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**Final Legal Evaluation of
 Materials Submitted by Lisa Schicker Regarding
 Paavo Ogren, Montgomery Watson Harza, and Related Matters**

Prepared by Warren R. Jensen, County Counsel, San Luis Obispo County
 September 22, 2009

Materials Evaluated. Ms. Schicker submitted materials to the Board of Supervisors and/or County Counsel beginning on about April 7, 2009. Due to staffing constraints, and an increase in competing demands on our time beginning in early May, County Counsel was not able to review all of those materials as soon as we would have liked. A Preliminary Legal Evaluation was issued on August 18, 2009. Since then, we have reviewed all of the submitted materials, which run to more than 1300 pages. We reached the same conclusions as we did in the Preliminary Legal Evaluation and have expanded our explanation of some of our conclusions below.

General Evaluation of the Materials. A variety of materials has been submitted by Ms. Schicker. Few of the documents submitted were original source documents and few of the documents were from impartial sources. Many of the documents were authored by Ms. Schicker or others who have staked out partisan positions that are consistently at odds with County staff. Many of these documents would not be admissible in a civil action because they are inadmissible hearsay, and/or they are lay opinions without foundation, and/or they simply are not relevant.

Conclusions. Based on my review of the materials submitted, my conclusions are as follows:

1. No Conflict of Interest Proven for Paavo Ogren. Although Ms. Schicker repeatedly asserts her opinion that Mr. Ogren has conflicts of interest, the material shows no factual basis for those alleged conflicts and contains no reliable evidence showing even the potential existence of such conflicts. The “evidence” she submitted consists almost exclusively of her personal opinions, without corroborating details or documentation. Such “evidence” is not substantial enough to warrant further consideration and would not, in any case, be admissible in court.

In reaching this conclusion, I have considered four possible varieties of conflicts of interest that are recognized under California law. Each of those is discussed below.

- a. *Conflicts Due to a Financial Interest.* The first two possible bases for finding a conflict of interest are statutory and depend on the existence of either a financial

interest in a contract (Govt Code §§ 1090 *et seq.*) or a financial interest in a governmental decision (Govt Code §§ 87000 *et seq.*). Ms. Schicker has not identified any such financial interest held by Paavo Ogren in either a contract or a governmental decision. In my discussions with Mr. Ogren, he has assured me that he has never had a financial interest in MWH, or Carollo Engineers, or any contractor on the Design-Build shortlist, either in the form of investments, income, loans, gifts, or anything else. Moreover, Mr. Ogren has assured me that his only financial relationship with anyone else involved in the LOWWP (other than the County) was his pre-2001 employment by Cannon (an engineering firm) and The Wallace Group (an engineering firm). At no time did Mr. Ogren have an equity or other ownership interest in either of these firms – he was simply a salaried employee. The mere fact that Mr. Ogren was employed by these entities at least 8 years ago does not show that he has a current financial interest in either Wallace Group or Cannon. It is apparent to us that Ms. Schicker has submitted *absolutely no evidence* that Mr. Ogren has a financial interest of the type referred to in these two blocks of statutes.

- b. *Common Law Conflict of Interest.* The third possible basis for finding a conflict of interest is the so-called Common Law Conflict of Interest doctrine.¹ To violate this doctrine, an official must put himself or herself in a position where he or she has divided loyalties that might tempt him or her to put his or her personal interests ahead of the interests of the County. A recent example is provided by the inappropriate personal relationship between a County management employee and the labor representative with whom she was negotiating. This was not a financial conflict of interest, but it was a common law conflict of interest. Ms. Schicker has not identified any facts that would support the conclusion that Mr. Ogren has placed himself in a position where he has divided loyalties that might tempt him to put his personal interests ahead of those of the County. The mere fact that Mr. Ogren is acquainted with, or has previously worked with, individuals employed by MWH, Carollo, or any of the other entities involved in the LOWWP, does not, in and of itself show that Mr. Ogren has put himself in a situation where he has divided loyalties.
- c. *Bias or Prejudice.* The final basis for finding a conflict of interest is bias or prejudice. Ms. Schicker's statements in some of the materials come close to charging Mr. Ogren with bias or prejudice. However, it appears that these apparent claims of bias or prejudice are not supported by anything except Ms. Schicker's disagreement with various decisions or recommendations that Mr. Ogren has been involved in. This is not sufficient to prove bias or prejudice.

¹ This doctrine is explained in an official opinion of the California Attorney General, published at 92 Ops Cal Atty Genl 19 (2009)

2. No Illegal Contract Proven Between LOCSD and MWH. We note first that Mr. Ogren did not execute the referenced contract. Even if Ms. Schicker's materials show a defect in execution of the MWH contract, she completely fails to deal with the possibility that any such defect was subsequently cured by ratification of the contract. Such ratification is implicit in the LOCSD Board's repeated subsequent payment of invoices submitted by MWH, including one invoice that expressly seeks payment for services provided before the September 1, 1999 effective date. In addition, the LOCSD Board repeatedly amended that contract, each time implicitly endorsing the original contract. Moreover, Ms. Schicker's written materials completely ignore the concept of promissory estoppel, under which a government entity can be required to pay for services that are rendered prior to the execution of a written contract where the entity induced the contractor to provide those services based on unwritten assurances that the work would be covered by a future contract. That appears to be exactly what happened according to the memo prepared by Bruce Buel, and included in the materials submitted by Ms. Schicker.

Moreover, the advisory committee that reported to the LOCSD Board on November 4, 1999 on the proposed contract with MWH made the following recommendation according to materials submitted by Ms. Schicker: "2) The Agreement is to be for one year, *retroactive to the date services were initially provided*, and subject to annual extensions by mutual agreement by the parties." (Italics added for emphasis.) The Advisory Committee recommendations appear to have been incorporated into Mr. Ogren's Board Letter for Agenda Item 13, "Consideration and approval of Montgomery Watson's contract for Wasteware Project Management Services . . ." The Minutes of the November 4, 1999 meeting show that the staff recommendation was approved. Therefore, it appears that the LOCSD Board actually formally approved the concept of a retroactive contract, completely negating Ms. Schicker's claims about an alleged "illegal contract."²

3. No Negative Inferences Justifiable, based on Pendency of Investigations. Ms. Schicker refers to various pending investigations and seems to draw the conclusion that the mere pendency of these investigations is a reason to avoid dealing with MWH. Logically, this makes no sense because anyone can trigger an investigation and therefore the mere pendency of an investigation means nothing about the validity of the triggering complaint. Only when a neutral investigative body has reached a conclusion is there a reasonable basis for negative inferences.

² A copy of the LOCSD Minutes, Board Letter, and Advisory Committee report is being posted on the LOWWP website.

4. No Negative Inferences Justifiable, based on Cape Coral Situation. Ms. Schicker refers to a controversy involving a wastewater project constructed by MWH in Cape Coral, Florida. She submitted newspaper coverage reporting on allegedly excessive costs incurred and she submitted newspaper coverage of an Attorney General opinion criticizing the City of Cape Coral. No original source documents were included in the materials evaluated. Newspaper articles are not admissible evidence in court and are not substantial enough to warrant further investigation.

Ms. Schicker and others have repeatedly and publicly suggested that there were serious questions about "bid rigging" by MWH in Cape Coral. One member of the public, in a public comment period, actually stated that there were felony convictions in Cape Coral for bid rigging. I have made a diligent search for any record of criminal prosecutions or convictions and found no trace of either. My research also indicates that there is no longer a pending investigation by either the FBI or the Department of Justice.

The Florida State AG Opinion cited by Ms. Schicker was not provided by her (she only provided media coverage of the opinion). A copy of the opinion is available on-line at the Florida Attorney General's website.³ It is interesting that the AG Opinion does not even mention the name of the firm in question. The focus of the AG's Opinion is on whether or not the City of Cape Coral followed detailed statutory procedures under Florida state law. The term "bid-rigging" does not appear in the AG Opinion. The un-named construction manager is not criticized in any manner in the AG Opinion.

In any event, the Florida Legislature was not satisfied with the AG's interpretation of its statutes, which was the basis for the AG's opinion. Subsequently, it adopted legislation that effectively overrules the AG's opinion.⁴

Considering all of these factors, it is clear to us that the materials submitted by Ms. Schicker do not constitute substantial evidence that MWH was involved in "bid-rigging" or any other misconduct in connection with projects of the City of Cape Coral.

5. No Negative Inferences Justifiable, based on MWH Filing of Bankruptcy Claims or Other Litigation. Ms. Schicker refers to the fact that MWH has filed a claim against the LOCSD in the Bankruptcy filed by the LOCSD and seems to draw the conclusion that the mere filing of a claim was improper. This is completely illogical. Two other creditors of LOCSD also filed claims against LOCSD. Were their claims improper too? The actual

³ For convenience, a copy of the opinion is being posted on the LOWWP website.

⁴ The Florida legislation is Chapter 2007-159 of the Florida Legislature. For convenience, a copy is posted on the LOWWP website.

outcome of those claims, after arbitration, was that these two creditors had valid claims for \$10 million.

6. AB 2701 Does Not Require an Advisory Vote. In her initial submissions, Ms. Schicker claimed that AB 2710 requires an advisory vote on the different types of wastewater collection and treatment systems that could be built. We reviewed AB 2701, word for word, and found no such requirement in AB 2701.⁵ When we advised Ms. Schicker of this finding, she suggested that there was such an agreement or understanding outside of the legislation itself. She never pointed to anything that would be legally binding on the County. Ms. Schicker also pointed out that the strategies approved by the Board of Supervisors in June 2006 included reference to a "community advisory election" to be held in Los Osos.⁶ We agree that this was one of the strategies approved by the Board at that time. However, this was merely a strategy adopted at an early stage of proceedings, before AB 2701 was adopted or effective. This strategy was not legally binding on the County. Subsequently, County staff recommended a community survey instead and this was done in lieu of a "community advisory election." The change does not raise any legal questions or concerns.
7. No Other Negative Inferences Warranted. Numerous other claims of impropriety are advanced by Ms. Schicker in the materials reviewed. None of these have any merit or are deserving of further discussion.

Respectfully submitted,



WARREN R. JENSEN
County Counsel

⁵ A copy of AB 2701 is available on the LOWWP website.

⁶ A copy of the Board of Supervisors agenda item approving these strategies is available on the LOWWP website.



1 of 50 DOCUMENTS

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA

No. 07-807

2009 Cal. AG LEXIS 2; 92 Ops. Cal. Atty. Gen. 19

January 14, 2009

QUESTION:

[*1]

THE HONORABLE NORMA J. TORRES, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following question:

May a city redevelopment agency enter into a loan agreement for commercial property improvement where the recipient of the proposed loan is a corporation solely owned by the adult, non-dependent son of an agency board member who also resides with the board member in the same rented apartment?

CONCLUSION

The circumstance that the recipient of a proposed commercial property improvement loan from a city redevelopment agency would be a corporation solely owned by the adult, non-dependent son of an agency board member who also resides with the board member in the same rented apartment does not, by itself, preclude the agency from entering into an agreement to make that loan. However, to avoid a conflict between her official and personal interests, the board member should abstain from any official action with regard to the proposed loan agreement and make no attempt to influence the discussions, negotiations, or vote concerning that agreement.

OPINIONBY:

EDMUND G. BROWN JR., Attorney General; MARC J. NOLAN, Deputy Attorney General

OPINION:

ANALYSIS

We are informed that a city redevelopment agency [*2] is considering whether to enter into a loan agreement for commercial property improvement and that the recipient of the proposed loan is to be a corporation solely owned by the adult son of an agency board member. We are also told that, while the son resides with the board member in the same rented apartment, we may assume for purposes of this analysis that he is not dependent on the board member for support. n1 Given this context, we are asked whether the agency may enter into the proposed loan agreement without violating any conflict-of-interest laws. As relevant here, those laws consist of two statutory schemes, *Government Code section 1090* and its related provisions and the Political Reform Act of 1974, as well as the common law doctrine against conflicts of interest. For the reasons that follow, we conclude that the given circumstances, by themselves, would not preclude the agency from entering into the proposed loan agreement, but that, to avoid a conflict between her official and personal interests, the board member should completely abstain from any official action with regard to the

proposed loan agreement and make no attempt to influence [*3] the discussions, negotiations, or vote concerning that agreement.

n1 In support of this assumption, we have been informed that the agency board member does not claim her son as a dependent for tax purposes.

Government Code section 1090

Our consideration of the question presented first requires that we undertake an analysis under *Government Code section 1090*, n2 which generally forbids the board of a public agency from entering into a contract in which one of its members has a personal financial interest. n3 In the words of the statute, "Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members . . ." n4

n2 All further references to the Government Code are by section number only.

[*4]

n3 89 *Ops. Cal. Atty. Gen.* 217, 218 (2006).

n4 *Govt. Code § 1090*.

A city redevelopment agency is a public body, n5 and members of its governing board are thus public officials within the meaning of section 1090, which applies to virtually all members, officers, and employees of such agencies. n6 An agreement by a public agency to loan money is treated as a contract for purposes of section 1090. n7

n5 *Health & Safety Code § 33100; see 88 Ops. Cal. Atty. Gen.* 222 (2005).

n6 *See 61 Ops. Cal. Atty. Gen.* 243, 248-250 (1978) (applying § 1090 to members of a local redevelopment agency).

n7 *E.g., Carson Redevelopment Agency v. Padilla*, 140 *Cal. App. 4th* 1323, 1329-1330 (2006).

Section 1090 is concerned with financial interests, other than [*5] remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their public agencies. n8 Under section 1090, "the prohibited act is the making of a contract in which the official has a financial interest." n9 Such an interest may be direct or indirect, but the "evil to be thwarted by section 1090 is easily identified: If a public official is pulled in one direction by his financial interest and in another direction by his official duties, his judgment cannot and should not be trusted, even if he attempts impartiality." n10 A contract that violates section 1090 is void. n11

n8 *Stigall v. Taft*, 58 *Cal. 2d* 565, 569 (1962).

n9 *People v. Honig*, 48 *Cal. App. 4th* 289, 333 (1996).

n10 *Carson Redevelopment Agency*, 140 Cal. App. 4th at 1330.

n11 *Thomson v. Call*, 38 Cal. 3d 633, 646 (1985).

With these principles [*6] in mind, we consider whether the familial relationship between the redevelopment agency board member and the member's adult son will, by itself, render the proposed loan agreement between the agency and the member's son's corporation invalid under section 1090. We considered a similar question in 88 *Ops. Cal. Atty. Gen.* 222 (2005). At issue in that opinion was whether the adult son of a redevelopment agency board member could acquire real property within the redevelopment zone without causing the member to violate *Health and Safety Code section 33130(a)*, which prohibits agency officers and employees from acquiring "any interest in any property included within the project area within the community," including "any indirect financial interest" in such property. n12 Because the statute under analysis did not further specify what constituted a prohibited "indirect financial interest," we found it appropriate to consult other conflict-of-interest statutes, including section 1090, to determine whether the parent-adult child relationship between the agency member and his son would give rise to the member having a cognizable [*7] financial interest in the property his son sought to purchase. n13 Our review of analogous statutory schemes led us to conclude that no such prohibited interest would arise solely on account of the parent-adult child relationship. n14

n12 88 *Ops. Cal. Atty. Gen.* at 224.

n13 *Id.* at 224-225.

n14 *Id.*

Here, where we are called upon to analyze section 1090 and its related provisions directly, rather than by comparison, the result is the same. For purposes of this analysis, we note that the Legislature has expressly defined certain "remote interests" n15 and "noninterests" n16 that do not come within section 1090's general prohibition. If a "remote interest" is present, as defined in section 1090, the proposed contract may be made, but only if (1) the public official or board member in question discloses his or her financial interest in the contract to the public agency, (2) such interest is noted in the entity's official records, and (3) the individual with [*8] the remote interest abstains from any participation in the making of the contract. n17 If a "noninterest" is present, as defined in section 1091.5, the contract may be made without the official's abstention, and generally a noninterest does not require disclosure. n18 We have found that an examination of these statutory exceptions is useful in determining what would otherwise be viewed by the Legislature as constituting a proscribed "financial interest." n19

n15 § 1091.

n16 § 1091.5.

n17 See 88 *Ops. Cal. Atty. Gen.* 106, 108 (2005); 83 *Ops. Cal. Atty. Gen.* 246, 248 (2000); see also *People v. Honig*, 48 Cal. App. 4th at 318-319.

n18 *City of Vernon v. Central Basin Mun. Water Dist.*, 69 Cal. App. 4th 508, 514-515 (1999); 84 *Ops. Cal. Atty. Gen.* 158, 159-160 (2001).

n19 85 *Ops. Cal. Atty. Gen.* 34, 36-37 (2002); see *Honig*, 48 Cal. App. 4th at 289, 317.

