

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
 725 FRONT STREET, SUITE 300  
 SANTA CRUZ, CA 95060-4508  
 VOICE (831) 427-4863 FAX (831) 427-4877

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

**SECTION I. Appellant(s)**

Name: J. H. Edwards Company, Jeff Edwards

Mailing Address: P.O. Box 6070

City: Los Osos

Zip Code: 93412

Phone: 805-235-0873

**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 Project

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

2198 Los Osos Valley Road, Los Osos, CA, APN#067-011-022

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

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5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: September 29, 2009

7. Local government's file number (if any): DRC2008-10103

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

San Luis Obispo County  
San Luis Obispo County Government Center  
San Luis Obispo, CA 93408

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) See Attached

(2)

(3)

(4)

**September 29, 2009 speakers at SLO CO. Board of Supervisor's LOWWP Appeal Hearing**

Mr. Don Beardon  
Mr. Steven Paige  
Mr. Barry Branin  
Mr. Bruce Corelitz  
Mr. Scott Kimura  
Mr. Dennis Law  
Mr. Jeff Edwards  
Ms. Piper Reilly  
Ms. Linde Owen  
Mr. Keith Wimer  
Mr. Al Barrow  
Ms. Sarah Corbin  
Mr. Jesse Hill  
Mr. Andrew Christie  
Mr. Chuck Cesena  
Ms. Anne Wyatt (Planning Commissioner)  
Mr. Eric Greening  
Dr. C. Hite  
Ms. Lisa Schicker  
Ms. Gail McPherson  
Ms. Julie Tacker  
Mr. Bruce Payne  
Mr. Chris Allebe  
Ms. Anne Bahme  
Mr. Bill Garfinkel  
Mr. Phil Gray  
Ms. Joyce Albright  
Mr. Frank Ausilio  
Mr. David Dubbink  
Mr. George Taylor  
Ms. Gewynn Taylor  
Mr. Bill Moylan  
Mr. Richard Nyznyk  
Ms. Anne Norment  
Mr. Fred Collins (Northern Chumash Tribal Council)  
Mr. Michael Chamberlain  
Ms. Gretchen Clark  
Ms. Elaine Watson  
Ms. Sharon Frederick  
Ms. Vita Miller  
Mr. Ben DiFatta  
Ms. Jerri Walsh  
Mr. Richard Margetson  
Mr. Alon Perlman  
Ms. Carolina VanStone  
Mr. Jack Hunter  
Mr. Joe Sparks (Los Osos Community Services District President)  
Ms. Katie Franklin

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

### **SECTION IV. Reasons Supporting This Appeal**

#### **PLEASE NOTE:**

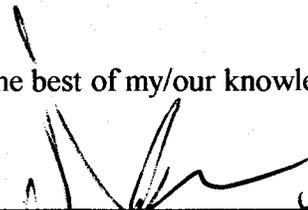
- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local 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.

See Attached

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**

**SECTION V. Certification**

The information and facts stated above are correct to the best of my/our knowledge.

  
\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date: October 16, 2009

**Note:** If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby authorize \_\_\_\_\_  
to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date: \_\_\_\_\_

California Coastal Commission  
725 Front Street  
Santa Cruz, CA

October 16, 2009

Attention: Jonathan Bishop

**Subject: Appeal of Los Osos Wastewater Project / County File No. DRC2008-00103**

The J. H. Edwards Company respectfully requests an appeal of the San Luis Obispo County Board of Supervisors approval of the above referenced project to the California Coastal Commission. This appeal text is attached to the official appeal forms for approved development within the Coastal Zone. The County of San Luis Obispo has approved a Development Plan/Coastal Development Permit to allow construction and operation of a sewer system to serve the community of Los Osos, which includes a collection system, a sewer treatment facility plant, effluent disposal system, agricultural re-use program, water conservation program, and all associated appurtenant infrastructure in multiple land use categories, located at 2198 Los Osos Valley Road, approximately 0.5 miles east of the community of Los Osos in the Estero Planning Area. 2<sup>nd</sup> District.

Said project may include an application for USDA Rural Development Funding. Also approved at the hearing was the Environmental Document prepared for the item. The Environmental Coordinator, after completion of the initial study, found that there was evidence that the project may have significant effects on the environment, and therefore a Final Environmental Impact Report (FEIR) was prepared (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) for this project. The FEIR addressed potential impacts on: Land Use and Planning; Groundwater Resources; Drainage and Surface Water Quality; Geology; Biological Resources; Cultural Resources; Public Health and Safety; Traffic and Circulation; Air Quality; Noise; Visual Resources and Environmental Justice. Mitigation measures were proposed to address these impacts and are included in the conditions of approval. Overriding considerations were determined necessary based on significant and unavoidable impacts associated with agricultural resources.

Throughout this appeal document, the J. H. Edwards Company, herein referred to as "Appellant" will bring attention to shortfalls in the approved project, demonstrate inadequacy in the Final Environmental Impact Report (FEIR) relative to the approved project and inconsistencies with the County of San Luis Obispo's Certified Local Coastal Plan and the Coastal Act. The approved project is that project approved by the San Luis Obispo County Board of Supervisors on September 29, 2009 including the Findings and Conditions. The appellant has been a resident of the community of Los Osos since 1976 and has been a supporter of wastewater project since 1982. Furthermore, the appellant supports the use of a gravity-hybrid collection system as approved by the Board of Supervisors. Additionally, the appellant supports the use of the Broderon site (APN# 074-022-073 and 074-022-074) for purposes of disposing of treated effluent during periods of wet weather.

