In the 2007 review of the Carollo Fine Screening Report, the National Water Research Institute (NWRI) peer reviewer stated that he was having a hard time not using the words gravity biased to describe the report. It has been obvious that the County has intended to not allow an honest consideration of alternative

collection system technologies. So it is very difficult to see how the general findings in Section 1.8 can be supported, particularly bullet #11 regarding no previous commitment to a definite course of action prior to certification of the EIR. And the failure of the general findings leaves open the question of all of the specific findings as the true Environmentally Superior Alternative was not the project proposed for consideration by the Planning Commission.

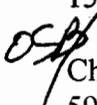
In addition to the failure to satisfy many Coastal Policies that focus on the physical environment, the proposed project fails to satisfy county code and Coastal Plan Policy 23.04.092 which requires that housing opportunities in the coastal zone for persons and families of low or moderate income shall be protected. The STEP/STEG collection system was guaranteed (by the Lyles team) to be at least 20% cheaper than the gravity system during the County Request for Qualifications interviews. And if the project were treated as whole rather than the sum of independent parts, the savings on the treatment system would likely be as substantial. In 2006, an updated wastewater project report was commissioned by the Los Osos CSD (Los Osos Wastewater Management Plan Update - Wastewater Collection, Treatment, Storage, and Water Recycling: Beneficial Reuse of Water and Nutrients, Ripley Pacific Company, 12/18/2006). The schematic diagram of this proposal was so highly regarded by the NWRI that it was published in their recent textbook entitled Water Reuse. It is interesting to note that the project, as now modified by the Planning Commission, looks exactly like that 2006 project except for the lack of the environmentally superior STEP/STEG collection system and a commitment to full agricultural reuse for disposal.

The EPA recognizes the potential benefits of a STEP/STEG system for communities such as Los Osos, urging "full consideration of options to a traditional gravity sewer, which "smaller communities cannot afford," such as pressurized effluent collection systems consisting of:

"shallowly buried plastic pipes, low-cost cleanouts instead of frequent/costly manholes, and a minimum number (if any) of lift stations. They have 40 years of successful experience in the US and worldwide (less I/I [inflow and infiltration], exfiltration, construction duration and disruption). Their management requirements are equal to or lower than conventional gravity sewers (depending on the number of lift stations)."

(www.epa.gov/owm/septic/pubs/septic_technologies.ppt)

Due to the substantial reconfiguration of the project in the Coastal Development Permit/Development Plan Findings and conditions of approval, the significant new information entered into the record in the Planning Commission process, and the inadequate and conclusory nature of the EIR as detailed above, the County must recirculate a revised EIR, pursuant to CEQA Guidelines § 15088.5(a)(1); § 15088.5(a)(2); and § 15088.5(a)(3).


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