[*9]

In our 2005 opinion, we observed that, although the Legislature deems a parent to have a remote financial interest for purposes of section 1090 "in the earnings of his or her minor child for personal services," n20 there is no similar determination that a parent has either a direct or indirect financial interest in the property or earnings of an adult child. n21 And we have previously found that the familial relationship between a county supervisor and his adult brother, in that instance an automobile dealer, would not result in a violation of section 1090 if the brother sold automobiles to the county. "Neither brother has any proprietary 'interest' in the financial attainments of the other; neither is entitled to any contribution or support from the other." n22

n20 § 1091(b)(4).

n21 88 Ops.Cal.Atty.Gen. at 225.

n22 28 Ops.Cal.Atty.Gen. 168, 169 (1956).

The situation here is analogous. A parent is not legally compelled to support an adult child absent special [*10] circumstances not present here, such as the child's incapacity. n23 Conversely, an adult child has no legal duty to support a parent, unless the parent is "in need and unable to support himself or herself by work," n24 a circumstance also not present here.

n23 *In re Marriage of Chandler*, 60 Cal. App. 4th 124, 130 (1997); *In re Marriage of Lambe & Meehan*, 37 Cal. App. 4th 388, 391-392 (1995); see *Fam. Code* § 58.

n24 *Fam. Code* § 4400; see also *Chavez v. Carpenter*, 91 Cal. App. 4th 1433, 1445 & fn. 8 (2001) (noting statutory standard).

We are informed that the board member's son's corporation will receive the proceeds of the agency's loan. There is no indication that the member will personally profit from this transaction. While the Legislature could have characterized the inherent "interest" that a self-supporting parent may be said to have in the [*11] financial attainments of an adult child as one that, by itself, amounts to a prohibited financial interest, it has not done so. Nor have we located any judicial determination that the parent-adult child relationship, in itself, creates a financial conflict of interest in situations of the sort considered here. n25 Thus, we conclude that the familial relationship between the board member and her adult son does not invalidate the proposed loan agreement under section 1090.

n25 An example of an indirect financial interest stemming from a parent-adult child transaction is found in *Moody v. Shuffleton*, 203 Cal. 100 (1928). There, a county supervisor sold his printing business to his son and took back a promissory note secured by a chattel mortgage on the business. Because the business helped to secure the value of the official's mortgage, it was held that a conflict existed when printing contracts were awarded to the son. *Id.* at 103-104; see also *Thomson*, 38 Cal. 3d at 645. In that case, the public official had a financial interest in the transaction (that of a mortgage holder in a printing business seeking to contract with the county) that was separable from and not dependent on the parent-child relationship.

[*12]

For similar reasons, we believe that a housing arrangement in which a public official and his or her adult child live together in the same rented apartment does not necessarily give the parent a prohibited financial interest in the contractual dealings of the child for purposes of section 1090. Although by statute a landlord has a "remote interest" in his or her tenant's official contracts and vice versa, n26 the same is not the case for individuals who share a rented

apartment, and whose legal obligations to one another are different in kind from those owed between landlord and tenant. Thus, we conclude that section 1090 does not preclude the redevelopment agency from entering into the contract at issue due solely to the circumstance that an agency board member and her adult son share living space in a rented apartment.

n26 § 1091(b)(5).

Having so concluded, however, we caution that if there were other circumstances suggesting that the member had a financial interest in the proposed contract, those circumstances would [*13] need to be analyzed separately to determine whether an impermissible conflict existed. n27

n27 *See, e.g., 88 Ops. Cal. Atty. Gen. at 225.*

The Political Reform Act

We next consider what effect, if any, the Political Reform Act of 1974 n28 has on this question. The Political Reform Act generally prohibits public officials from participating in "governmental decisions" in which they have a financial interest. n29 Of potential relevance here, the Political Reform Act requires officials to abstain from participating in such a decision when it will have a material financial effect on a member of his or her "immediate family." n30 The term "immediate family" includes only the official's "spouse and dependent children." n31 As stated earlier, we are assuming here that the board member's adult son is not her dependent.

n28 §§ 87100 et seq.

n29 *See § 87100; 88 Ops. Cal. Atty. Gen. 32, 33-34 (2005).*

[*14]

n30 § 87103.

n31 § 82029.

No other provision of the Political Reform Act purports to link a public official's personal financial interests to those of an individual (other than the official's spouse and/or dependent children) with whom he or she shares a rented residence. Therefore, we find that the Political Reform Act's prohibitions are not triggered by the circumstance that the board member shares a rented residence with her adult son, whose corporation seeks to contract with the agency.

Common Law Doctrine against Conflicts of Interest

Having found no disqualifying financial interests within the meaning of section 1090 or the Political Reform Act, we now analyze the circumstances under the common law doctrine against conflicts of interest. The common law doctrine "prohibits public officials from placing themselves in a position where their private, personal interests may conflict with their official duties." n32 While the focus of the statutes analyzed above is on actual or potential financial conflicts, the common law prohibition extends to noneconomic interests as well. n33 Thus, we have [*15] previously cautioned that, even where no conflict is found according to statutory prohibitions, special situations could still

constitute a conflict under the common law doctrine. n34 While the common law may be abrogated by express statutory provisions, n35 the statutes we have considered thus far do not address the circumstances we have been asked to evaluate, nor are we aware of any other statutes that address those circumstances.

n32 *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 1171 (1996), quoting 64 Ops.Cal.Atty.Gen. 795, 797 (1981); see also *Kunec v. Brea Redevelopment Agency*, 55 Cal. App. 4th 511, 519 (1997).

n33 *Clark*, 48 Cal. App. 4th at 1171 & fn. 18; 70 Ops.Cal.Atty.Gen. 45, 47 (1987); 64 Ops.Cal.Atty.Gen. at 797.

n34 See 53 Ops.Cal.Atty.Gen. 163, 165-167 (1970).

n35 70 Ops.Cal.Atty.Gen. at 47; 67 Ops.Cal.Atty.Gen. 369, 381 (1984).

[*16]

Here, even if the agency board member cannot be said to have a statutory financial interest in her son's contract with the agency within the meaning of section 1090 or the Political Reform Act, it is difficult to imagine that the agency member has *no* private or personal interest in whether her son's business transactions are successful or not. At the least, an appearance of impropriety or conflict would arise by the member's participation in the negotiations and voting upon an agreement that, if executed, would presumably redound to her son's financial benefit. As one court has said with regard to the common law doctrine and the need to strictly enforce it:

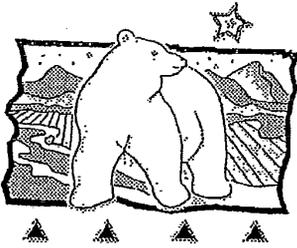
A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public. . . . [P] . . . [P] Actual injury is not the principle the law proceeds on. Fidelity in the agent is what is aimed at, and as a means of securing it the law will not permit him to place himself in a position in which he may be tempted by his own private interests to disregard those of his principal. This doctrine is generally applicable to private agents and [*17] trustees, but to public officers it applies with greater force, and sound policy requires that there be no relaxation of its stringency in any case that comes within its reason. . . . n36

n36 *Noble v. City of Palo Alto* 89 Cal. App. 47, 51 (1928) (citations omitted); see also *Clark*, 48 Cal. App. 4th at 1170-1171.

In our view, the agency board member's status as the private contracting party's parent and co-tenant places her in a position where there may be at least a temptation to act for personal or private reasons rather than with "disinterested skill, zeal, and diligence" in the public interest, thereby presenting a potential conflict. In an earlier opinion, we advised that a common law conflict of interest may "usually be avoided by [the official's] complete abstention from any official action" with respect to the transaction or any attempt to influence it. n37 Under these circumstances, we believe that the only way to be sure of avoiding the common [*18] law prohibition is for the board member to abstain from any official action with regard to the proposed loan agreement and make no attempt to influence the discussions, negotiations, or vote concerning that agreement.

n37 See 70 Ops.Cal.Atty.Gen. at 47; 64 Ops.Cal.Atty.Gen. at 797; see *Clark*, 48 Cal. App. 4th at 1171 (conflicted official is disqualified from taking any part in the discussion and vote regarding the particular matter); Eugene McQuillin, *The Law of Municipal Corporations* vol. 4, § 13.35, 840-841 (3d ed. rev. 1992); 26 Ops.Cal.Atty.Gen. 5, 7 (1955).

Accordingly, we conclude that the circumstance that the recipient of a proposed commercial property improvement loan from a city redevelopment agency would be a corporation solely owned by the adult, non-dependent son of an agency board member who also resides with the board member in the same rented apartment does not, by itself, preclude [*19] the agency from entering into an agreement to make that loan. However, to avoid a conflict between her official and personal interests, the board member should abstain from any official action with regard to the proposed loan agreement and make no attempt to influence the discussions, negotiations, or vote concerning that agreement.



Los Osos Community Services District

P.O. Box 6064 • Los Osos, California 93412 • Phone 805/528-9370 • Fax 805/528-9377

President: Rosemary Bowker
Vice-President: Pandora Nash-Karner
Directors: Stan Gustafson, Gordon Hensley, Sylvia Smith
Interim General Manager: Paavo A. Ogren
Utilities Manager: George Milanés

November 4, 1999

Board of Directors
Los Osos Community Services District

**Subject: Agenda Item No. 13:
 Consideration and approval of Montgomery Watson's contract for Wastewater
 Project Management Services in an amount not to exceed \$288,145.00.**

Summary

Attached are recommendations developed by the District's wastewater committee for inclusion in the Los Osos Community Services District Wastewater Project Management Agreement with Montgomery Watson. These recommendations result from a meeting of the ad-hoc subcommittee appointed by the Standing Sewer Committee and Mark Ysusi, District Wastewater Project Manager on October 28, 1999.

Recommendation

That after discussion and public comment, your Board

1. Review the recommendations of the Advisory Committee and adopt them, or in the alternative, modify and adopt the recommendations.
2. Authorize the District's President to execute an agreement with Montgomery Watson upon final preparation by legal counsel.

Sincerely,

Paavo A. Ogren
Paavo A. Ogren
Interim General Manager

GARY E. KARNER, FASLA
CA Landscape Architect #1175
350 Mitchell Drive, Los Osos, CA 93402
(805) 528-7014 • FAX (805) 528-7033
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FAX MEMO: 5 pp. total including this page

Date: October 29, 1999

To: Paavo Ogren - CSD Gen Mgr
Jon Seitz - CSD Counsel
Mark Ysusi - WWT PM
Frank Freiler
Bob Semenson

cc: Pandora Nash-Karner, Chair, Standing Sewer Committee
✓ Stan Gustafson - Standing Sewer Committee

Re: WPM Agreement Review

Frank, Bob and I met with Mark Ysusi yesterday and reviewed aspects of the Agreement for WPM (Montgomery Watson). **Our recommendations are attached.**

I have revised the "Chain of Command" chart, adding coordination of the geotech and hydrogeology consultants as part of the WPM's duties. This chart is in color and I will leave copies at the CSD office for reproduction and inclusion in the Agreement. The chart was created in Canvas.

I am sending this to all parties identified above. If there are questions or if I have not recorded the meeting accurately, please call.

I will attempt to email this to all concerned with the documents attached as files. Hope they get through.

Best,
Gary

This FAX and the information it contains is intended to be a confidential communication only to the person or entity to whom it is addressed. If you have received this FAX in error, please notify us by telephone and return the original to this office by mail. We will reimburse any costs incurred in complying with this request.

**LOCSD WWT PM Agreement Review and Recommendations
October 28, 1999**

Following is a summary of recommendations for inclusion in the Los Osos Community Services District Wastewater Project Management Agreement between Montgomery Watson and the LOCSD. These recommendations result from a meeting of the ad-hoc subcommittee appointed by the Standing Sewer Committee (Frank Freiler, Gary Karner and Bob Semenson) and Mark Ysusi, LOCSD WWT Project Manager ("WPM") on October 28, 1999.

1) The Agreement is to be on an hourly-maximum basis, not to exceed the cost projections in the Montgomery Watson proposal for the Los Osos Wastewater Project Manager dated July, 1999, under "Fees and Expenses".

2) The Agreement is to be for one year, retroactive to the date services were initially provided, and subject to annual extensions by mutual agreement by the parties.

3) The Scope of Work (Exhibit "A") for Los Osos Community Services District Wastewater Project Management was reviewed and approved for inclusion in the Agreement.

4) The Terms and Conditions to be included in the Agreement were reviewed and approved with minor changes. Mr. Ysusi is to clarify these modifications with LOCSD legal counsel.

5) The chart entitled "Chain of Command, Management Direction" (Recommendations by Standing Committee, 3/23/99), revised 10/28/99 is to be attached to the Project Manager Scope of Services as Attachment "A". This chart was revised by the ad-hoc committee and WPM to reflect that the geotechnical and hydrogeology consultants retained directly by the LOCSD would report to and be coordinated by the WPM.

6) The WPM is to prepare Attachment "B" to the Project Manager Scope of Services to define the WPM's time commitment to be in residence in Los Osos and to define communication procedures both while in residence in Los Osos and away. Generally, the WPM's commitment is for four days per week devoted to the Los Osos WWT Project, with a minimum of two days per week in residence in Los Osos. This attachment is subject to approval by the parties and may be

modified by mutual consent.

7) It is recommended that this document (LOCSD WWT PM Agreement Review and Recommendations, October 28, 1999) be attached to the Scope of Services as Attachment "C" in the Agreement.

8) Billing Procedures: It was agreed that:

- a) Mr. Ysusi would be billed at a flat hourly rate of \$140. per hour. Mr. Ysusi's time "commuting" between Fresno and Los Osos is not chargeable.
- b) All other MW personnel would be billed in general accordance with the document entitled "MWA Cost Recovery", June 14, 1999 prepared by Rick Frank. (See Reimbursable Expenses, below.)
- c) In addition, we agreed that a profit margin of 10% would be acceptable.

Effectively, personnel will be billed according to the following formula (numbers are for illustration only):

Item:	Example
Direct Salary:	\$40.00
Overhead (130.8% x \$40)	52.32
APC (flat charge per direct labor hour)	<u>7.25</u>
subtotal	99.57
G&A (15.7% x \$99.57)	<u>15.63</u>
Subtotal	\$115.20
Profit (10% x \$115.20)	<u>11.52</u>
Billing Rate	\$126.72

Personnel will be billed by classification and by person and services charges allocated to "project billing sectors".