While supportive of the adjustments made to the Los Osos Wastewater Project (LOWWP) by the Planning Commission on July 24, 2009, specifically removing all aspects for use of the 3515 Turri Road aka "Tonini" property from the project, the Planning Commission's effort does not go far enough to bring a comprehensive wastewater project to the community of Los Osos. Neither did the action of the Board of Supervisors on September 29, 2009 include provisions that would have obviated the appellants concerns. The project falls short in a number of areas including identification of dry weather options for disposal of treated effluent, the treatment site location, disposal methodology at the Broderon site, and miscellaneous other appeal contentions. The standard for review for the proposed LOWWP is conformity with and adequacy to carry out the provisions of the County's Certified LCP and the Coastal Act.

**Appeal Contention No. 1:**

**Construction of AB2701**

The bill passed by the Assembly in 2006 gives the County of San Luis Obispo specific authority to best meet the needs of Los Osos and its water *and* wastewater issues.

*(c) The county may undertake any efforts necessary to construct and operate a community wastewater collection and treatment system to meet the wastewater collection and treatment needs within the district. These efforts may include programs and projects for recharging aquifers, preventing saltwater intrusion, and managing groundwater resources to the extent that they are related to the construction and operation of the community wastewater collection and treatment system. These efforts shall include any services that the county deems necessary, including, but not be limited to, any planning, design, engineering, financial analysis, pursuit of grants to mitigate affordability issues, administrative support, project management, and environmental review and compliance services. The county shall not exercise any powers authorized by this section outside the district.*

The project as presented by the applicant fails to address the serious threat of seawater intrusion to the Los Osos Groundwater Basin. This has resulted in the Certification of a Level III Severity for supply in the lower basin under the Resource Management System. It appears the rate of intrusion is increasing rapidly in a manner that threatens the continued use of the lower basin for domestic supplies. A goal of this appeal is to ask the California Coastal Commission to further address the water supply issues in Los Osos by implementing programs and projects for replenishing aquifers, preventing seawater intrusion, and managing groundwater resources to the extent that they are related to the construction and operation of the community wastewater collection and treatment system. AB2701 enables the County through implementation of the wastewater project to concurrently address groundwater management issues including the method of effluent disposal that maximizes mitigation to seawater intrusion occurring in the lower basin this includes construction of all necessary conveyance systems, acquisition of necessary real property or easements and permitting.

The appellant objects to the general approach the project takes assuming the water purveyors (Interlocutory Stipulated Judgment, ISJ) will beneficially use treated effluent to the extent the project does not. This will include necessary planning, design, permitting, funding and construction of water resource infrastructure to manage the Los Osos Groundwater Basin. In light of the sensitive project area, the appellant requests that the California Coastal Commission recognize and modify the project to eliminate the need for water purveyors to plan, design, permit and finance water infrastructure development in the future and compel the wastewater project to include these features. The current project enjoys treatment under Section 7 under the Federal Endangered Species Act, while future purveyor projects would likely be delayed by the onerous and costly pursuit of an incidental take permit under Section 10 of the Act.

If beneficial use of the treated effluent isn't made part of the LOWWP it will be deferred into the future with an uncertain outcome and at an unknown cost. This is inconsistent with CQEA and the Coastal Act. The ISJ is coercive, not compulsory and future projects to be performed by purveyors identified in the ISJ Work Program may or may not ever be accomplished. (See ISJ Work Program attached as Exhibit 1).

The project purports to serve existing developed properties. The current deficit in the lower groundwater basin from seawater intrusion has resulted from the very development the project will serve. It is a well known legal and planning precept that deficits or limitations concerning a given resource may not be made up or offset by future development. For example, 66000 of the Government code requires a demonstration that development pay solely for the impacts associated with such and not for any existing deficiencies. The project may not proceed without a showing that the entire 469 AFY deficit in the lower groundwater basin is addressed and not the 120AFY or so the current project achieves.

## Appeal Contention No. 2:

## Inadequate Review of Alternatives

The Final Environmental Impact Report fails to adequately analyze feasible alternatives: Specifically, Conditions of Approval, Approved Development 1.a and 1.d.

### Disposal Plan Alternative Analysis:

The applicant claims to have done a co-equal analysis of effluent disposal alternatives. On the contrary, the applicant provides only one disposal scheme, a two pronged approach by which 2/3 of the effluent is sprayed on the Tonini site in an effort to "lose" the wastewater and 1/3 dedicated to the Broderon site for subsurface disposal. The approved dry weather effluent disposal plan was not analyzed in the DEIR, remains unanalyzed and is deficient in many areas.

### Dry Weather Effluent Disposal Concept Approved by the County is Infeasible

**The following is language included in approved Condition #97** *"Disposal of treated effluent shall be reserved for the following sites/uses: a. Broderon (not to exceed 448 AFY on an average annual basis), b. Urban re-use within the urban reserve line (as identified in the Effluent Re-Use and Disposal Tech Memo, July 2008), c. Agricultural re-use overlying the Los Osos Groundwater Basin, d. Environmental reservations (not less than 10% of the total volume of treated effluent), and e. Other agricultural re-use within Los Osos Valley. New paragraph - Total agricultural re-use shall not be less than 10% of the total treated effluent. New paragraph - Disposal shall be prioritized to reduce seawater intrusion and return/retain water to/in the Los Osos groundwater basin. Highest priority shall be given to replacing potable water uses with tertiary treated effluent consistent with Water Code Section 13550."* Please see map labeled as Attachment 4 included and color coded list of property owners that would potentially participate in the programs associated with effluent disposal. (Attached as Exhibit 2).

The approved project as conditioned above fails to adequately address seawater intrusion migrating into the lower basin. The Broderon site is intended to serve as the wet weather disposal option. Wintertime disposal is proposed at the Broderon site using leachfields for subsurface disposal. Gravity/dry wells should be considered for subsurface disposal instead of the leachfields because of superior performance with respect to groundwater mounding as discussed in the March 2004 geotechnical report prepared by Fugro West, Inc. It is anticipated Broderon will be used exclusively for treated effluent disposal during periods of wet weather. However, the approved plan fails to deploy the treated effluent during dry weather in a manner that optimizes lower basin replenishment to slow the rate of seawater intrusion. (See Broderon Prototype Drywell test attached as Exhibit 3).

Effluent disposal should be considered in a seasonal context. Summertime deployment of treated effluent in an Ag in-lieu disposal scenario would work in concert

with disposal into Los Osos Creek where the lower basin is exposed during dry weather. A creek discharge of treated effluent would likely have a high seawater intrusion mitigation factor given the unique hydrogeologic characteristics of the lower groundwater basin. (Please see Technical Memo #3 prepared by Kenneth Schmidt, July 10, 2006). An NPDES permit for the surface water discharge would be required. This disposal option was the dry weather disposal option for the LOWWP as discussed in the Morro Group August 1987 FEIR and Appendices; and Morro Group September 1989, SEIR..

A key distinction relates to the use of the words "Ag-Exchange and Ag In-lieu". Ag-Exchange is a relationship where farmers receive treated effluent and they provide fresh water supplies from their wells in exchange. Given the uncertain water quality underlying agricultural uses in Los Osos Valley an in-lieu program appears more desirable. An ag in-lieu program would provide treated effluent to farmers in consideration of farmers not pumping their wells overlying the Creek Compartment of the Los Osos groundwater basin. Ag In-Lieu should be a lower priority disposal option given its minimal seawater intrusion mitigation (0.1). It is clearly a mistake to reserve any minimum allocation (10%) for ag-reuse as the approved project does when higher priority options for disposal are available. The agricultural wells in the Los Osos Valley are substantially removed from the seawater intrusion wedge in contrast to the ag interests in Monterey County that receive treated effluent from the MRWPCA.

Additionally, a 10% minimum reservation for "Environmental" may have little to no seawater intrusion mitigation. At present the only known location for such disposal is the Willow Creek wetland system that will receive 33AFY which is substantially less than the 120AFY provided for in the approval.

As for urban reuse so called "purple pipe", there are limited opportunities, if any, to utilize treated effluent for Urban Reuse. Locations, including schools, golf course and the cemetery are problematic for a number of reasons. The most notable constraint is the cost to convey treated effluent to any given location as compared to the economic benefits of receiving the effluent. Neither the project or potential recipients of treated effluent for urban reuse will pay for the costly conveyance infrastructure. California Water Code 13550 cannot compel private properties overlying the groundwater basin to terminate well extractions which in most cases serve turf irrigation needs in the community. (E.g. Sea Pines Golf Resort, Simple Tribute Cemetery).

With regard to individual residences, the exterior water use in Los Osos is only thirty percent (30%) of daily water use and with drought tolerant landscaping, exterior water use will likely be reduced further in the future. The cost benefit analysis of providing purple pipe to all homes in the community is cost prohibitive. The following table summarizes effluent disposal locations as proposed under the current Board of Supervisors approval as compared to alternatives.

**Effluent Disposal Summary**

<b>BOS Approved</b>		<b>Appellant Proposed</b>	
<b><u>Disposal Location</u></b>	<b><u>AFY</u></b>	<b><u>Disposal Location</u></b>	<b><u>AFY</u></b>
Broderson	448	Broderson	448
Ag In-Lieu 10% min.	522	Creek Discharge	350
Urban Reuse	110	Ag In-Lieu	369
Environmental 10% min.	<u>120</u>	Limited Urban Reuse (Willow Creek)	<u>33</u>
<b>Total</b>	<b>1200AFY</b>	<b>Total</b>	<b>1200AFY</b>

The ability to check the rate of seawater intrusion in the lower basin should be the single focus of an effluent disposal plan for the project. The wet weather disposal at Broderson in combination with a dry weather creek discharge and ag-in-lieu program has the greatest seawater intrusion mitigation and will allow the community of Los Osos to continue to rely primarily on the lower basin for domestic water supplies. In the absence of a sound and feasible dry weather disposal plan, 100% reliance on the Broderson site year round may be necessary resulting in significant downstream impacts that have not been fully analyzed.

As a housekeeping item it is unclear what roll if any the following properties in connection with the approved project, specifically concerning the effluent disposal plan. *"a portion of the effluent disposal system to 2350 and 2780 Los Osos Valley Road (APN's 067-031-008 Andre; 067-031-011, Andre; 067-031-037, Robbins; and 067-031-038, Robbins)."*

**Treatment Sites Alternatives analysis:**

The applicant claims to have performed a co-equal analysis of project treatment site alternatives. Arguably, the most viable site, Gorby, was not analyzed as a treatment plant location. The Planning Commission efforts to relocate the treatment facility from the Tonini site to the Giacomazzi site are appreciated, yet the constraints identified in the DEIR render their decision infeasible, when potentially feasible alternatives exist.

San Luis Obispo County Agricultural Policy 24 contained in the Agricultural & Open Space Element and California Coastal Act Section 30250 discourages conversion of agricultural lands to non agricultural uses through the following policies:

**AGP a. (4).** *Avoid location new public facilities outside urban and village reserve lines unless they serve a rural function or there is no feasible alternative location within the urban village reserve lines.*

**California Coastal Act Section 30250: Location, existing developed area (a)** *New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located with, contiguous with, or in close proximity to, existing*

*developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land division, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.*

The appellant agrees there are no feasible alternatives for a treatment plant site within the Urban Reserve Line (URL) including the Tri-W site, but there is a potentially feasible location **adjacent to** the URL at the Gorby site on the urban fringe. A project at Gorby would likely be consistent with AGP 24 and Section 30250, would also reduce environmental effects and it would provide the broadest options for beneficial re-use of treated effluent via its strategic location as a distribution hub. Condition of Approval, 95, Mitigation 5.11-A1, requires procurement of an ag easement related to the conversion of ag resources which is not applicable to the Gorby site.