- d) The WPM is to establish project billing sectors, generally to account for expenditures attributable to:

SSMMP
Collection System
Treatment System

Recharge/discharge System
Harvesting System
(Others, as required for clarity)

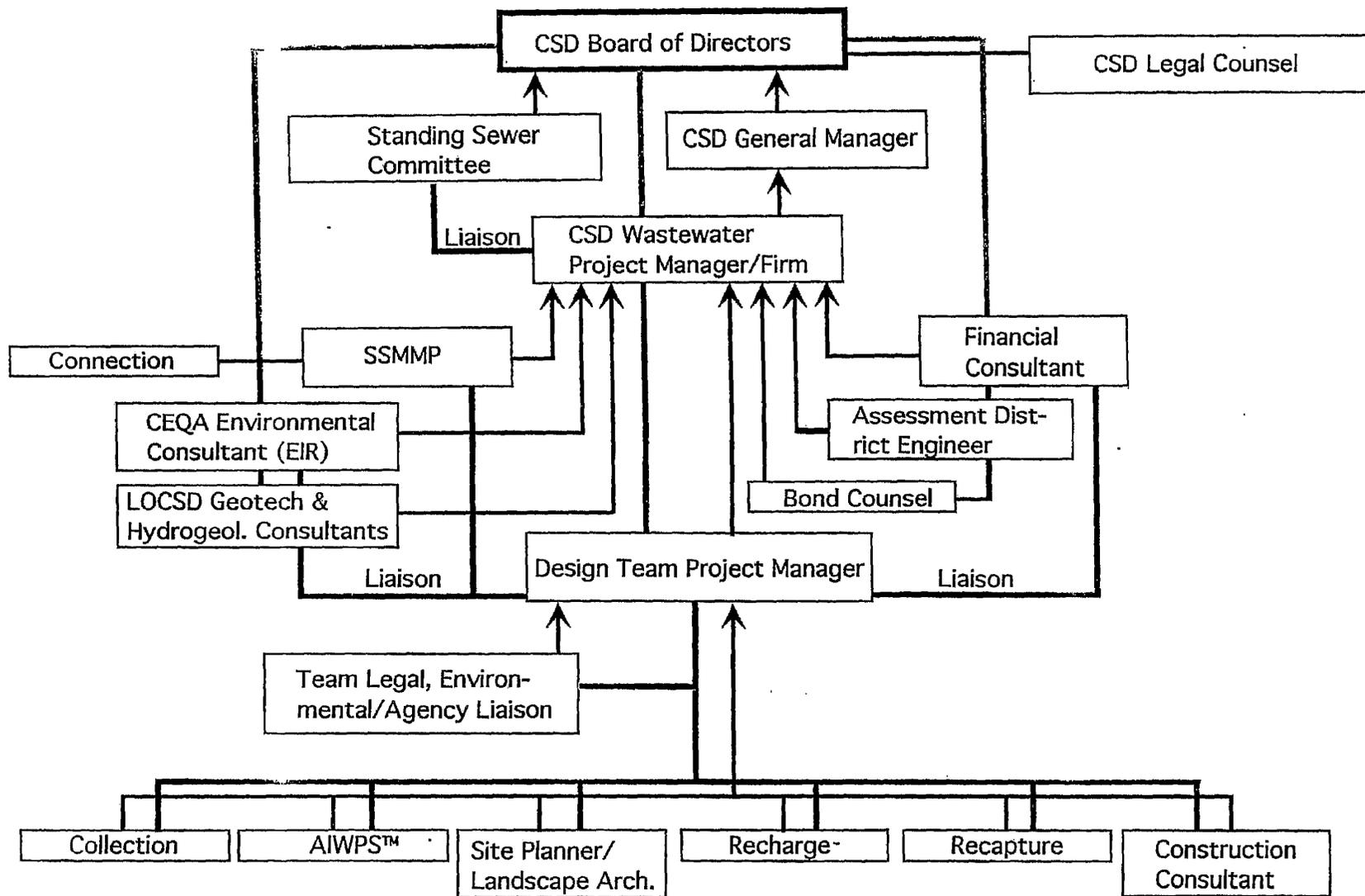
9) Reimbursable Expenses: With the exception of the following, all expenses are included in the billing formula described above.

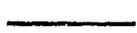
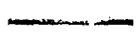
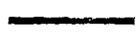
Exceptions:

- a) The LOCSD will provide office space in the CSD offices in Los Osos for the WPM, at the pleasure and direction of the CSD.
- b) Reasonable and necessary project-related travel expenses, while travelling on behalf of the Project beyond a 30-mile radius of Los Osos, are chargeable at cost + 15.7%.
- c) Mileage costs for automobile use by WPM between Fresno and Los Osos ("commute"), and for reasonable and necessary Project travel, are chargeable at \$0.31/mile + 15.7%. (= \$.36/mile). Note: WPM's time in "commuting" between Fresno and Los Osos is not chargeable. Non-project automobile use is not chargeable.

10) It was agreed that the ad-hoc subcommittee would review Montgomery Watson's billings compared to the proposed cost projections in the MW proposal on a quarterly basis. It is the WPM's responsibility to control expenditures in accordance with the proposal.

END



-  = Management Path (Chain of Command)
-  = Contractual Path for CSD commitments
-  = Contractual Path for Design Team
-  = Liaison

Los Osos Community Services District
 Chain of Command
 Management Direction
 Recommendations by Standing Comm.
 3/23/99 Rev: 10/28/99

Fees and Expenses

First Year Project Management Costs			
Staff Member	Estimated Hours	Hourly Rate	Amount (\$)
WPM			
Ysusi	1400	140	\$196,000
Labor Subtotal	1400		\$196,000
APC			\$10,150
Other Direct Costs			\$20,000
Reimbursable Subtotal			\$30,150
Estimated First Year WPM Cost			\$226,150
Additional Staff (as determined by CSD)			
Bergen	16	140	\$2,240
Creager	16	135	\$2,160
Monroe	16	135	\$2,160
Gellerman	24	135	\$3,240
Valuse	16	135	\$2,160
Erskine	24	75	\$1,800
Midalebrooks	16	125	\$2,000
Richardson	60	140	\$8,400
Smith	32	125	\$4,000
Zurawski	40	115	\$4,600
Hasan	40	100	\$4,000
Administrative Aid	288	60	17,280
Clerk	32	60	\$1,920
Labor Subtotal	620		\$55,960
APC			\$4,495
Other Direct Costs			\$1,500
Reimbursable Subtotal			\$5,995
Estimated Cost of Additional Staff			\$61,955

Post-It® Fax Note	7671	Date	11/1/99	# of pages	1
To	KAREN VEGA	From	MARK YUSI		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #	(805) 528-9377	Fax #			

EXHIBIT A

SCOPE OF WORK

Los Osos Community Services District Wastewater Project Management

Introduction

The Los Osos Community Services District (DISTRICT) is embarking upon a major capital project to provide wastewater treatment and disposal facilities for the community. This project will be consistent with the vision established in the Comprehensive Resource Management Plan prepared by The Solutions Group.

To assist in delivering the project DISTRICT has retained Montgomery Watson (MW) to be the Wastewater Project Manager (WPM). The key functions of the WPM will be to provide leadership and to coordinate the activities of the various project participants including the DISTRICT, design consultant, environmental, financial and other consultants and regulatory and funding agencies. The goal of this coordination is to aid the DISTRICT in ensuring that the project proceeds on schedule and budget and that effective reporting and communication are maintained among all project participants through project completion.

Mark Ysusi will serve as MW's WPM. The WPM will serve as the project focal point and will be the DISTRICT's agent during the planning and design phases of the project. He will also coordinate and determine with the DISTRICT the need for MW's support staff as required for project assignments.

DISTRICT has retained the firm of Oswald Engineering, Inc. (Design Engineer) to provide design engineering services for the project. The initial design engineering services include preparation of a Facilities Plan to be submitted to the State Regional Water Quality Control Board in January 2000. It is understood and agreed that the Design Engineer will be solely responsible for the completeness and accuracy of its own activities and work products including reports, technical memoranda, facilities plans, preliminary designs, designs, estimates, schedules and other items. Similarly, the DISTRICT's other consultants shall be responsible for the completeness and accuracy of their own work products.

MW will perform the following project management services.

Task 1 – Administration

Task 1.1 - Project Management

Task includes work related to the management, administration and coordination of activities for the project management contract.

- Prepare Project Management Plan including organization, schedule, communications, reporting, documentation and project procedures.

- Prepare Work Plans for each work order as it is authorized, including work tasks, labor required, individuals responsible for each task and the budget by task.
- Track and document work progress and budget expenditures for MW and its subconsultants efforts.
- Track and document work progress and budget expenditures for DISTRICT in-house and DISTRICT consultants efforts.
- Administer the contract by providing assistance with monthly status reports, invoices, and managing DISTRICT consultants and MW subconsultants.
- Attend and provide minutes for regular project management meetings with the DISTRICT related to management of this contract.
- Prepare cost proposals for change orders and amendments to this contract.

Task 1.2- Monthly Status Report

Using the information developed under Task 1.1 as well as supplemental information, MW will prepare a detailed Monthly Status Report for the DISTRICT. Master schedule and budget status will be reported. The report will include progress and budget status information for the WPM, MW subconsultants and each DISTRICT consultant. Key Project Journal information including action items completed will also be provided. Problem areas and suggested solutions will be included. Key upcoming activities and milestones will be identified. Agency contacts and status will be summarized. An executive summary of each Monthly Status Report will be provided on the Project Journal.

Task 1.3 - Program Assistance Services

As requested, assist DISTRICT staff in management of contracts and project issues. This would include the WPM attending project coordination meetings, preparation of analyses of technical issues, assistance in developing construction contract packages, preparation of a construction management plan, and related services. This assistance will also include development of a master project schedule and budget. Assist the DISTRICT in reviewing DISTRICT consultants scopes of work and budgets. Assist the DISTRICT in assessing the quality of progress and completed work products. The consultant will also prepare level of effort estimates for engineering change orders and contracts for work to be performed under DISTRICT consultant contracts, as necessary. MW will assist DISTRICT staff as requested during the preparation of construction contract documents and the bidding process.

Task 1.4 – Permit and Easement Acquisition Support and Agency Coordination

Our team will coordinate work performed by the environmental, permitting and easement consultants. We will review the documents and assist in gathering drawings as needed and provide input based on experience to assist in expediting permits and easements. Maintain regular liaison with all affected regulatory and funding agencies including SWRCB, RWQCB, Department of Fish and Game and DOHS. Prepare a project binder containing all permitting and approval documents.

Task 1.5 – Inter/Intranet Site (Project Journal)

Establish and maintain an inter/intranet Project Journal that can be accessed by DISTRICT and other project participants. The Journal will include e-mail, general project information, project directory, project calendar, meeting minutes, status reports, technical issue discussions and related materials. As part of community outreach, this site may also be expanded to provide public access to general project information.

Task 1.6 – Master Filing System/Document Control

Prepare a master filing system to organize all project documents to and from the DISTRICT. MW will review a selection of commercial document control products and recommend a document control system to provide document retention and tracking for appropriate documents during the design period. MW can also provide it's own Access-based document control system.

Task 1.7 – Technical Focus Workshops/Liaison

Working in close conjunction with DISTRICT staff and the design team, involve MW's and subconsultant resources with specific experience in needed areas in focused workshops. Suggested subject areas are listed below. These areas can be modified during the initial project meetings.

- Design Criteria
- Effluent Disposal/Groundwater Quality
- Permits and Easements
- Project Financing
- Cost Estimating
- Scheduling and Construction Packaging
- Constructability/Biddability
- Community Outreach Strategy

Brief meeting minutes and/or technical memoranda will be prepared.

Maintain regular contact and dialog with the project design team so that appropriate questions are asked and issues raised in a timely manner in order to maintain progress and the project schedule.

Task 1.8-Master Consultants Budget, Schedule and Deliverables

Prepare a master budget and schedule showing all DISTRICT consultant services including those of the WPM. This will facilitate proper consultant services tracking and coordination. The schedule will also show all major deliverables to be provided by each consultant. Identify all deliverables required from each consultant. Consultants invoices/expenditures will be tracked under Task 1.1 and reported under Task 1.2.

Task 1.9- Action Items Calendar

Prepare an action items calendar for DISTRICT and consultants efforts. This will be based upon the master schedule generated under Task 1.8 and will be included in the Project Journal so that all parties will be able to assess the progress of each participant and tasks that need to be completed prior to the next milestone.

Task 1.10- Assessment District Engineering Coordination and Funding Considerations

Maintain regular contact and coordinate with the project Assessment District Engineering consultant. Assist the DISTRICT and Assessment District Engineer in conducting public meetings required for the assessment district process. Assist the DISTRICT in assessing the adequacy of overall project funding, coordination with State Revolving Fund loan requirements and other associated considerations. Assist the DISTRICT in assessing the viability of alternative funding sources. Assist the DISTRICT in developing project cash flow requirements consultant services and construction.

Task 2 – Review Existing Information

Montgomery Watson will establish a project library so that project team members can become familiar with existing project planning and environmental documents, regulatory and permitting agency requirements and other pertinent existing information. The library will incorporate existing documents compiled by the DISTRICT.

Task 3- Project Facilities Plan and Environmental Documentation Coordination

Task 3.1- Coordinate Draft Facilities Plan and Environmental Document Preparation

MW will meet with the project design consultant to assist in developing a Facilities Plan table of contents acceptable to the DISTRICT, the SWRCB and the RWQCB. MW will assist the DISTRICT in reviewing the draft Facilities Plan. MW will also meet with the project environmental consultant to assist in developing a table of contents for necessary environmental documentation acceptable to regulatory and permitting agencies and will assist in reviewing the draft document. MW will track the progress of each effort to monitor compliance with the master schedule milestones. MW will assist the DISTRICT and design and environmental consultants in responding to SWRCB and RWQCB review comments. Following draft Plan acceptance, MW will assist the DISTRICT and design consultant in developing additional design consultant scope necessary to complete the facilities planning predesign process.

Task 3.2- Coordinate Final Facilities Plan and Environmental Documentation Preparation

MW will track the progress of the final Facilities Plan and final environmental documentation preparation to monitor compliance with the master schedule milestones. MW will monitor Facilities Plan project scope changes and environmental mitigation requirements to assess impacts upon the project estimated construction cost. MW will assist the DISTRICT in reviewing the final Facilities Plan and the final environmental documentation prior to their submittal to the SWRCB and the RWQCB.

Task 4-Assess Design-Build Approach (Optional Service)

At the DISTRICT's request, MW would assess the appropriateness of employing the design-build delivery system for one or more project elements. Compatibility with project funding and DISTRICT institutional requirements would also be assessed.

Task 5 –Design Quality Monitoring

Task 5.1 – Technical Reviews

As requested, perform technical reviews of design phase work completed by the design consultant. The intent of these reviews is not to duplicate the design consultant's own QA/QC reviews, but to supplement reviews by DISTRICT staff to address project-wide issues, interfaces between construction contracts, consistency (e.g., specifications, standard details), and related issues such as system hydraulics, construction contract packaging, etc. Reviews will consider overall consistency of the documents with particular consideration to minimizing exposure to potential construction claims. Technical reviews will be conducted at the preliminary design, mid-point design and 90 percent design completion steps for each contract. Review comments will be documented along with agreed upon resolution and circulated to the design teams and DISTRICT staff. An operability review would also be completed in conjunction with the DISTRICT's Utilities Manager.

Task 5.2 – Value Engineering Services/Constructability Review

Under this task, MW will plan, organize, facilitate, and document a value engineering workshop focusing on the preliminary design for each contract. These workshops will address the preliminary design work. At the 90 percent level of design, the consultant will plan, organize, facilitate and document a constructability review.

Task 6 – Construction Cost Estimates and Schedules

Task 6.1 – Design and Construction Schedule

Coordinate with the design team and DISTRICT staff to create a comprehensive design schedule. The design team is responsible for its own schedule commitments within the established project milestones. This schedule will be used to coordinate information and permitting/approvals needs and identify

interdependencies between project elements. Our team will manage the schedule to minimize schedule impacts due to informational needs.

Prepare a comprehensive construction schedule at the preliminary, midpoint, and 90 percent levels of design. Scheduling will be performed with Primavera Project Planner for Windows.

Task 6.2 – Construction Cost Estimate

Prepare a comprehensive construction cost estimate at the preliminary, midpoint, and 90 percent levels of design. Unit prices, estimating methods and related information will be provided. Cost estimates will conform to a standardized work breakdown structure/cost code to be determined. Cost estimates at each milestone will be prepared in a format that facilitates comparison between the current estimate and all previous estimates, so that major differences between the estimates can be identified. Prepare an engineer's estimate for each contract package, based on the 90 percent design estimate with any final review comments and market adjustments, prior to advertisement for bids.

To facilitate the tracking of changes between estimates, the cost estimator will perform estimates of the work, including possible design alternatives, and work with the design consultants to identify likely cost impacts from each design change. Major changes beyond a cost or schedule impact threshold (to be determined) will be documented and presented to the DISTRICT and design consultants. The DISTRICT will make the decision whether or not to approve such changes and "trend" them into the baseline estimate as part of the ongoing design.

Task 7 – Bid Period Assistance

Provide assistance during bid period including coordinating advertisement, conducting prebid conferences, fielding bidders telephone calls, soliciting input from the design engineer, coordinating responses and coordinating preparation of addenda to the Contract Documents. Such assistance will be provided for each bid package.

Assist the DISTRICT in determining the apparent low bidder(s) and in preparing the package(s) for submittal to the SWRCB. Assist the DISTRICT in receiving SWRCB approval to award (ATA) to enable DISTRICT execution of each construction contract.

Task 8- Construction Management Services (Optional Service)

At the DISTRICT's request, MW will submit a scope of work and budget estimate to perform construction management services. These services would consist of construction contract administration and inspection and materials testing.

Task 9 – O&M Manual Quality Assurance

Provide quality assurance for operations and maintenance (O&M) manuals prepared by the design team for the new facilities. Check the manuals for conformance with the project documents and with any agreed upon O&M procedures from project workshops. Also check for compliance with DISTRICT standards and NPDES permit requirements. Coordinate with DISTRICT's Utilities Manager. Upon the DISTRICT's request, as an optional service MW could also prepare the O&M manual.

Task 10 –Record Drawings Quality Assurance (Optional Service)

At the completion of construction, provide quality assurance for the preparation of Record Drawings. Actual Record Drawings preparation will be by the design team. This will include all changes to the

contract documents resulting from addendum items, change orders and other changes made during construction.

Task 11 – Community Relations Program (Optional Service)

Upon the DISTRICT's request, using a public relations/information firm or individual acceptable to the DISTRICT, MW would prepare a community relations/information plan. The community outreach staff will coordinate, prepare and distribute materials to keep the public informed about the project and to maintain community support. MW would also assist the DISTRICT in preparing for and conducting public meetings.

Task 12- Additional Services (Optional Service)

Upon the DISTRICT's request MW would meet with the DISTRICT to identify additional services to address project needs. MW would then develop scopes of work and budgets necessary to provide those services. These would be added to the existing agreement by contract amendment.

Attachment C

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**Los Osos Community Services District
Board of Directors
Minutes of the November 4, 1999 Meeting**

AGENDA ITEM	DISCUSSION OR ACTION	FOLLOW-UP										
Call to Order	The meeting was called to order at 6:30 p.m. by President Bowker.											
Roll Call	<table style="width: 100%; border: none;"> <tr> <td style="width: 80%;">Director Smith</td> <td style="width: 20%;">Present</td> </tr> <tr> <td>Director Hensley</td> <td>Present</td> </tr> <tr> <td>Director Gustafson</td> <td>Present</td> </tr> <tr> <td>Vice President Nash-Karner</td> <td>Present</td> </tr> <tr> <td>President Bowker</td> <td>Present</td> </tr> </table>	Director Smith	Present	Director Hensley	Present	Director Gustafson	Present	Vice President Nash-Karner	Present	President Bowker	Present	
Director Smith	Present											
Director Hensley	Present											
Director Gustafson	Present											
Vice President Nash-Karner	Present											
President Bowker	Present											
Adjourn to Closed Session	<p>President Bowker announced that the meeting would adjourn to closed session for the following:</p> <p>Pursuant to Section 54957 for the following: Public Employment of Utilities Manager</p> <p>Pursuant to Subsection c of Section 54956.9 for the following: Conference with Legal Counsel, Existing Litigation:</p> <p>Re: In real property, APN 074-221-089 Owner: Morro Palsades, a general partnership</p> <p>Re: In real property, APN 074-221-092 Owner: Morro Shores Company</p>											
Reopening to Public Session	The meeting reopened to public session at 7:00 p.m.											
Report on Closed Session	<p>Legal Counsel Jon Seitz reported on the following: No action was taken pursuant to Section 54957.</p> <p>Pursuant to Subsection c of Section 54956.9, the Board discussed the court order that was obtained by the District to obtain permission to enter APN 074-221-089 and APN 074-221-092 to determine their feasibility as sites for the wastewater treatment plant.</p>											
Pledge of Allegiance												

AGENDA ITEM	DISCUSSION OR ACTION	FOLLOW-UP
Public Comment	<p><u>Lisa Gonzales, 1297 15th Street</u>: She spoke for herself, and also read letters from Mary Teft, 1285 15th Street, and Carolyn Niblick, 1288 15th Street, requesting assistance in controlling traffic speeds on 15th Street near the intersection of Santa Maria.</p> <p><u>George Taylor, 423 Mitchell Drive</u>: He spoke in opposition to the proposed tenancy of Hollywood Video in the Ralphs complex, both from an aesthetic standpoint and the potential loss of business for the three existing video rental stores in Los Osos.</p> <p><u>Pandora Nash-Karner, Chair, County Parks and Recreation Commission</u>: She gave an update on the progress for the new swimming pool.</p> <p><u>Sylvia Smith</u>: She reported that the South Bay Library book sale and event was a huge success. She thanked Fire Chief Bruce Pickens, Utilities Manager George Milanés, and sound technician Hunter Kilpatrick for their help.</p> <p><u>Rosemary Bowker</u>: She invited the community to the Los Osos CSD Independence Day celebration and open house on November 14th.</p>	
1. Report from Sheriff's Department	<p>Sergeant Hodgkin reported on the following:</p> <ul style="list-style-type: none"> • The CSD must get the encroachment permit for the skateboard park construction to move forward. • The Sheriff's Department will participate in the Veteran's Day ceremony on 11/12 and the CSD celebration on 11/14. • Halloween was relatively quiet with no major incidents to report. 	
2. Report from Utilities Systems Manager	<p>George Milanés reported on the following:</p> <ul style="list-style-type: none"> • The FLOHelp volunteers have requested the District research possible insurance coverage. Staff is currently researching the options and costs for this type of coverage. • He met last week with the State Department of Health Services for the annual inspection of the Baywood Park water system. The District's operating permit is forthcoming. • The utility crews are cleaning up the drainage basins and culverts before the storm season. • As of November 1, 1999, the District has assumed responsibility for the well sites. A standby schedule is in place to respond to alarms. • The first water billing has been mailed out. 	

AGENDA ITEM	DISCUSSION OR ACTION	FOLLOW-UP
3. Report from Fire Chief	Chief Pickens submitted a warrant in the amount of \$1,221.50 to WPC for work on the station remodel. This contract had been previously approved by the Board.	
4. Report from Legal Counsel	Jon Seitz reported that he is working on a District e-mail policy to present for the next meeting.	
5. Report from Interim General Manager	<p>Interim General Manager Ogren reported on the following:</p> <ul style="list-style-type: none"> • November 11th is the first meeting with bond counsel. • Request for discussions on fire employees MOU will be postponed until the bargaining unit is formed. • Information on Social Security will be distributed to employees tomorrow. • This is the last pay period for County employees prior to their transition to the District. 	
Consent Agenda		
<p>6. Approval of Warrants</p> <p>7. Approval of Previous Meeting Minutes of October 21, 1999</p> <p>8. Approval of a Revision of the District Personnel Policies to Reflect Various Benefits, Rights, and Responsibilities for Exempt Employees</p> <p>9. Approval of Modifications to the Fire Chief and Fire Captain/Fire Marshal Job Specifications</p> <p>10. Approval of an Increase in the Section 125 Cafeteria Plan of \$19.04 Per Month Per Employee By the District</p> <p>11. Approval of a Resolution Authorizing the Establishment of a District Bank Account for Employee Payroll</p> <p>12. Approval of a 3.3% Cost of Living Adjustment to the District Salary Schedule for Administrative Secretary and Fire Chief Positions, Retroactive to June 26, 1999</p>	<p>Interim General Manager Ogren announced that Agenda Item No. 9 would be pulled from the consent agenda and placed on the regular agenda.</p> <p>A motion was introduced by Director Smith to approve Agenda Items 6,7,8,10,11, and 12. The motion was seconded by Vice President Nash-Karner.</p> <p>The motion was approved unanimously by voice vote.</p> <p>District Legal Counsel Jon Seitz reported that additional changes to the Fire Chief position should be approved as follows: Under "Typical Tasks": "Plans, organizes, and directs all employees of all classifications, including volunteer firefighters, if any, assigned to the District's fire department..." In addition, under the fifth bulletin item, "and good morale" should be stricken. Under the Fire Captain/Fire Marshal job description, "Definition", sixth line, delete "and Fire Captain/Paramedic".</p> <p>A motion was introduced by Director Gustafson to approve modifications to the Fire Chief and Fire Captain/Fire Marshal job specifications as amended. The motion was seconded by Director Smith.</p> <p>The motion was approved unanimously by voice vote.</p>	

AGENDA ITEM	DISCUSSION OR ACTION	FOLLOW-UP
Regular Agenda		
<p>13. Consideration and Approval of Montgomery Watson's Contract for Wastewater Project Management Services in an Amount Not To Exceed \$288,145.00.</p>	<p>A motion was introduced by Director Hensley to approve the contract with Montgomery Watson for Wastewater Project Management Services in an amount not to exceed \$288,145, with the conditions that the District charge the appropriate rent, that no mileage charges be reimbursed. The motion was seconded by Director Smith.</p> <p>Roll Call Vote: Director Smith Yes Director Hensley Yes Director Gustafson No Vice President Nash-Karner No President Bowker No</p> <p>The motion failed to pass with three (3) negative votes.</p> <p>A motion was introduced by President Bowker to accept staff recommendation to approve the contract with Montgomery Watson for Wastewater Project Management Services in an amount not to exceed \$288,145, with the condition that Mr. Ysusi does not charge the District his hourly rate for travel time, that mileage reimbursement between Fresno and Los Osos be limited to one round trip per week, or more if pre-approved by the District's General Manager, and that Montgomery Watson not be charged rent. The motion was seconded by Director Gustafson.</p> <p>Roll Call Vote: Director Smith No Director Hensley No Director Gustafson Yes Vice President Nash-Karner Yes President Bowker Yes</p> <p>The motion passed with three (3) affirmative votes.</p>	
<p>14. Consideration and Approval of Technical Corrections to Section 4020 of the District Personnel Policies, Sick Leave, To Eliminate Payment of Accrued Leave Upon Termination of Employment by the Fire Captain/Fire Marshal, Fire Captain/Paramedics, Fire Engineer/Paramedics, and Fire Engineer</p>	<p>A motion was introduced by Vice President Nash-Karner to approve the attached technical corrections to Section 4020 of the District Personnel Policies, Sick Leave, to eliminate payment of accrued leave upon termination of employment by the Fire Captain/Fire Marshal, Fire Captain/Paramedics, Fire Engineer/Paramedics, and Fire Engineer. The motion was seconded by Director Hensley.</p> <p>The motion passed unanimously by voice vote.</p>	

AGENDA ITEM	DISCUSSION OR ACTION	FOLLOW-UP
15. Consideration and Approval of Group Life Insurance and Group Long-Term Disability Plans, At an Estimated Annual Cost of \$6,720.00	A motion was introduced by Director Hensley to approve group life insurance and group long-term disability plans, at an estimated annual cost of \$6,720.00, and to authorize the Interim General Manager to submit payment with the applications. The motion was seconded by Director Gustafson. The motion passed unanimously by voice vote.	
16. Consideration of a Request for Funding Up To \$15,000.00 of a Joint Project of the Army Corps of Engineers Feasibility Study to Determine Further Action By the Corps To Solve the Problems of Morro Bay, At Total Study Cost of \$1.6 million	No action was taken on this item.	
17. Consideration and Approval of a Staff Recommendation For the Board To Set Up an Ad Hoc Committee To Review Bids Received For Purchase of Utilities Vehicles, To Authorize This Committee To Execute the Necessary Documents, and That After Review By Legal Counsel, This Committee Be Authorized To Purchase the Equipment That Meets the Bid Specifications and Is Within the Budgeted Amounts Previously Approved By the Board	A motion was introduced by Director Hensley to approve staff recommendation for the Board to set up an Ad Hoc Committee Composed of Directors Gustafson and Smith to review bids received for purchase of utilities vehicles, to authorize the committee to execute the necessary documents, including any necessary deposits, and that after review by legal counsel, this committee be authorized to purchase the equipment that meets the bid specifications and is within the budgeted amounts previously approved by the Board. The motion was seconded by Vice President Nash-Karner. The motion passed unanimously by voice vote.	
Committee Reports		
a. Ad Hoc Identity/Outreach	Vice President Nash-Karner thanked several people who have volunteered their time and talents for the CSD Independence Day on 11/14.	
b. Ad Hoc Environmental	<ul style="list-style-type: none"> • Deadline for Board comment on the draft Comprehensive Conservation Management Plan is imminent. A special Board meeting is scheduled for November 14, 1999 at 12:00 p.m. to approve a letter of comments to be sent. • Inquiries on the habitat conservation plan, which the District is negotiating with Fish and Wildlife, need to be addressed. 	Ogren to respond to Mr. Bob Robertson of Los Osos Auto Body regarding status of habitat conservation plan.
c. Ad Hoc Mission Statement	No report.	
d. Wastewater	Written report submitted.	
e. Drainage	Committee met on 11/2. Written minutes will be submitted.	
f. Water Operations	Committee met 11/3. The District needs to address a policy for removal of meters from abandoned properties. County Planning needs to notify the District on permits issued in Los Osos.	
g. Finance & Budget	Committee will meet Monday, 11/8 at 9:30 a.m.	

AGENDA ITEM	DISCUSSION OR ACTION	FOLLOW-UP
Directors' Comments	<p>Director Gustafson suggested that the new General Manager will take over more of the staff functions, and that committees will become more advisory in nature.</p> <p>Vice President Nash-Karner wanted the wastewater committee minutes amended to reflect that Rick Hernandez was present at the last meeting, not absent.</p> <p>Director Hensley is concerned that the Ralphs project may not reflect the proper "gateway to Los Osos".</p> <p>Director Smith reported that the Chamber of Commerce Board would meet with the real estate negotiator for Ralphs regarding the potential tenancy of Hollywood Video.</p>	
Adjournment	The meeting was adjourned at 9:20 p.m.	

Attachment D



MONTGOMERY WATSON

INVOICE

Please Reference Invoice No. With Payment
Remit To: Post Office Box 51140
Los Angeles, CA 90051-5440

Los Osos County Services District
PO Box 6064
Los Osos, CA 93412

Date: 10/29/99

Invoice No: 262856

Contract No: 10834311

Attention: Ms. Rosemary Bowker
President

Client No: 217576

FOR PROFESSIONAL SERVICES RENDERED DURING PERIOD OF 08/10/99 THRU 10/29/99.