The Giacomazzi site is considered "Farmland of Statewide Importance", once used for irrigated pasture, dryland farming, confined livestock, or dairy facilities, aquiculture poultry facilities, or dry grazing that has since become idle. See Exhibit 5.11-2, Farmland Designations map. In contrast, the Gorby site holds no distinction due to the fact that the parcel currently operates as an equestrian facility.

Physical characteristics of the Cemetery, Branin and Gacomazzi sites only differ slightly. The similarities of these parcels hardly provide alternatives for an exhaustive treatment site analysis. An adequate alternatives analysis would have included all potential sites adjacent to or near the URL. In essence there were only two treatment sites reviewed by the FEIR, the Cemetery Complex and Tonini.

The Giacomazzi site raises significant growth inducing questions, as it is located approximately one-half (0.5) mile from the Los Osos Urban Reserve Line (URL). AGP 24 a. (4) and California Coastal Act Section 30250.

In the DEIR the Giacomazzi site is mapped as having "Very High Potential" for liquefaction. Conversely, the CEQA Findings characterize the Giacomazzi site as having "low potential for liquefaction"; the latter statement appears to be in error. The record shows that the Gorby site is in an area of "Moderate Potential" for liquefaction.

The Giacomazzi site is considered a Visual Resource under Section 23.04.210 of the CZLUO, the parcel is in the foreground of the Morro's Scenic Corridor, this open space is a scenic, visual resource that could be protected if the Gorby site was analyzed as a potentially feasible alternative.

California Coastal Act Section 30251:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to

protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The Giacomazzi treatment plant layout as presented at the Planning Commission hearing of August 13, 2009, please see site Layout Plan labeled as Attachment 2 (Exhibit 4) clearly ignores impacts to wetlands. Considerable testing was done onsite, with pits dug at W-1 and W-2 drainage fingers that form a funnel criss-crossing the Giacomazzi site at the project location. These pits identified wetland characteristics of the land. Specifically, W-1 Pits 4-6 identified hydrophytic vegetation; hydric soils and wetland hydrology were encountered during the study. Due to agricultural practices much of the vegetation (hydrophytic) that would otherwise be present in these areas has been disked under apparently reducing overall area of project impacts. The Sensitive Biological Resources Map (FEIR Exhibit 6) clearly demarcates wetland fingers bisecting the Giacomazzi parcel. These wetland fingers represent environmentally sensitive habitat areas (ESHA) and are afforded protections under the LCP.

The FEIR further identifies Special Status Wildlife in the vicinity of the Giacomazzi drainage features specifically;

- California Tiger Salamander
- Southwestern Pond Turtle
- Coast Range Newt
- Two Stripe Garder Snake
- Northern Harrier
- Yellow Warbler
- \*Southwestern Willow Flycatcher

\*Federal and State listed endangered species.

These species are all associated with the Warden Lake and Warden Wetlands which are adjacent to the Giacomazzi site. There are no mitigation measures proposed for impacts to wetlands on the Giacomazzi site.

It is consistent with planning policies to avoid impacts wherever possible, the constraints of the Giacomazzi site are such that feasible alternatives should be explored in an effort to reduce impacts to wetlands and ESHA's. CZLUO Section 23.07.172 e. (1) Wetlands Site Development Standards and Section 23.08.288(d) Public Utilities Facilities Development Standards. The LUP requires that only resource dependant uses be allowed within ESHA; that is new development must completely avoid ESHA if it is not dependant on the ESHA.

CZLUO, 23.05.034 (c), Grading Standards, will be violated by grading within 100 feet of ESHA as part of a project at the Giacomazzi site, due to alterations necessary to drainage finger W-1 into Warden Wetland and Warden Lake and on to Morro Bay.

The appellant has provided a Pro-Con Analysis of the Gorby site for the benefit of the Board. While this property was identified in the FEIR it was not analyzed fully. It remains an unanalyzed potentially feasible alternative and therefore must be analyzed before the finding can be made as required by AGP 24 a. (4) and California Coastal Act Section 30250.

### ***Gorby Pro-Con Analysis***

#### **Advantages of Gorby Property**

*(Los Osos Valley Equine Farm, 1869 Los Osos Valley Rd.)*

*Gorby is 50 acres in total area with approximately 20 acres of usable flat land presently occupied by an equestrian facility in the box canyon at the South west corner of the Los Osos Valley. A number of unique hydrogeologic characteristics are present at or near this location. The site abuts Los Osos Creek, overlies the creek compartment and the Los Osos Groundwater Basin. Also, the site is outside of the clay aquitard and is near outcroppings of the lower groundwater basin. The site is accessible from Los Osos Valley Road approximately six-tenths (0.6) of a mile to the South. The conversion of the horse ranch to a wastewater treatment facility and distribution hub for the beneficial reuse of treated effluent represents an adaptive reuse of the site and optimizes water resource management. Please note that the Gorby site is already developed, impacts to biology, archeology, and prime ag (6 acres identified in the DEIR) are impacts already realized. The use of the Gorby site in a redevelopment/Brownfield scenario for a wastewater treatment facility and treated effluent distribution hub is the highest and best use of the site all things considered. Please see Treated Effluent Distribution map attached, the Gorby site represents a "small footprint" project with associated cost savings. The National Water Resource Institute failed to analyze a surface water discharge disposal option into Los Osos Creek nor did they review the Gorby site as a potential treatment location and effluent distribution hub on a seasonal basis.*

*\* Gorby currently boards dozens of horses with their associated waste stream; which would be removed, further protecting Los Osos Creek and Morro Bay from these point and non-point pollution sources. Ideal Brownfield redevelopment site.*

*\* Nearest receptors (homes) are upwind and across the creek from the site. This is low density Residential Suburban zoning with parcels ranging from 1-10 acres in size.*