Wastewater Project Management Services
Initial Services Authorization & Compensation

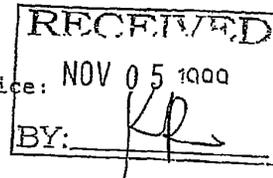
Professional Classification	Name	Hours	Rate	Amount
Principal Professional	Ysusi, Mark A.	152.0	140.00	21,280.00
Senior Professional	Shuter, Kelli A.	3.5	100.00	350.00
Senior Professional	Hasan, Ali	4.0	100.00	400.00
Professional	Harrison, Robin S.	2.0	90.00	180.00
Associate Professional	Hill, Joseph R.	58.5	76.00	4,446.00
Senior Administrator	Shepherd, Nancy L.	2.5	60.00	150.00

Total Labor: \$ 26,806.00

Other Direct Charges	Cost	Plus 15.7 %	Amount
Travel	592.55	93.03	685.58
Mileage	537.54	84.40	621.94
Associated Proj. Costs	1,613.13	253.25	1,866.38

Total ODC: \$ 3,173.90

Total This Invoice: \$ 29,979.90



Contract Amount: \$ 30,000.00
Amount Previously Billed: \$.00

OK per Paavo 11/12/99
over phone -

Equal Opportunity Employer
Serving the World's Environmental Needs

Osos County Services District
PO Box 6064
Los Osos, CA 93412

Date: 10/29/99

Invoice No: 262856

Amount This Invoice:	\$	29,979.90
Total Amount Billed to Date:	\$	29,979.90

Please Note: This invoice is due within 30 days of the invoice date.
A charge of 18.00% will be added to past due accounts.

Visit our home page on the World Wide Web at <http://www.mw.com>

FMT: HR0001
BATCH: 548660
VERSION: Z

Florida Attorney General Advisory Legal Opinion

Number: AGO 2007-12

Date: February 27, 2007

Subject: Consultants' Competitive Negotiation Act,

Ms. Dolores D. Menendez
City Attorney
City of Cape Coral
Post Office Box 150027
Cape Coral, Florida 33915-0027

RE: CONSULTANTS' COMPETITIVE NEGOTIATION ACT - MUNICIPALITIES - CONTRACTS - guaranteed maximum price and completion date must be determined during competitive negotiations under section 287.055, Fla. Stat. s. 287.055, Fla. Stat.

Dear Ms. Menendez:

You have asked substantially the following question:

Does the use of a construction manager at risk or program manager at risk contract for the design and construction of a multi-phase project comply with section 287.055 (9)(c), Florida Statutes, when each phase of the project is separately negotiated for a guaranteed maximum price and completion date?

You state that the city entered into a utility expansion project in the early 1990's, using a design-bid-build approach which, due to disputes with the contractors, resulted in the city paying out an additional \$14,250,000 over the amount of the initial bids. The city subsequently chose a "construction manager at risk" method whereby the city contracts with a single entity to provide design and construction management services, coupled with multi-phase guaranteed maximum prices and guaranteed completion dates for each phase. The city entered into such a contract beginning in 1999 for a term of five years, with five different expansion phases.

Due to the size, geographic locations and uncertain design requirements of the phases, the city determined that it was impractical to establish a guaranteed maximum price for the project at the time the contract was initially entered into. Rather, each phase was divided into three "tiers" which were individually negotiated. The construction manager's compensation for Tier One services was based on an hourly rate negotiated at the outset and incorporated into the agreement. Compensation for Tier Two services was also negotiated at contract inception and established based on a guaranteed maximum price agreed to by the parties. Finally, Tier Three compensation was negotiated by the parties when the city was ready to commence the next phase of the project.

You indicate that this allowed the city flexibility in choosing the compensation for each phase based on a number of different methods: guaranteed maximum price; lump sum fixed price; cost of work plus a designated design fee and/or construction fee; or cost of work plus a designated design and/or construction fee subject to a guaranteed maximum price. Under this system, the construction manager was required to solicit competitive bids from pre-qualified subcontractors, then negotiate the compensation with the city.

In late 2005 and early 2006, the Auditor General for the State of Florida conducted an operational audit of the city's water, sewer and stormwater operations. The auditor's report included a finding that the city did not fully comply with the provisions of section 287.055, Florida Statutes, the Consultants' Competitive Negotiation Act, when it negotiated contracts for the expansion of the utility system. Specifically, the report cites that the city executed two contracts without first negotiating fair, competitive and reasonable compensation as required by the act, effectively precluding the city from negotiating contracts with lower ranked qualified firms if the compensation demands of the selected firm were excessive. The auditor also noted that the contracts did not establish a guaranteed maximum price or guaranteed completion date, contrary to section 287.055(9)(c), Florida Statutes.

Section 287.055, Florida Statutes, sets forth requirements for the procurement and contracting of professional architectural, engineering, landscape architectural, or land surveying services by governmental agencies.[1] Subsection (9)(c) of the act provides for the act's application to design-build contracts and pertinent to the award of such contracts by municipalities provides:

"Municipalities, political subdivisions, school districts, and school boards shall award design-build contracts by the use of a competitive proposal selection process as described in this subsection, or by the use of a qualifications-based selection process pursuant to subsections (3), (4), and (5) for entering into a contract whereby the selected firm will subsequently establish a guaranteed maximum price and guaranteed completion date. If the procuring agency elects the option of qualifications-based selection, during the selection of the design-build firm the procuring agency shall employ or retain a licensed design professional appropriate to the project to serve as the agency's representative. Procedures for the use of a competitive proposal selection process must include as a minimum the following:

1. The preparation of a design criteria package for the design and construction of the public construction project.
2. The qualification and selection of no fewer than three design-build firms as the most qualified, based on the qualifications, availability, and past work of the firms, including the partners or members thereof.
3. The criteria, procedures, and standards for the evaluation of design-build contract proposals or bids, based on price, technical, and design aspects of the public construction project, weighted for the project.
4. The solicitation of competitive proposals, pursuant to a design criteria package, from those qualified design-build firms and the evaluation of the responses or bids submitted by those firms based on the evaluation criteria and procedures established prior to the solicitation of competitive proposals.
5. For consultation with the employed or retained design criteria professional concerning the evaluation of the responses or bids submitted by the design-build firms, the supervision or approval by the agency of the detailed working drawings of the project; and for evaluation of the compliance of the project construction with the design criteria package by the design criteria professional.
6. In the case of public emergencies, for the agency head to declare an emergency and authorize negotiations with the best qualified design-build firm available at that time." (e.s.)

The statute's plain language requires a firm selected by the qualification-based process in subsections (3), (4) and (5) of section 287.055, Florida Statutes, to subsequently establish a guaranteed maximum price and a guaranteed completion date. While there is no definitive time frame for doing so, the statute does provide for competitive negotiations to begin after the firm is selected. Following the public announcement and qualification procedures in subsection (3) and the competitive selection steps in subsection (4), an agency is required by section 287.055(5), Florida Statutes, to enter competitive negotiations with the selected firm as

follows:

"(a) The agency shall negotiate a contract with the most qualified firm for professional services at compensation which the agency determines is fair, competitive, and reasonable. In making such determination, the agency shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For any lump-sum or cost-plus-a-fixed-fee professional service contract over the threshold amount provided in s. 287.017 for CATEGORY FOUR, the agency shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract under which such a certificate is required must contain a provision that the original contract price and any additions thereto will be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments must be made within 1 year following the end of the contract.

(b) Should the agency be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the agency determines to be fair, competitive, and reasonable, negotiations with that firm must be formally terminated. The agency shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency must terminate negotiations. The agency shall then undertake negotiations with the third most qualified firm.

(c) Should the agency be unable to negotiate a satisfactory contract with any of the selected firms, the agency shall select additional firms in the order of their competence and qualifications and continue negotiations in accordance with this subsection until an agreement is reached."

These procedures clearly indicate that compensation will be negotiated prior to the selected firm beginning work under the contract. As noted in Attorney General Opinion 93-56, the statute states that an "agency may request, accept, and consider proposals for the compensation to be paid under the contract only during competitive negotiations under subsection (5)."[2] Nothing in the act appears to contemplate the negotiation of a guaranteed maximum price and guaranteed completion date of each phase of a multi-phase project that has been awarded to a construction manager at risk or program manager at risk.

Accordingly, it is my opinion that separately negotiating each phase of a multi-phase project that has been awarded to a construction manager at risk or program manager at risk does not comply with the plain language or intent of section 287.055 (9)(c), Florida Statutes.

Sincerely,

Bill McCollum
Attorney General

BC/tals

[1] See s. 287.055(2)(a) and (b), Fla. Stat.

[2] Section 287.055(4)(b), Fla. Stat.

Council Substitute for House Bill No. 1489

An act relating to public project construction bonds; amending s. 255.05, F.S.; providing that the amount of a bond shall equal the contract price except under certain conditions; providing that a bond may not be conditioned on the performance of design or nonconstruction services if such services are not included in the bond amount; creating s. 255.103, F.S.; providing a definition; authorizing local governments to select construction-management or program-management entities to be responsible for certain construction project activities; providing requirements and authority for such entities; amending s. 287.055, F.S.; revising provisions relating to the award of design-build contracts for surveying or mapping services by certain governmental entities; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) is added to subsection (1) of section 255.05, Florida Statutes, to read:

255.05 Bond of contractor constructing public buildings; form; action by materialmen.—

(1)

(c)1. The amount of the bond shall equal the contract price, except that for a contract in excess of \$250 million, if the state, county, municipality, political subdivision, or other public entity finds that a bond in the amount of the contract price is not reasonably available, the public owner shall set the amount of the bond at the largest amount reasonably available, but not less than \$250 million.

2. For a construction-management or design-build contracts, if the public owner does not include in the bond amount the cost of design or other nonconstruction services, the bond may not be conditioned on performance of such services or payment to persons furnishing such services. Notwithstanding paragraph (a), such a bond may exclude persons furnishing such services from the classes of persons protected by the bond.

Section 2. Section 255.103, Florida Statutes, is created to read:

255.103 Construction management or program management entities.—

(1) “As used in this section, the term “local government” means a county, municipality, special district as defined in chapter 189, or other political subdivision of the state.

(2) A local government may select a construction management entity, pursuant to the process provided by s. 287.055, which is to be responsible for construction project scheduling and coordination in both preconstruction and construction phases and generally responsible for the successful, timely,

and economical completion of the construction project. The construction management entity must consist of or contract with licensed or registered professionals for the specific fields or areas of construction to be performed, as required by law. The construction management entity may retain necessary design professionals selected under the process provided in s. 287.055. At the option of the local government, the construction management entity, after having been selected and after competitive negotiations, may be required to offer a guaranteed maximum price and a guaranteed completion date or a lump-sum price and a guaranteed completion date, in which case, the construction management entity must secure an appropriate surety bond pursuant to s. 255.05 and must hold construction subcontracts. If a project, as defined in s. 287.055(2)(f), solicited by a local government under the process provided in s. 287.055 includes a grouping of substantially similar construction, rehabilitation, or renovation activities as permitted under s. 287.055(2)(f), the local government, after competitive negotiations, may require the construction management entity to provide for a separate guaranteed maximum price or a separate lump-sum price and a separate guaranteed completion date for each grouping of substantially similar construction, rehabilitation, or renovation activities included within the project.

(3) A local government may select a program management entity, pursuant to the process provided by s. 287.055, which is to be responsible for schedule control, cost control, and coordination in providing or procuring planning, design, and construction services. The program management entity must consist of or contract with licensed or registered professionals for the specific areas of design or construction to be performed as required by law. The program management entity may retain necessary design professionals selected under the process provided in s. 287.055. At the option of the local government, the program management entity, after having been selected and after competitive negotiations, may be required to offer a guaranteed maximum price and a guaranteed completion date or a lump-sum price and guaranteed completion date, in which case the program management entity must secure an appropriate surety bond pursuant to s. 255.05 and must hold design and construction subcontracts. If a project, as defined in s. 287.055(2)(f), solicited by a local government under the process provided in s. 287.055 includes a grouping of substantially similar construction, rehabilitation, or renovation activities as permitted under s. 287.055(2)(f), the local government, after competitive negotiations, may require the program management entity to provide for a separate guaranteed maximum price or a lump-sum price and a separate guaranteed completion date for each grouping of substantially similar construction, rehabilitation, or renovation activities included within the project.

(4) This section does not prohibit a local government from procuring construction management services, including the services of a program management entity, pursuant to the requirements of s. 255.20.

Section 3. Paragraph (c) of subsection (9) of section 287.055, Florida Statutes, is amended to read:

287.055 Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties.—

(9) APPLICABILITY TO DESIGN-BUILD CONTRACTS.—

(c) Except as otherwise provided in s. 337.11(7), the Department of Management Services shall adopt rules for the award of design-build contracts to be followed by state agencies. Each other agency must adopt rules or ordinances for the award of design-build contracts. Municipalities, political subdivisions, school districts, and school boards shall award design-build contracts by the use of a competitive proposal selection process as described in this subsection, or by the use of a qualifications-based selection process pursuant to subsections (3), (4), and (5) for entering into a contract whereby the selected firm will, subsequent to competitive negotiations, ~~subsequently~~ establish a guaranteed maximum price and guaranteed completion date. If the procuring agency elects the option of qualifications-based selection, during the selection of the design-build firm the procuring agency shall employ or retain a licensed design professional appropriate to the project to serve as the agency's representative. Procedures for the use of a competitive proposal selection process must include as a minimum the following:

1. The preparation of a design criteria package for the design and construction of the public construction project.
2. The qualification and selection of no fewer than three design-build firms as the most qualified, based on the qualifications, availability, and past work of the firms, including the partners or members thereof.
3. The criteria, procedures, and standards for the evaluation of design-build contract proposals or bids, based on price, technical, and design aspects of the public construction project, weighted for the project.
4. The solicitation of competitive proposals, pursuant to a design criteria package, from those qualified design-build firms and the evaluation of the responses or bids submitted by those firms based on the evaluation criteria and procedures established prior to the solicitation of competitive proposals.
5. For consultation with the employed or retained design criteria professional concerning the evaluation of the responses or bids submitted by the design-build firms, the supervision or approval by the agency of the detailed working drawings of the project; and for evaluation of the compliance of the project construction with the design criteria package by the design criteria professional.
6. In the case of public emergencies, for the agency head to declare an emergency and authorize negotiations with the best qualified design-build firm available at that time.

Section 4. This act shall take effect July 1, 2007.

Approved by the Governor June 15, 2007.

Filed in Office Secretary of State June 15, 2007.

Assembly Bill No. 2701

CHAPTER 360

An act to amend Section 61105 of, and to add Section 25825.5 to, the Government Code, relating to San Luis Obispo County.

[Approved by Governor September 20, 2006. Filed with
Secretary of State September 20, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2701, Blakeslee. San Luis Obispo County.

(1) Existing law authorizes the establishment of community services districts for the provision of various services to the geographic area within a district, including the collection, treatment, or disposal of sewage, wastewater, recycled water, and stormwater.

This bill would authorize the County of San Luis Obispo to undertake any efforts necessary to construct and operate a wastewater collection and treatment system to meet the needs of the Los Osos Community Services District, as specified, and to impose and collect user fees and other charges to cover the reasonable costs of any wastewater collection or treatment services provided pursuant to these provisions.

The bill would also require the Board of Supervisors of San Luis Obispo County to prepare and submit a proposed assessment to pay for the facilities, and, if certain requirements are met, to decide whether to proceed with construction of the project. The district would retain the powers to provide all other services to a designated zone. After a minimum of 3 years and when the district and the county mutually apply for, and are granted, a modification to the waste discharge permit issued by the Regional Water Quality Control Board, responsibilities would be transferred back to the district.

The people of the State of California do enact as follows:

SECTION 1. Section 25825.5 is added to the Government Code, to read:

25825.5. (a) The Legislature finds and declares all of the following:

(1) There are ongoing discharges to the Los Osos Discharge Prohibition Zone established in the Water Quality Control Plan for the Central Coast Basin.

(2) The agency responsible for eliminating these discharges is the Los Osos Community Services District, which is a relatively new agency, formed in 1998.

(3) The Central Coast Regional Water Quality Control Board has imposed substantial fines on the Los Osos Community Services District for failing to make adequate progress toward eliminating these discharges.

(4) The Los Osos Community Services District has a relatively small staff that has no experience of successfully designing and constructing facilities of the size and type needed to eliminate these discharges.

(5) The County of San Luis Obispo has a larger staff that has experience in successfully designing large public works projects.

(6) There is an urgent need to protect the public health and safety by eliminating these discharges and the most feasible alternative is best accomplished by a temporary realignment of certain wastewater collection and treatment powers between the Los Osos Community Services District and the County of San Luis Obispo.

(7) It is the intent of the Legislature in enacting this section and amending Section 61105 to authorize the County of San Luis Obispo to design, construct, and operate a wastewater collection and treatment project that will eliminate these discharges, particularly in the prohibition zone, to avoid a wasteful duplication of effort and funds, and to temporarily prohibit the Los Osos Community Services District from exercising those powers.

(b) As used in this section, the following definitions apply:

(1) “Board” means the Board of Supervisors of the County of San Luis Obispo.

(2) “County” means the County of San Luis Obispo.

(3) “District” means the Los Osos Community Services District, formed pursuant to the Community Services District Law, Division 3 (commencing with Section 61000) of Title 3, located in San Luis Obispo County.

(4) “Prohibition zone” means that territory within the Baywood Park-Los Osos area of the county that is subject to the wastewater discharge prohibition imposed by the Central Coast Regional Water Quality Control Board pursuant to Resolution 83-13.

(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.

(d) Nothing in this section shall affect the district’s power to do any of the following:

(1) Operate wastewater collection and treatment facilities within the district that the district was operating on January 1, 2006.

(2) Provide facilities and services, other than wastewater collection and treatment.

(e) To finance the construction and operation of a wastewater collection and treatment system, the county may levy benefit assessments consistent with the requirements of Article XIII D of the California Constitution, pursuant to any of the following:

(1) The Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code).

(2) The Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code).

(3) The Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code).

(f) The county may charge standby charges for sewer services, consistent with the requirements of Article XIII D of the California Constitution, pursuant to the Uniform Standby Charge Procedures Act (Chapter 12.4 (commencing with Section 54984) of Part 1 of Division 2 of Title 5).

(g) The county may impose and collect user fees and charges and any other sources of revenue permitted by law sufficient to cover the reasonable costs of any wastewater collection or treatment services provided pursuant to this section.

(h) Promptly upon the adoption of a resolution by the board requesting this action, the board of directors of the district shall convey to the county any requested retained rights-of-way, licenses, funds, and permits previously acquired by the district in connection with construction projects for which the district awarded contracts in 2005. The county shall use those fee interests, rights-of-way, licenses, and funds for the purpose of furthering the construction and operation of a wastewater collection and treatment system pursuant to this section.

(i) After the approval of a benefit assessment, the board shall complete a due diligence review before deciding to proceed with the construction and operation of a wastewater collection and treatment system. The board shall consider any relevant factors, including, but not limited to, the prompt availability of reasonable and sufficient financing, the status of enforcement actions, the successful development of reasonable project technology and location options, the availability of any necessary permits and other approvals, and the absence of other significant impediments. At the completion of this due diligence review, the board shall adopt a resolution declaring its intention to proceed or not proceed with the construction and operation of the wastewater collection and treatment system.

(j) Collection of assessments may not commence until the adoption of the resolution to proceed pursuant to subdivision (i).

(k) The county shall have no power or responsibility to construct and operate a wastewater collection and treatment system pursuant to this

section and the district shall resume that power and responsibility when any of the following occurs:

(1) If the board adopts a resolution not to hold a benefit assessment election pursuant to subdivision (e).

(2) If there is a majority protest to a benefit assessment proposed by the county, on the date of the resolution adopted by the board determining that the majority protest exists.

(3) If there is not a majority protest, but the board adopts a resolution, pursuant to subdivision (i), which declares that the county will no longer exercise its powers pursuant to this section, on the date specified in the board's resolution.

(4) If the county constructs and operates a wastewater collection and treatment system pursuant to this section, not less than three years after the operation of the system commences, the board and the board of directors of the district shall mutually apply to the Central Coast Regional Water Quality Control Board for a modification of the waste discharge permit, requesting permission to transfer of the responsibility to operate the wastewater collection and treatment system from the county to the district. Consistent with that modification, the board shall adopt a resolution that specifies the date on which the county will no longer exercise its powers pursuant to this section.

(l) When the power and responsibility to construct and operate a wastewater collection and treatment system transfers from the county to the district pursuant to subdivision (k), the county shall do all of the following:

(1) Promptly convey to the district any remaining retained fee interests in any real property, rights-of-way, licenses, other interests in real property, funds, and other personal property that the county previously acquired pursuant to subdivision (h).

(2) Promptly convey to the district the wastewater collection and treatment system that the county constructed pursuant to this section.

(3) Continue to collect any necessary assessments and use them to repay any indebtedness incurred by the county to finance the construction of the wastewater collection and treatment system pursuant to this section.

(4) The county shall cease collecting any benefit assessments after repayment of any indebtedness incurred by the county to finance the construction of the wastewater collection and treatment system.

(m) Nothing in this section shall be construed as imposing upon the county any liability for any district decisions or actions, or failures to act, or imposing upon the county any liability for any decisions or actions, or failures to act, by any district officers, employees, or agents. In addition, nothing in this section shall be construed as imposing upon the county any liability for any prior or subsequent district liabilities, whether liquidated or contingent, or any prior or subsequent liabilities of district officers, employees, or agents, whether liquidated or contingent.

SEC. 2. Section 61105 of the Government Code is amended to read:

61105. (a) The Legislature finds and declares that the unique circumstances that exist in certain communities justify the enactment of special statutes for specific districts. In enacting this section, the Legislature intends to provide specific districts with special statutory powers to provide special services and facilities that are not available to other districts.

(b) (1) The Los Osos Community Services District may borrow money from public or private lenders and loan those funds to property owners within the district to pay for the costs of decommissioning septic systems and constructing lateral connections on private property to facilitate the connection of those properties to the district's wastewater treatment system. The district shall lend money for this purpose at rates not to exceed its cost of borrowing and the district's cost of making the loans. The district may require that the borrower pay the district's reasonable attorney's fees and administrative costs in the event that the district is required to take legal action to enforce the provisions of the contract or note securing the loan. The district may elect to have the debt payments or any delinquency collected on the tax roll pursuant to Section 61116. To secure the loan as a lien on real property, the district shall follow the procedures for the creation of special tax liens in Section 53328.3 of this code and Section 3114.5 of the Streets and Highways Code.

(2) (A) Except as otherwise provided in this paragraph, on and after January 1, 2007, the Los Osos Community Services District shall not undertake any efforts to design, construct, and operate a community wastewater collection and treatment system within, or for the benefit of, the district. The district shall resume those powers on the date specified in any resolution adopted pursuant to subdivision (j) of Section 25825.5.

(B) Nothing in this paragraph shall affect the district's power to do any of the following:

(i) Operate wastewater collection and treatment facilities within the district that the district was operating on January 1, 2006.

(ii) Provide facilities and services in the territory that is within the district, but outside the prohibition zone.

(iii) Provide facilities and services, other than wastewater collection and treatment, within the prohibition zone.

(C) Promptly upon the adoption of a resolution by the Board of Supervisors of the County of San Luis Obispo requesting this action pursuant to subdivision (h) of Section 25825.5, the district shall convey to the County of San Luis Obispo all retained rights-of-way, licenses, other interests in real property, funds, and other personal property previously acquired by the district in connection with construction projects for which the district awarded contracts in 2005.

(c) The Heritage Ranch Community Services District may acquire, construct, improve, maintain, and operate petroleum storage tanks and related facilities for its own use, and sell those petroleum products to the district's property owners, residents, and visitors. The authority granted by this subdivision shall expire when a private person or entity is ready,

willing, and able to acquire, construct, improve, maintain, and operate petroleum storage tanks and related facilities, and sell those petroleum products to the district and its property owners, residents, and visitors. At that time, the district shall either (1) diligently transfer its title, ownership, maintenance, control, and operation of those petroleum tanks and related facilities at a fair market value to that private person or entity, or (2) lease the operation of those petroleum tanks and related facilities at a fair market value to that private person or entity.

(d) The Wallace Community Services District may acquire, own, maintain, control, or operate the underground gas distribution pipeline system located and to be located within Wallace Lake Estates for the purpose of allowing a privately owned provider of liquefied petroleum gas to use the underground gas distribution system pursuant to a mutual agreement between the private provider and the district or the district's predecessor in interest. The district shall require and receive payment from the private provider for the use of that system. The authority granted by this subdivision shall expire when the Pacific Gas and Electric Company is ready, willing, and able to provide natural gas service to the residents of Wallace Lake Estates. At that time, the district shall diligently transfer its title, ownership, maintenance, control, and operation of the system to the Pacific Gas and Electric Company.

(e) The Cameron Park Community Services District, the El Dorado Hills Community Services District, the Golden Hills Community Services District, the Mountain House Community Services District, the Rancho Murieta Community Services District, the Salton Community Services District, the Stallion Springs Community Services District, and the Tenaja Meadows Community Services District, which enforced covenants, conditions, and restrictions prior to January 1, 2006, pursuant to the former Section 61601.7 and former Section 61601.10, may continue to exercise the powers set forth in the former Section 61601.7 and the former Section 61601.10.

(f) The Bear Valley Community Services District, the Bell Canyon Community Services District, the Cameron Estates Community Services District, the Lake Sherwood Community Services District, the Saddle Creek Community Services District, and the Wallace Community Services District may, for roads owned by the district and that are not formally dedicated to or kept open for use by the public for the purpose of vehicular travel, by ordinance, limit access to and the use of those roads to the landowners and residents of that district.

(g) Notwithstanding any other provision of law, the transfer of the assets of the Stonehouse Mutual Water Company, including its lands, easements, rights, and obligations to act as sole agent of the stockholders in exercising the riparian rights of the stockholders, and rights relating to the ownership, operation, and maintenance of those facilities serving the customers of the company, to the Hidden Valley Community Services District is not a transfer subject to taxes imposed by Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

(h) The El Dorado Hills Community Services District and the Rancho Murieta Community Services District may each acquire, construct, improve, maintain, and operate television receiving, translating, or distribution facilities, provide television and television-related services to the district and its residents, or authorize the construction and operation of a cable television system to serve the district and its residents by franchise or license. In authorizing the construction and operation of a cable television system by franchise or license, the district shall have the same powers as a city or a county under Section 53066.

(i) The Mountain House Community Services District may provide facilities for television and telecommunications systems, including the installation of wires, cables, conduits, fiber optic lines, terminal panels, service space, and appurtenances required to provide television, telecommunication, and data transfer services to the district and its residents, and provide facilities for a cable television system, including the installation of wires, cables, conduits, and appurtenances to service the district and its residents by franchise or license, except that the district may not provide or install any facilities pursuant to this subdivision unless one or more cable franchises or licenses have been awarded under Section 53066 and the franchised or licensed cable television and telecommunications services providers are permitted equal access to the utility trenches, conduits, service spaces, easements, utility poles, and rights-of-way in the district necessary to construct their facilities concurrently with the construction of the district's facilities. The district shall not have the authority to operate television, cable, or telecommunications systems. The district shall have the same powers as a city or county under Section 53066 in granting a franchise or license for the operation of a cable television system.

SEC. 3. Due to the unique circumstances concerning the wastewater treatment needs in the Los Osos Community Services District, as set forth in Section 1 of this act, it is necessary that, and the Legislature finds and declares that, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

County of San Luis Obispo

County Government Center, RM. D-430 – San Luis Obispo, California 93408 – (805) 781-5011



DAVID EDGE
COUNTY ADMINISTRATOR

To: Board of Supervisors

From: Gail Wilcox, Deputy County Administrative Officer

Date: June 19, 2006

Subject: Discussion about possible options for County involvement in the Los Osos Wastewater Project

Recommendation:

It is recommended that the Board:

- 1) Support legislation that allows the County, **at its discretion and upon confirmation of conditions as outlined in this report**, to assume responsibility for the design, construction and temporary operation of a community wastewater treatment system in Los Osos; and
- 2) Approve the key elements of a legislative solution outlined in this report as **required conditions** for the County's agreement to assume responsibility for this project; and
- 3) Approve the Los Osos Wastewater Treatment Project strategy and objectives included in this report in order to minimize County taxpayers' risk and provide the highest probability for success on this project.

Background:

Please review the attached "Report on Policy and Legislative Considerations Related to the Los Osos Community Wastewater Treatment Project" as it contains a significant amount of background information on this issue.

Discussion:

County staff have been in discussions with Assemblyman Sam Blakeslee and other state representatives for the past several months about what role, if any, the County might play in resolving the wastewater issue in Los Osos. The County has no legal obligation to be involved in this matter and staff entered these discussions with the understanding – and overriding concern - that any agreement to become involved carries with it the potential for adversely impacting the County's financial status and the important services we provide to the public. However, a number of factors – including the LOCSO's deteriorating financial status, the possible dissolution of the LOCSO, and the continued delay in addressing the community's water quality issues – resulted in the initiation of these discussions. The goal of these discussions has been to develop information and prepare recommendations for the

Board to determine whether the County should consider playing a role in this matter and, if so, under what conditions.

In reviewing options for the County's involvement in this issue, a legislative solution – coupled with agreement by various other governmental agencies to support the County - appears to be the route that could provide the most protection for the County's general taxpayers. To that end, and in response to Mr. Blakeslee's inquiry, staff crafted what we believe are required elements of any solution that involves the County. We appreciate Mr. Blakeslee's agreement to incorporate most of our key elements in the proposed legislation and understand that the legislative environment in Sacramento does not appear to allow for a solution that guarantees the County absolute protection should the Board decide to become involved. Those key required elements, which we recommend your Board approve today are:

1. An opportunity for property owners within the affected area to demonstrate (via a Proposition 218 election) their willingness to fund, through property assessments, the cost of this project; and
2. Agreement that, in the absence of property owners' commitment to pay for this project, **the County has no responsibilities or obligations in relation to this project;** and
3. State water board agreement to expedite processing of a low-interest loan; and
4. State and/or regional water boards agreement to hold enforcement actions in abeyance based on an agreed upon schedule for completion of this project; and
5. Agreement that the LOCSD's current liabilities remain their obligation (i.e. not transferred to the County); and
6. Agreement that the LOCSD will immediately suspend further actions on this project to avoid duplicative or cross purpose efforts and, in the event the Board agrees to assume project responsibility, the County will develop the project in the manner that it deems appropriate within the confines of applicable laws and regulations

In addition to legislation, Mr. Blakeslee has drafted a "framework" for a solution to this issue. Based on the outcome of today's discussion with the Board, staff will prepare a response to Mr. Blakeslee's request that the County review his proposed framework and identify legal, fiscal or operational constraints that must be addressed prior to moving forward.