*\* Adjacent to the Los Osos Urban Reserve Line and LOCSD boundary. This location addresses potential "growth inducing" arguments that plague sites further removed from the urban reserve line.*

*\* Gorby overlies the Los Osos Groundwater Basin and lies adjacent to Los Osos Creek for potential dry weather creek discharge. The Paso Robles Formation (lower aquifer) "daylights" or surfaces at Los Osos Creek in this vicinity. Also, the site strategically overlies the creek valley alluvial aquifer, also known as Creek Compartment. The Creek Compartment has been identified as having additional storage capacity of approximately 600 AFY (CHG 2009). This concept of a surface water discharge and creek outfall during dry weather has been endorsed by the Coastal San Luis Resource Conservation District. The primary test in considering an NPDES permit for a surface water discharge from the CCRWQCB is whether, or not an entirely land disposal project is feasible. A cursory review of the history of LOWWP's and the current dry weather effluent disposal plan proposed project would indicate that it is not feasible. SLO County has considered a surface water discharge during the summer time in the vicinity of the Gorby site. See Morro Group August 1987 FEIR and Appendices; and Morro Group September 1989, SEIR.*

*\* Proximate to the Broderson winter time disposal site (approximately 1.5 miles from Gorby). Please see the Treated Effluent Map for treated effluent disposal distribution from Gorby. With adequate disposal options for treated effluent, limited to no storage of treated effluent would be necessary.*

*\* Nearby agricultural interests overlying the Los Osos Groundwater Basin have been willing to consider participation in an ag in-lieu program. Treated effluent would be conveyed to agricultural properties overlying the basin in exchange for reduced groundwater extractions by agriculture. Please see Treated Effluent Disposal map (Exhibit 5). It is important to note this disposal option provides minimal seawater intrusion mitigation.*

*\* The wastewater facilities would be out of site, hidden in the canyon and out of the scenic view corridors.*

*\* The site has excellent solar access for installation of solar panel arrays.*

*\* Limited to no impact to prime Ag soils and not under Williamson Act contract.*

*\* Construction of the collection system can begin and the treatment facility may be phased subsequently to allow the horse ranch business(s) time to discontinue operations over a 1-year period before treatment facilities begin construction.*

*\* In combination with the various disposal options outlined here the overall wastewater project with Gorby as a treatment site location is contained within a small "footprint" and optimizes the length of collection system and transmission of treated wastewater pipelines ultimately reducing costs. Please see Treated Effluent Disposal map.*

*\* With effective seasonal disposal options (winter and summertime discharge strategies) a balance between supply and foreseeable demand for water within the basin may be achieved without the need for imported water.*

*\* The development of a wastewater project at this location is consistent with the Certified Local Coastal Plan and Coastal Act.*

*The FEIR diminishes the potential for Gorby site for a number of reasons. Most notable is the statement of unwillingness to sell on the part of the property owners. Other misplaced reasons include the potential presence of the Los Osos Fault (Strand A), Los Osos Creek is subject to flooding, sensitive receptors nearby, potential impacts to archaeological resources, potential biological impacts (Red Legged frog and Steelhead trout), Los Osos Creek setbacks and impacts to prime soils.*

*Strand A of the Los Osos Fault is shown to bisect the property in the DEIR. In fact, this is an inferred fault because the fault line as shown is not located accurately and is based upon questionable fault traces. At the Gorby site a break-in-slope (bis) is of uncertain origin, this bis may have seismic implications; however it may also be an erosional feature. The only way to verify the origin of the bis and the potential presence of a fault is to conduct field testing. This field testing has not been done to date. The Gorby site has a moderate potential for liquefaction in contrast to the very high potential at the Giacomazzi site for example. Ground movement during a seismic event would have comparable effects on all of the treatment sites considered in the Los Osos Valley. (See Treated Effluent Distribution Plan). The most important seismic consideration is that related to a ground rupture which may be fully assessed by field testing as referenced above. The source document for the depiction of faults in the DEIR is the PG&E report of July 1988 (portion of plate 16). Maps of Faults, Scarps and Lineaments along the Los Osos Fault Zone, South-Central California, Morro Group, September 1989, SEIR.*

*The Gorby site is shown to be affected by being partially within the 100-Year Flood Hazard map. Most, if not all facilities would be located outside the affected area given a minimum 50 foot setback/buffer from Los Osos Creek would be required. The usable area of the site is shown as an "Area of Minimal Flooding" in the FEMA Map revised July 18, 1985. Any reported soil erosion in the vicinity has occurred on the west side of Los Osos Creek where the soil is sandy.*

*The only homes in the vicinity are part of a low density neighborhood that lies upwind from the Gorby site. The Los Osos Creek also separates the Gorby site from the nearby receptors. Also, an additional buffer is achieved because of the elevational differences (i.e. Gorby is in the valley below most of the homes in the vicinity). The Giacomazzi site, for instance, has dozens of residential neighbors in the immediate area and they have formed an opposition group (Bear Valley Alliance) and retained legal counsel.*

*Potential impacts to archeological resources will be addressed with monitoring and creek setbacks following surface surveys that should be conducted.*

*Potential biological impacts may only be determined following appropriate surveys which have not been completed to date.*

**Transcription of Board of Supervisors September 29, 2009 Discussion of Gorby**

Live stream video time: 7:42:25

**Supervisor Frank Mecham:** ...and then also I've heard from some folks about, I think Mr. Edwards, was talking about the Gorby site and from what I understand from letters I think the Board has received and the folks out there are not interested in any way, shape or form in relinquishing that property so, that would be an eminent domain issue that I don't think we'd want to be getting into.

**Environmental Mark Hutchinson:** Yeah it would, that was interestingly not one of the criteria in the rough and fine screening report, just because it wasn't appropriate at the time. But there are issues with prime soils, although used for a horse facility. Most confident authorities agree there is a trace of the Los Osos fault either on or very near to the property. It's a long linear, which we might be able to deal with. But, Los Osos Creek does come out of the mountains and does run down the long side of the property that bank is eroding and subject to mass relocating the creek during a significant event and there are residences overlooking the site. So, quite a few constraints that moved it down the priority list.

**Supervisor Bruce Gibson:** I emphasize that, the questions of eminent domain we don't want to exercise that if we don't have to but there are other environmental issues that were very plainly at play there as well as prime soil underlying the current equestrian facility?

**Environmental Mark Hutchinson:** Yes, and all of those issues were discussed relative to that site at the Planning Commission.

\*The Gorby site did not receive co-equal analysis by the applicant. County staff misrepresents Gorby to the County Board of Supervisors in their discussion.

**Appeal Contention No. 3: Unaddressed Growth Inducing Impacts**

The Giacomazzi site raises significant growth inducing questions, as it is located approximately one half mile from the Los Osos Urban Reserve Line (URL). New public facilities outside of the URL, specifically sanitary sewer service is potentially available to serve development around the facility yet outside of the URL. On the other hand, the Gorby site being contiguous to the URL and LOCSD boundary raises no growth inducing impacts. The Gorby site represents a feasible alternative at the URL which is analogous to a feasible alternative location within the urban or village reserve lines.

*Coastal Act policies require that the maximum amount of prime agricultural lands be maintained in production and that conflicts between agricultural and urban land uses be*

*minimized. To carry out the goals of the Coastal Act, the Local Coastal Program delineates long-range urban/rural boundaries to support long-term agricultural use free from urban encroachment.*

There are no Conditions of Approval or Findings to address this concern. Siting of the wastewater treatment facility at the Giacomazzi site is at cross purposes with the Coastal Act and its protection of agricultural resources and issues relative to growth inducement.

**Appeal Contention No. 4: Los Osos Groundwater Basin is Coastal Dependant**

Section 30101 Coastal-dependant development or use "Coastal-dependant development or use".

The use of the Los Osos Groundwater Basin is Coastal Dependant and as such the current project must fully address impacts from seawater intrusion occurring in the lower confines of the basin. Once the County collects the wastewater it becomes incumbent upon them to return that water in a replenishment scheme in a manner that protects the lower basin from further seawater intrusion. The interface between the Los Osos Groundwater Basin and the sea is well documented.

**Appeal Contention No. 5: Tertiary Treatment**

Modify Condition of Approval, 6, for disinfection to delete chlorination/dechlorination and substitute Ultraviolet (UV) disinfection. UV disinfection is a physical process rather than a chemical disinfectant, which eliminates the need to generate, handle, transport, or store toxic/hazardous or corrosive chemicals. Please see Wastewater Technology Fact Sheet Ultraviolet Disinfection, USEPA, September 1999, EPA-F-99-064.

**Appeal Contention No. 6: Inadequate Statement of Overriding Considerations**

The Planning Commission approved project finds project impacts are outweighed by the benefits of the project via a Statement of Overriding Considerations. In fact the applicant's project and the Planning Commission's alternative project neglected to analyze all feasible alternatives, specifically adjacent to or within the URL. To comply with CEQA, the LCP and Ag Policy 24 the project must exhaust all feasible alternatives as discussed in the above appeal.

**Appeal Contention No. 7: Further CEQA Analysis Necessary**

Under CEQA, there are viable alternatives to the proposed project that would likely reduce impacts to Land Use and Planning; Groundwater Resources; Drainage and Surface Water Quality; Geology; Biological Resources; Cultural Resources; Public Health and Safety; Traffic and Circulation; Air Quality; Noise; Visual Resources,

Environmental Justice and Growth Inducing potential. We believe further environmental review be performed for inclusion in the project.

1. Treatment site locations including site specific project review of the Gorby site.
2. Effluent disposal options, summer time or dry weather approved by Planning Commission and shown on Attachment 4, page 3-170. Surface water discharge into Los Osos Creek via an NPDES permit at the AT&T crossing as per 1987 Final EIR, Morro Group.
3. Miscellaneous other refinements.

The appellant requests that further CEQA requirements for review be performed by the California Coastal Commission as the functional equivalent of either a Supplemental or Subsequent EIR.

Throughout the course of the review of the applicant's proposal at the local level much was heard about what is feasible, in terms of time and money, yet the applicant misspent \$7 million and over one year on a fatally flawed "Preferred Alternative". A preferred alternative that was decided upon prior to any meaningful analysis, let alone a true comparison of potentially viable alternatives for disposal of treated effluent with high seawater intrusion mitigation and a treatment site location that can effectively serve as a distribution hub to effectuate that disposal plan.

The County applicant has advanced the community of Los Osos \$7 million and repayment will occur only if the County accepts the project following receipt of all discretionary permits. I submit a conflict of interest has arisen during the process and at this juncture the applicant is motivated more by an interest in being repaid and do what is expedient rather than what may be in the best long-term interest of the community of Los Osos.

The appellant requests that the California Coastal Commission determine:

1. The subject appeal raises Substantial Issue with regard to the project's compliance with the Coastal Act.
2. Hold a de Novo hearing on the matter.
3. Examine a scheduled or seasonal surface water discharge of treated effluent into a creek outfall at upper Los Osos Creek.
4. Review the viability of the redevelopment of the Gorby site for purposes of siting a wastewater treatment plant and seasonal distribution hub for disposal of treated effluent.