On June 8, 2006, the LOCSD approved a resolution requesting that the County assist them "on a temporary basis, by providing the administrative, technical and funding assistance necessary to review, design, construct and initially operate a community wastewater system." The legislation introduced by Mr. Blakeslee calls for the County, at its discretion and contingent upon certain assurances, to assume responsibility for this project. **It is critical to emphasize that, if and when the County assumes responsibility for this project, we must have sole and final authority within the confines of existing laws and**

regulations. The County Public Works Department has prepared strategies and objectives for completion of this project (included in the attached Report on Policy and Legislative Considerations) should the Board elect to pursue this. **These objectives are essential for controlling County taxpayers' risk and creating the highest probability for a successful project.** Additionally, these objectives were designed to:

- Reflect the LOCSD's "compromise" agreement with the State (Fall 2005)
- Encourage community involvement and input
- Utilize existing/updated analyses
- Ensure completion of this project in as timely a manner as possible to prevent further escalation of costs for property owners

If the Board approves staff's recommendations, "next steps" include:

1. Legislation with sufficient protections for the County must be approved by the state legislature and signed by the Governor.
2. The LOCSD must suspend all work on this project and provide County staff with information and analyses completed to date.
3. If/when legislation is approved, County Public Works staff would begin the process of preparing for a Proposition 218 election (alternative site analyses, engineering reports, assessment analyses, etc.). This would require a mid-year budget adjustment to appropriate up to \$2 million from General Fund contingencies to pay for engineering analyses and Prop 218 election costs. Additionally, Public Works would require staffing adjustments to address this workload increase.
4. The County would conduct a Proposition 218 election to determine if property owners are willing to approve assessments to pay for this project.
5. If the 218 election fails, LOCSD would resume responsibility for this project unless/until the state assumes responsibility for this project.
6. If the 218 election passes, the County would enter into a "due diligence" period to ensure that necessary agreements or actions are taken by other involved agencies (e.g. low-interest loan is approved by state, enforcement actions are held in abeyance, etc.)
7. If/when those necessary agreements or actions are in place, the Board of Supervisors would consider adopting a resolution to assume responsibility for the design, construction and temporary operation of the wastewater system
8. If approved by Board of Supervisors via resolution, design and construction would begin (date depends largely on how long it takes to gain necessary assurances as outlined in #6 above)
9. After a minimum of three years of operation, County and LOCSD – with concurrence from Regional Water Board – may agree to return operational authority to the LOCSD

Conclusion

A recent newspaper article on this topic labeled the proposal to have the County assume responsibility for this project as a potential "compromise" under which the County would have "the most responsibility". The latter comment significantly understates the situation. The staff recommendation on this matter was not arrived at easily and we know that your Board is faced with a decision of great magnitude. Unlike the state and the LOCSD, the

County has no legal authority or obligation in this matter. However, we are aware that two different agencies – the Local Agency Formation Commission (LAFCo) and the State of California – may be able to force the County to assume responsibility for this project regardless of the merits of arguments against such an action. Since the majority of LAFCo members represent governmental agencies within San Luis Obispo County, we are confident they would take great care to evaluate the potential negative impacts of dissolving the LOCSD. The state, however, has many times demonstrated its willingness and ability to impose “solutions” that are detrimental to local governmental agencies. With this in mind, staff is presenting you with recommendations that we believe will provide us the most opportunity to manage this risk.

If, as a result of today’s discussion, a favorable Proposition 218 election and the other required actions outlined in this report, the County does assume responsibility for this project, the County Public Works Department will be assigned responsibility for ensuring its successful completion. The many hours of work and effort that have gone into this project so far pale in comparison to the work ahead. Public Works staff have repeatedly demonstrated their competency and success in delivering complex public works projects in recent years. A critical prerequisite for success on this highly problematic and contentious project, however, is your Board’s approval of the strategies and objectives outlined in this report. Without that approval, this project will likely suffer from continued delays. Further delays will exacerbate water quality issues and significantly increase the “price tag” associated with completion of this project.

Other Agency Involvement:

County Counsel, Public Works and the Auditor-Controller participated in this analysis and the preparation of this report. We are particularly appreciative of the efforts made by Deputy County Counsel Warren Jensen, who was charged with reviewing many complex legal issues with very little lead time. Please note that County Auditor-Controller Gere Sibbach has disagreements with the recommended action before you today. A letter explaining his concerns and recommendation is attached for your review.

Financial Considerations:

Preliminary estimates done by the Public Works Department indicate that the County would incur up to \$2 million in costs to prepare the analyses and reports necessary to conduct a Proposition 218 election. This estimate includes the cost of conducting the election. If the 218 fails (meaning that it fails to get approval from a majority of voters to impose property assessments to pay for this project) it is highly unlikely that the County will recover these costs, despite the fact that we would be conducting the election as a result of a state directive.

Based on a review of the financial documents that are available, it appears that approximately \$30 million has been spent over the past 30 years in an effort to get this project going. About \$6 million of that was paid by the County, approximately \$4.8 of which came from the County General Fund.

The total cost of this project – and the amount individual property owners will have to pay – depends on a number of factors, including:

- The extent to which the County is allowed/able to use prior analyses, contracts and permits
- The length of time before construction begins (construction costs have skyrocketed in the past couple years and it is expected that they will continue to increase at a rate that far exceeds typical inflationary rates). **Each month of delay on this project is projected to add at least \$400-500,000 to the total cost.**
- The state’s willingness to expedite approval of a low-interest loan for this project (County staff is concerned that “conditioning” their approval on the LOCSD’s repayment of their loan will impede progress on this project)
- The location of the wastewater treatment facility

Results:

This report is intended to provide the Board of Supervisors and the public with an overview of issues pertaining to the County’s potential involvement in resolving the Los Osos wastewater treatment issue.

County of San Luis Obispo

Office of the Auditor-Controller

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San Luis Obispo, California 93408

(805) 781-5040 FAX (805) 781-1220



GERE W. SIBBACH, CPA

BILL ESTRADA, Assistant

JAMES ERB, CPA, Deputy

LYDIA CORR, CPA, Deputy

TO: HONORABLE BOARD OF SUPERVISORS
FROM: GERE W SIBBACH, AUDITOR-CONTROLLER
DATE: JUNE 19, 2006
SUBJECT: AUDITOR'S VIEWS REGARDING LOS OSOS LEGISLATION

I have worked over the past few months with a small group of County staff that have prepared today's report and recommendations for your consideration. They deserve the thanks of your Board for the work they have done to bring this discussion to today's meeting. In every regard I respect and support their judgments, but do not support every recommendation. The purpose of this memorandum is to offer my views as the independently elected Auditor-Controller, where they may differ from the staff.

I was initially asked by the Assistant County Administrator to assist in a study of the possible ramifications of dissolution of the Los Osos CSD. It became clear to me that the results were likely to be negative financially for the County and also unlikely to provide a timely solution to the wastewater problems in Los Osos. We then found out that LAFCO staff was interested in exploring possible compromise solutions short of dissolution, and that Assemblyman Blakeslee was exploring a possible legislative solution. I was asked to help study and respond to those efforts.

San Luis Obispo County has already spent approximately \$6.1 million toward a wastewater project for the community of Los Osos. As a result of the vote to form the Los Osos CSD, about \$4.8 million of that amount was never recovered by the County General Fund. Perhaps I am overly sensitive to this fact because I was the official that had to sign the checks. Notwithstanding my possibly jaded view, your Board must carefully consider the possibility that the Los Osos voters might choose to vote against the Prop 218 assessments required under the proposed legislation. Their vote will be difficult because the cost will be high, and because for some of them a delayed project is nearly as desirable as no project at all. Accordingly, I will not recommend that your Board accept the risk of another \$2 million of General Fund monies under these circumstances.

Staff has repeatedly requested that the legislation include an automatically triggered State imposed revenue source in the event the Prop 218 fails. We have been told that this is either unnecessary or not achievable in the current legislative environment. I believe the onus should be on the state regulators demanding this project to provide such an imposed revenue source if they wish the County to participate. Otherwise, let the state agencies run the project themselves at their own risk, or wait patiently until the people of Los Osos come to the consensus necessary to solve their problems.

**Report
on
Policy and Legislative Considerations
Related to the
Los Osos Community Wastewater Project
for the
San Luis Obispo County Board Of Supervisors**

**County Administrative Office
and
County Department of Public Works**

June 2006

**Report on Policy and Legislative Considerations Related to the Los Osos
Community Wastewater Project – June 2006**

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Report on Policy and Legislative Considerations Related to the Los Osos Community Wastewater Project – June 2006

A. Background

On November 3, 1998, Measure K98 – an initiative to create the Los Osos Community Services District (District) – was approved by 86.8% of the Los Osos’ voters who cast their vote on this matter. On May 21, 1998, the Local Agency Formation Commission (LAFCo) had previously adopted Resolution 98-6, which approved the formation of the District subject to the voters’ approval of Measure K98. Among its various provisions, LAFCo Resolution 98-6 approved the transfer of the “rights, duties and obligations” of the following list of services from San Luis Obispo County Service Area No. 9 (CSA No.9/County) to the District.

- Water
- Wastewater
- Fire and Emergency Medical Response
- Drainage
- Street Lighting
- Open Space Maintenance

The voter approved “reorganization” of CSA No. 9 to the District included the transfer of all real and personal property, including cash on hand and money due to CSA No. 9 but uncollected (water bills awaiting payment, for example). No unfunded obligations were transferred from the County to the District. In total, the reorganization transferred approximately \$3.5 million in budget reserves from the County to the District. In addition to revenues from user charges and special taxes, the reorganization also transferred approximately \$915,000 in annual property taxes to the District, which now totals about \$1.5 million annually.

Prior to the above actions, the County had expended approximately \$6.1 million on the project, including \$4.8 million in contributions from the County General Fund. County adopted assessments levied on Los Osos property owners in 1990 resulted in approximately \$1.6 million in pre-paid assessments at that time, but after the District’s creation (on June 15, 1999), the County Board of Supervisors approved refunds to property owners for those prepaid assessments, including interest, of nearly \$2.5 million.

The District efforts to develop a community wastewater project began in 1999. After spending over six years and nearly \$24 million¹ on their project, the District *temporarily suspended* construction of its wastewater facilities shortly after a special election on September 27, 2005 approved the recall of three (3) of the District’s Board members and the passage of Measure B, which intended to establish requirements for siting the wastewater treatment plant that was already under construction. Subsequently, San Luis Obispo County Superior Court Judge Martin Tangeman ruled that Measure B is invalid. At this time, Judge Tangeman’s ruling is still subject to appeal.

In addition to suspending construction of its wastewater facilities, the number of cases of litigation involving the District has significantly increased, including litigation with the State Water Resources Control Board (State Water Board) concerning \$6.4 million in State

¹ Districts Audited Financial Statements for the Year Ended June 30, 2005; Page 22; Note 7: Sewer Fund

Report on Policy and Legislative Considerations Related to the Los Osos Community Wastewater Project – June 2006

Revolving Fund loans advanced to the District for the suspended project, and \$28 million in payment disputes from contractors hired to construct the project. In addition, the Central Coast Regional Water Quality Control Board (Regional Water Board) has fined the District \$6.6 million as a result of suspending their project. The District is also appealing the fines. Between December 1, 2005 and April 1, 2006, the District spent nearly \$1 million on legal and engineering services relating to the litigation, personnel issues, administrative and managerial services, and the wastewater project.²

On February 17, 2006, a petition was submitted to LAFCo by a group identifying itself as the “Taxpayers Watch” requesting the dissolution of the District. On March 7, 2006, the San Luis Obispo County Clerk-Recorder certified 1,687 signatures of registered voters of the District on the petition (17.4%) which was sufficient to require that LAFCo consider dissolving the District at a public hearing in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. That hearing was originally scheduled for June 15, 2006, but due to a noticing error, will be continued to July 6, 2006.

In April 2006, the District’s credit rating was downgraded by Standard and Poors from BB to CCC.

On May 3, 2006, the District’s audit firm issued their Independent Auditors’ Report referencing the recall election, the suspension of the wastewater project and other subsequent events that “could involve the devaluation of certain district assets and may even cause *going concern* problems for the District.” In essence, the report reflected substantial doubt concerning the District’s ability to continue its existence. We have no reason to disagree with the District auditors’ opinion.

On May 4, 2006 San Luis Obispo County Superior Court Judge Roger Piquet appointed a Certified Public Accountant to examine the Districts records and submit a report to the court on the amount of State Revolving Loan Fund moneys that remain in District hands, an amount that will most likely be frozen for the benefit of the construction contractors who brought this action. That audit has not been completed.

Los Osos - A Divided Community

The recall election, the passage of Measure B by the District voters, and the subsequent petition filed by the community’s “Taxpayers Watch” group and signed by 17.4% of the District’s registered voters to dissolve the District are just a few of the indicators that the community is deeply divided on the wastewater project, its impact, and the ability of the District to continue to function. It is clearly arguable that the District may be in an untenable situation and may be paralyzed without the County’s help and special legislation crafted to help solve the District’s problems.

² The Tribune (San Luis Obispo, Calif); 5/30/2006 – see Exhibit “A”- obtained from:
<http://www.highbeam.com/library/docfreeprint.asp?docid>

**Report on Policy and Legislative Considerations Related to the Los Osos
Community Wastewater Project – June 2006**

In correspondence to County staff dated June 1, 2006, the District's Interim General Manager, Dan Blesky, stated to Gail Wilcox, Deputy County Administrative Officer that:

"I am frustrated by the pressure on LAFCO in that the recalled Board members, those that failed to represent this community and so they want to take their ball and go home. I do not envy you or your staff being stuck in the middle of this morass."

Adding to the District's financial, legal and wastewater project challenges, the *personal attacks* associated with the District, its prior Boards, its new Board, and even attacks on County Supervisor Shirley Bianchi illustrate the emotional challenges of the "morass" that exists. We, County staff, do not believe it is appropriate for us to distinguish between the District's old Boards or its new Board as Mr. Blesky has done; it would not be appropriate for County staff to "take sides."

In contrast, we believe that, in some respects, the community's civic involvement should be acknowledged. It is all too easy to forget that community debate is a cornerstone to democratic forms of government; emotions are a normal part of debate. Nevertheless, the ability to resolve problems requires compromise and concessions, and rational dialogue is more likely to lead to resolutions than emotional attacks.

It is also important to distinguish between the District's willingness to resolve the current situation versus its ability to do so. Certainly we believe that the community's extensive civic involvement indicates its willingness to face its issues and pursue solutions. Both current and prior District Board members are actively involved in community debates. Individual citizens routinely spend countless hours of effort researching issues and expressing their opinions and recommendations. Yet, willingness is only one component of the prerequisites to implementing solutions.

We believe that although it is more than willing, and while we respect the District as an autonomous local agency, we are deeply concerned that it will be unable to resolve its problems – which now extend well beyond just a wastewater project. In addition, unless the current path is changed, the District's inability to resolve its problems might so negatively impact its overall condition that, consistent with the concerns of the District's auditor, the District may not be able to function at all. To reiterate a point of emphasis, though, our conclusions in this report recognize that Los Osos is divided and we do not believe it is appropriate for County staff to take sides on who is to blame – we simply believe that everyone must look to the future so that rational dialogue can prevail in pursuing a resolution to the current and long embattled situation.

**Report on Policy and Legislative Considerations Related to the Los Osos
Community Wastewater Project – June 2006**

B. Current Status

The District is currently evaluating alternative approaches to a community wastewater project. Outcomes of the District's litigation could significantly jeopardize their already precarious financial status. Other unknowns include, but are not limited to, the following:

- The feasibility of project alternatives that the District is currently evaluating
- The ability of the District to resume work on the project it is holding in suspense if it became the District's desire to do so
- The District's basic ability to fund or implement any wastewater project
- The District's ability to fund the liquidated and contingent liabilities it faces as a result of its past and future conduct

In a letter to Dan Blesky and Gail Wilcox dated May 12, 2006 regarding "Collaborative Options to Dissolving the District" Paul Hood, Executive Officer for LAFCo, stated:

"The County appears to be in a better position in terms of resources and financial standing to complete the sewer project."

Subsequently, in the correspondence to Gail Wilcox dated June 1, 2006, Mr. Blesky stated that the wastewater project is "not the County's problem":

"This (the wastewater project) is not the County's problem and there are so darn many potential resolutions to it that it is sickening when we think about the time wasted on dissolution."

We agree with Mr. Blesky from the standpoint of formal legal roles and responsibilities. The community wastewater project is not formally or legally the responsibility of the County. The responsibility for the project is directly that of the District, and as a special district that is *independent* from the County, the District is, in fact, an autonomous local agency of the State of California. The Regional and State Water Boards, as agencies of the State of California, also have direct responsibilities for the project in their capacity to protect the quality of the State's waters.