## **J. H. Edwards Company Appeal Exhibits**

**Exhibit 1** ISJ Work Program

**Exhibit 2** Approved Urban and Ag Reuse Map  
List of Urban and Ag Reuse Prospects

**Exhibit 3** Broderson Prototype Drywell test data  
Map  
Well Schematic  
Photographs

**Exhibit 4** Giacomazzi Site Layout

**Exhibit 5** Appellant Proposed Treated Effluent Distribution Map

**ISJ Participants Work Program  
For Los Osos Groundwater Basin**

**Task 1**

- Update Steady State Hydraulic Model
- Adjust Build-out Projections of the Basin Water Demand, including water conservation
- Preliminary Evaluation of Nitrate Removal Unit
- Assess the potential of the upper aquifer before and after wastewater project

**Task 2**

- Evaluate and Determine Creek Compartment Safe Yield
- Perform Sampling Analysis for Water Quality of Creek Compartment

**Task 3**

- Prepare Groundwater Basin Infrastructure Master Plan
- Evaluate Groundwater Recharge Opportunities
- Evaluate Options for Beneficial Re-Use of Reclaimed Water
- Prepare a Draft Basin Management Plan

**Task 4**

- Prepare a Transient, Dual-Density Hydraulic Model of the Groundwater Basin

**Task 5**

- Annual Groundwater Monitoring
- Transient Model Updates Every Two Years

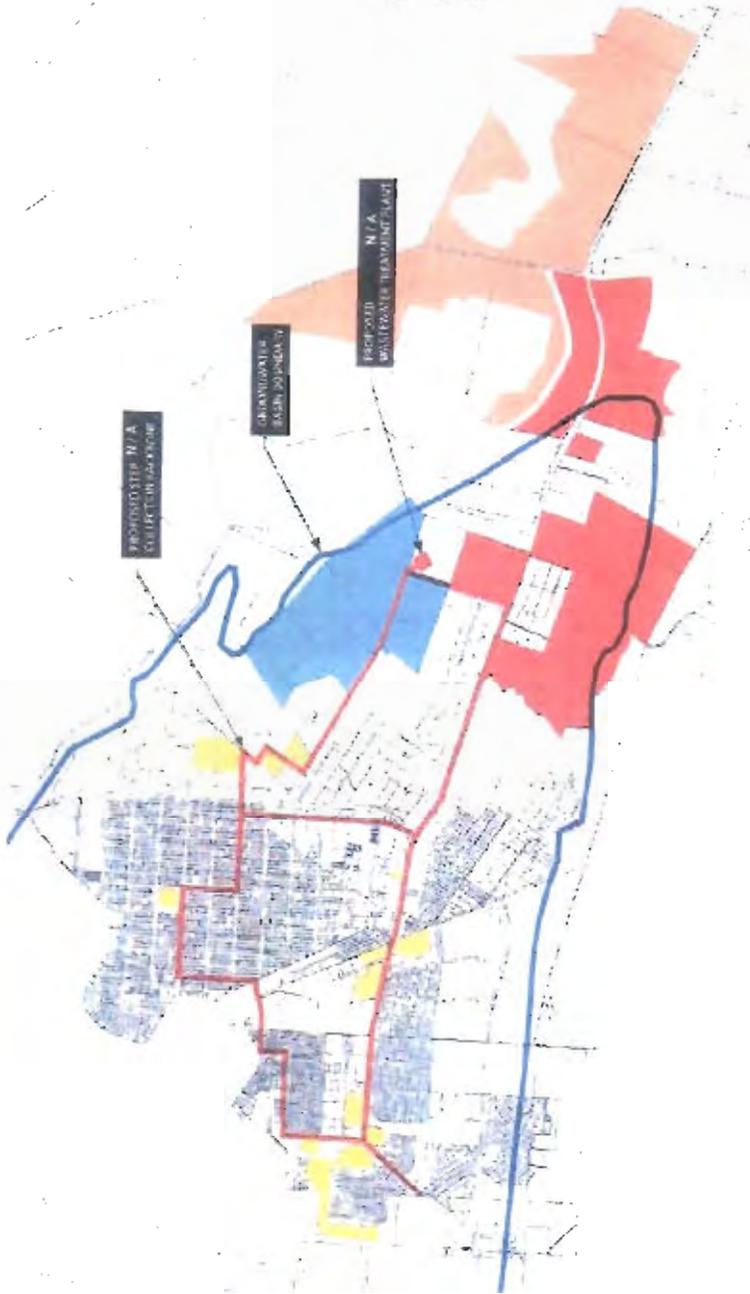
3-170

Exhibit 2

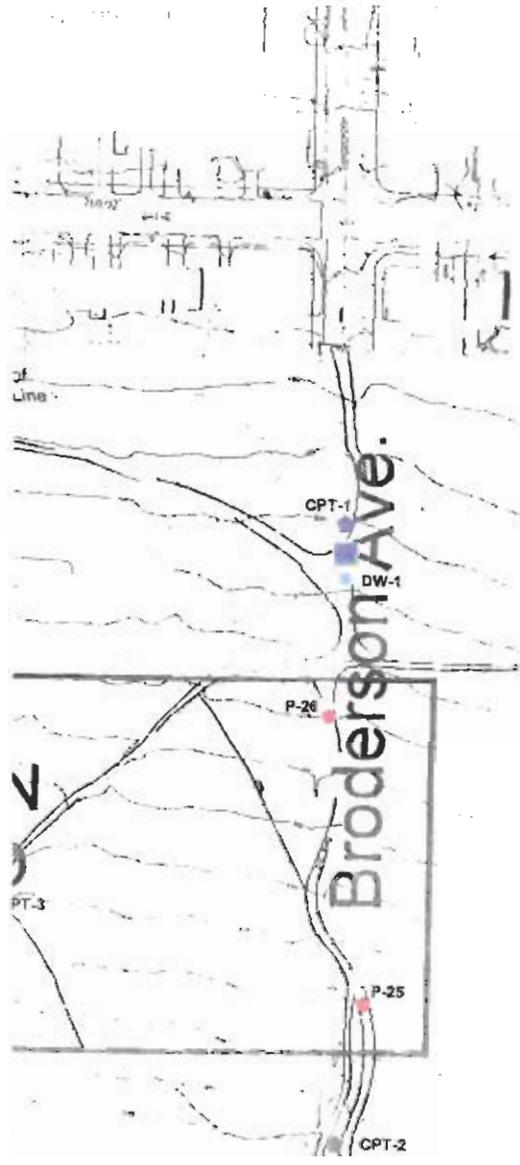
ATTACHMENT 4

LEGEND

City of San Francisco Planning Department







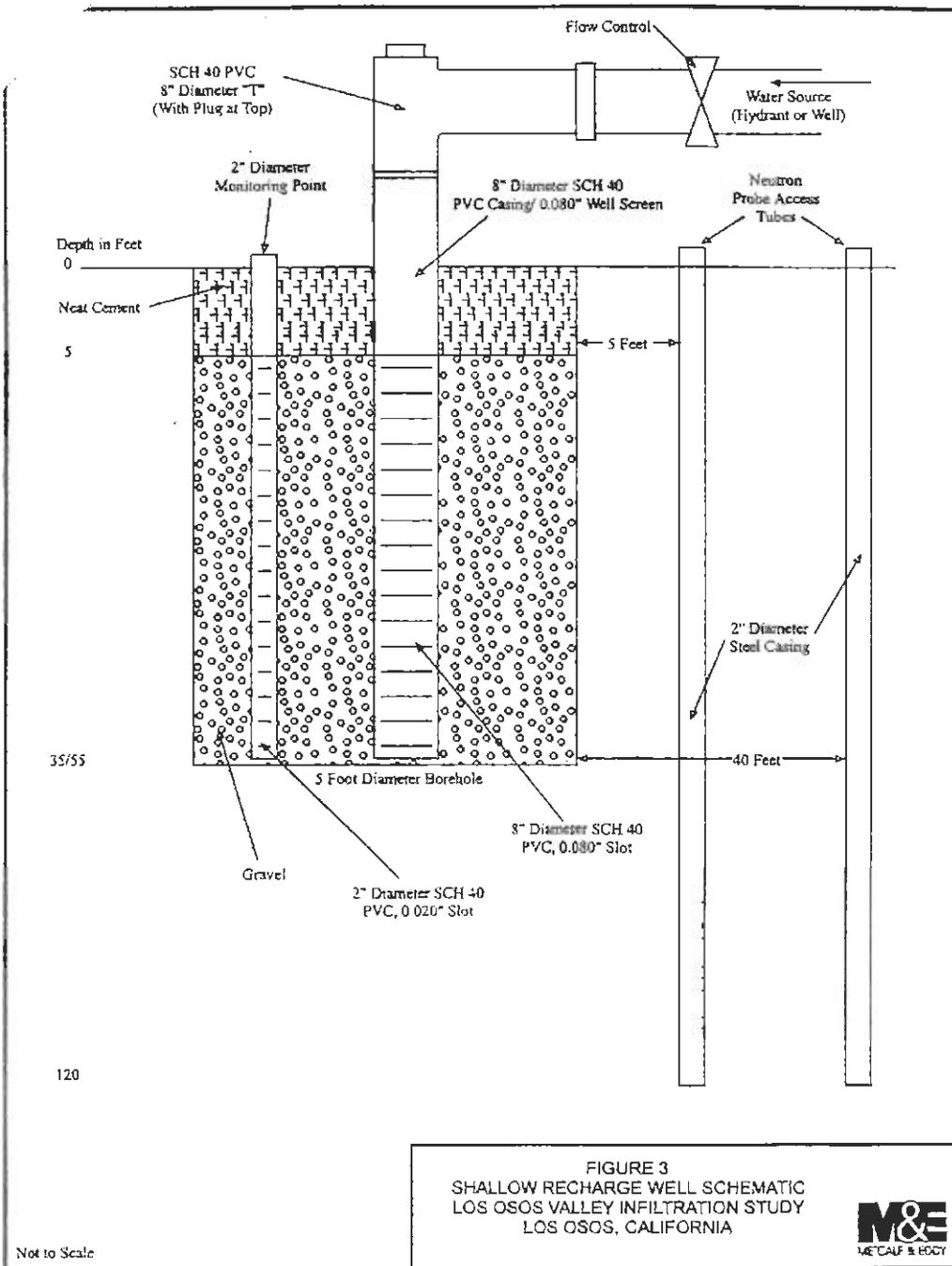
**LEGEND**

- M&E (1997) Prototype Drywell
- CPT and/or Boring Site (Fugro 1996, M&E 1996)
- Boring Site (Fugro 1997)
- Monitoring Well for Prototype Percolation Testing
- P-1 Percolation Test Location
- L-1 Percolation Test Location at Prototype Percolation Line Site
- M&E (1997) Prototype Percolation Line
- Section C-C' extends to approximately 150' north of Los Osos Valley Road



**FIELD EXPLORATION PLAN**  
 Prototype Test Site at Broderson  
 Los Osos Wastewater Project  
 Los Osos, California





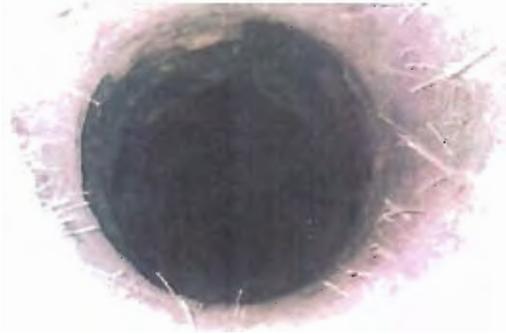






Exhibit 5.2-2  
Los Osos Surface Water Features  
COUNTY OF SAN LUIS OBISPO - LOS OSOS WASTEWATER PROJECT  
GROUNDWATER QUALITY AND WATER SUPPLY DETAILED ANALYSIS SECTION