We also believe it is important to recognize, that although Mr. Hood considers the County to be in a "*better position*" to implement a community wastewater project, that the County, as a local agency, is still constrained by the same laws and regulation that face the District. For example, when Proposition 218 (1996) was approved by state-wide voters and incorporated into the California State Constitution as Articles XIIIIC and XIIID, the previous ability of local elected officials to override a protest on an assessment district, on the basis of health and safety needs, was eliminated. Thus, the County does not have sufficient authority under existing laws to implement a project with certainty (i.e. unless it can get assessments approved by property owners in accordance with Article XIID, and unless permits and other regulator approvals are obtained). The current status of significant uncertainty for the District's project would also exist for a County project - that uncertainty is impossible to mitigate through existing laws and regulations - the framework under which all LAFCo

**Report on Policy and Legislative Considerations Related to the Los Osos
Community Wastewater Project – June 2006**

alternatives must be considered. As a result, County staff is extremely concerned about any solution that could be developed through LAFCo.

Although we appreciate Mr. Blesky's intent in indicating that the Project is not the County's problem, the District's actions and inactions do in fact create potential risks to County-wide taxpayers and County services and programs that benefit County-wide stakeholders. If a bankruptcy occurred, or the District was dissolved in a hasty manner, it could require significant County expenditures to wind up the affairs of the District.

In addition, although we are extremely concerned over options available to LAFCo under existing laws and regulations, we believe that the time and efforts spent on the dissolution and other alternatives has not been "time wasted," but rather, it has been "productive time" spent considering overall options that may be utilized to change the path that the District is clearly heading. Furthermore, we believe that the democratic principles of self governance rely on individuals and associations to seek changes in their government when that government is failing to protect and serve its constituents, and while we do not support a dissolution, we do understand the concerns of citizens who have signed the dissolution petition that is currently driving LAFCo's work efforts in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

In conclusion, the District's current status is so filled with uncertainty that its current path must change; the District is at risk of soon becoming effectively paralyzed. As demonstrated in the deterioration of the District's credit rating, the opinion of the auditor hired by the District, and as illustrated in growing litigation, among other issues, the District's current path is contrary to the best interests of the community of Los Osos and to avoid a total collapse, alternatives to the future should be considered.

**Report on Policy and Legislative Considerations Related to the Los Osos
Community Wastewater Project – June 2006**

C. Alternatives – Looking to the Future

The following is a list of the alternatives for your Board’s consideration regarding policy and legislative solutions for Los Osos.

- No change / No County involvement at this time
- Alternatives developed through mutual agreement
- Alternatives developed through LAFCo
- Alternatives developed through State legislation

As previously stated, we believe that the District’s current path needs to change. Expeditious resolution of the wastewater dilemma is critical. The “no change” alternative simply does not seem viable.

In addition, we do not believe that solutions that might be developed through LAFCo, or those solely relying on mutual agreement between the District and the County, would be productive to pursue. We are especially concerned about the unprecedented nature of the proposed dissolution and believe that, if approved by LAFCo, it would cause us to recommend that your Board direct us to evaluate the legal ability to seek bankruptcy for the District, in the County’s role as “successor in interest,” prior to distribution of District assets and payment of District obligations required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

Since non-legislative solutions inherently rely on existing laws and regulations, we are not optimistic that non-legislative solutions would succeed. Past efforts to develop a community wastewater project for Los Osos, without special legislation, over the past 30+ years has resulted in approximately \$30 million expended and no project.

In summary, of the various alternatives, we can only possibly favor those that are developed through special legislation. To support a legislative solution, we also believe that some specific and focused terms of a mutual agreement between the District and the County could be helpful in developing a final solution to the wastewater project. In the Fall of 2005, Assemblyman Sam Blakeslee was attempting to help develop a solution between the District and the State Water Board. We believe that the discussions at that time, and the terms agreed upon by the District, continue to point to possible compromises between local and state agencies in seeking a solution to the wastewater problem and developing a semblance of certainty for the community.

Report on Policy and Legislative Considerations Related to the Los Osos Community Wastewater Project – June 2006

D. Legislative Options

Regarding legislative solutions, the following two basic options exist:

- State Implemented - Authorizing State Agencies to take direct control of the project with new regulatory fee authority to fund the necessary efforts.
- County Implemented – Authorizing the County to conduct a vote of property owners in accordance with Prop. 218 (1996) to decide whether they wish to authorize the funding for a community wastewater project and overall legislative support for a collaborative solution.

A State Implemented Legislative Option

This legislative option would establish greater certainty if it could be approved by the Assembly, the Senate and the Governor. It would entail the State of California taking control of the wastewater project through an appropriate *state agency*, enacting a *regulatory fee* authority for that agency, and authorizing a solution funded through those regulatory fees. Since the regulatory fees would be authorized for a State agency to impose (presumably only under special circumstances) those fees would not be subject to Article XIID of the State Constitution that restricts *local agencies* from, among other actions, imposing assessments or special taxes without a vote of either property owners or registered voters. This approach could possibly use the County as an “*Implementing Agency*” – in a special role that would be legislatively established and that would contrast from the County’s normal role as a locally authorized agency. In essence, the County (if needed) would act on behalf of a specified state agency and would be paid by that State agency through fees authorized in the legislation.

While we believe that this approach may be legislatively permissible, legislative findings should be established that consider the health and safety issues, the current regulatory enforcement actions, and the history of extensive community review and debate, but that no solution has been developed by the community despite over 6 years of efforts and approximately \$24 million expended since the District took over the project.

Although we believe that this option would be the most expeditious to resolving the wastewater dilemma and setting the District on a path to resolution of its overall issues, we were told it is less legislatively viable because it would require development of new roles and responsibilities for State agencies against the perception that Los Osos is a “local” problem, and this legislative approach would also require specific legislative approval of a new regulatory fee authority. An additional challenge to this approach is the argument that a State implemented project should be the option of last resort.

Report on Policy and Legislative Considerations Related to the Los Osos Community Wastewater Project – June 2006

A County Implemented Legislative Option

While the State legislature should consider a State implemented project-approach if the Prop 218 election fails, the alternative of a County implemented solution appears more viable at this time. Combined with cooperative local policies aimed at turning the corner on the negative circumstances surrounding the current situation, and supported by mutual agreement between the District and County, it would be our hope that a successful Prop 218 vote of property owners, and cooperation from state agencies, would lead to the resolution of the wastewater project dilemma in the near future.

In considering details, we strongly believe that local policies and strategies that will be needed should begin with the discussions between the District and State officials that occurred during the Fall of 2005. In other words, despite the impasse that resulted last Fall, the concessions that the District did agree to, during discussions with the staff of the State Water Board, must be a prerequisite to County assistance. Specifically, resuming the construction of the conventional gravity collection system while also considering alternative treatment plant locations are important project-specific strategies that must be supported by all agencies for a County implemented solution to have a reasonable chance of obtaining property owner support.

As previously stated, resolving the wastewater dilemma is foremost in restoring the District's financial and legal condition. We are hopeful that the District would agree. In Mr. Blesky's June 1st correspondence, he also stated:

"I think that the County could help get all the parties back to the table, specifically the Regional Board and this District."

Under a County implemented project-approach, the County could consider taking an active role in developing a solution for Los Osos provided that sufficient legislative protection is afforded the County and provided that we receive assurances from other involved agencies as outlined elsewhere in this report. Any financial support provided by the County under a County implemented solution should be minimized in the event of an unsuccessful Prop. 218 election; and ultimately, all current liabilities, obligations and litigation of the District should remain the responsibility of the District.

Even with a resolution to the wastewater dilemma, the District could still find itself with continuing challenges as a result of existing litigation. Insufficient information exists at this time to know the extent to which the District's potential liabilities could be minimized through a County implemented approach to the wastewater project. It is our hope that cooperation between the County and the District could help minimize the liabilities and obligations of the District by, for example, considering whether existing collection system contractors can resume work and thereby minimizing existing payment disputes. **Under no circumstances, however, should your Board consider delegating or relinquishing any of your existing powers or authority – instead, the legislation must authorize new powers for the County, while holding the District accountable for their current and potential liabilities, and provide a framework for interagency cooperation.**

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E. County Project Objectives and Strategies

The County's project objectives for its involvement, if any, in the Los Osos wastewater project are those recommended for inclusion in special legislation for the project. The following list was included in correspondence from Gail Wilcox to Assemblyman Sam Blakeslee dated June 9, 2006 in response to his request for comments about a possible legislative solution to the Los Osos wastewater issue. The following objectives and project specific strategies if implemented by the County, are essential for controlling County taxpayer risk and for creating the highest probability for a successful project.

County project objectives for inclusion in special legislation:

1. An opportunity for property owners within the affected area to demonstrate (via a Proposition 218 election) their willingness to fund, through property assessments, the cost of this project
2. Agreement that, in the absence of property owners' commitment to pay for this project, **the County has no responsibilities or obligations in relation to this project**
3. State water board agreement to expedite processing of a low-interest loan
4. State and/or regional water boards agreement to hold enforcement actions in abeyance based on an agreed upon schedule for completion of this project
5. Agreement that the District's current liabilities remain their obligation (i.e. not transferred to the County)
6. Agreement that the District immediately suspend further actions on this project to avoid duplicative or cross purpose efforts and, in the event the Board agrees to assume project responsibility, the County will develop the project in the manner that it deems appropriate within the confines of applicable laws and regulations

County project strategies for inclusion in Board policy and/or an agreement with the District when specified:

- A. County expenditures prior to a Prop 218 hearing - not to exceed \$2.0 million.
- B. Scope strategies:
 - a. **Based on District's Fall 2005 compromise:**
 - i. Conventional gravity collection; essentially as designed
 - ii. Analysis of alternative treatment plant sites
 1. Conventional technologies
 2. Confer with District Board on developing objectives for alternatives review

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- b. Supplemental Scope strategies:
 - i. Community input –
 - 1. Utilize technical advisory committee (FTAC) for alternatives site review with representation from community and the District by including the District’s engineer
 - 2. Conduct a community advisory election on top site alternatives
 - 3. With FTAC providing pro/con evaluations but not a final recommendation;
 - 4. Board of Supervisors makes final site and technology determination while considering community advisory election
 - ii. Co-equal analysis under CEQA for top site alternatives;
 - 1. Anticipate a supplemental Environmental Impact Report (EIR)
 - 2. Findings developed so that any of the top alternatives may be carried out (i.e. implemented).
 - iii. Discharge alternatives
 - 1. Input from District board on water management objectives;
 - 2. Timeliness in obtaining Regional Water Board permit approvals;
 - 3. Timeliness in other agency approvals.
 - iv. Prop 218 assessments proceedings
 - 1. Based on prohibition zone
 - 2. Substantially utilizing methodologies established by District’s assessment engineer.
 - 3. Boundaries may be expanded through separate hearings
 - v. Employment of consultants:
 - 1. Will need sole source contracting to proceed quickly
 - 2. Intent to utilize District consultants through County professional services agreements, and District contractors through assignment agreements, if possible, for the following:
 - a. Assessment engineering
 - b. Collection system
 - c. Environmental Review
 - d. Municipal Finance team
 - e. District Engineer – for representation on technical advisory committee
 - 3. Intent to utilize existing or additional County consultants for the following:
 - a. Alternatives analysis, updated cost estimates and overall project management
 - b. Property acquisition and disposition evaluations
 - c. Other needed services
 - vi. Utilize County staff – need for additional position(s) to be determined

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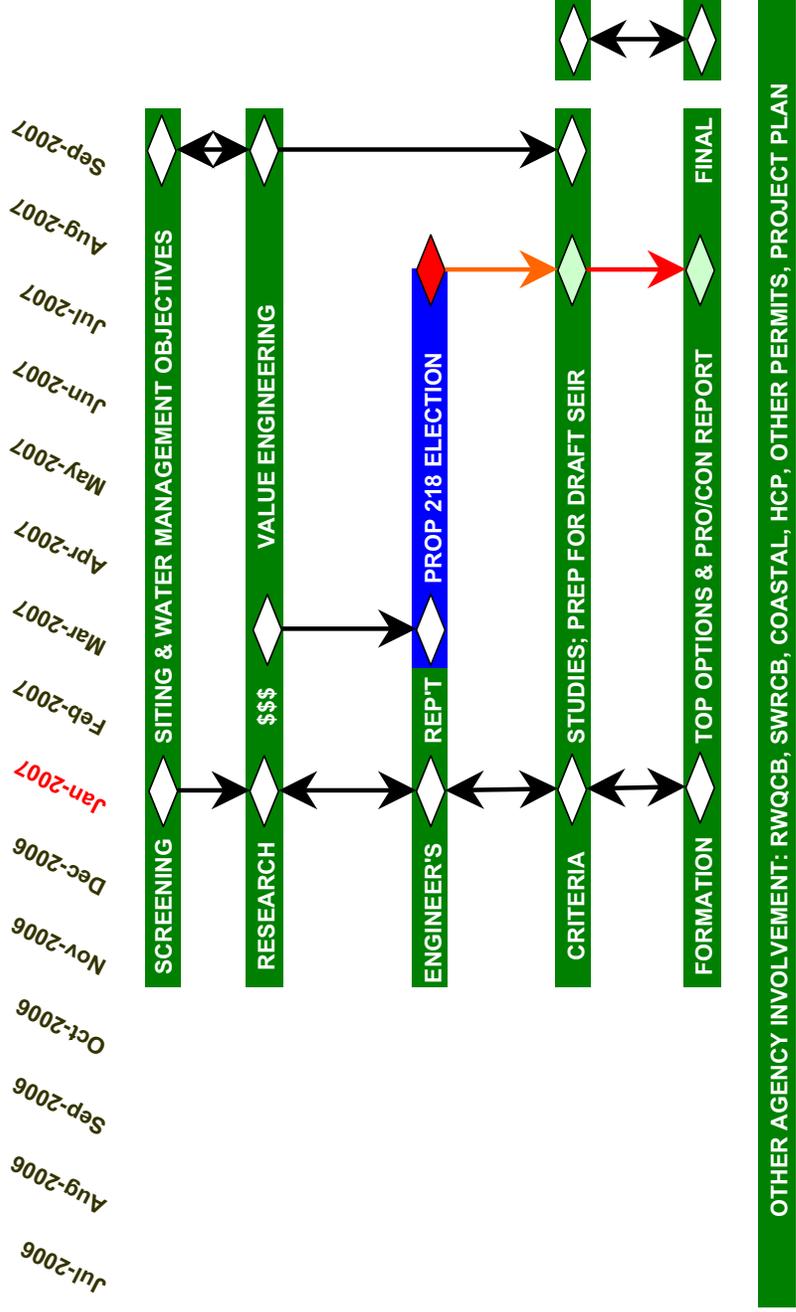
C. Schedule Strategies

- a. Proceed as expeditiously as reasonably possible
- b. Attached schedule based on the following:
 - i. Concurrent efforts
 - 1. Prop. 218 proceedings
 - 2. Alternative site review
 - 3. CEQA
 - 4. Permitting
 - 5. Other agency involvement
 - ii. Sequence of milestones
 - 1. Sequence of Legislative and Policy milestones (timing is currently indeterminable but could proceed relatively quickly with mutual cooperation by District)
 - a. Special legislation approved
 - b. Confer with District board on scope related objectives stipulated above
 - c. Confer with District board on County/District agreement; adopted by District then County if recommended
 - d. Technical advisory committee formation
 - 2. Sequence of consultant and technical milestones
 - a. Prop. 218 assessment vote and re-initiate collection system construction when first possible (subject to funding – i.e. SRF or Assessment bonds); approach to employing contractors to be determined
 - b. Supplemental EIR with top alternatives treated co-equally; appropriate findings; ability to carry-out any of top alternatives
 - c. Community Advisory Election
 - d. Final Project Implementation Recommendations

D. Budget Strategies

- a. Do not exceed \$2.0 million in “at-risk” County funds
- b. Full recovery of County funds
- c. Develop detailed project approach so that consultant efforts, compensation and County costs are minimized if the Prop. 218 election fails.
- d. Pursue grant revenues to
 - i. Specifically seek funding for disadvantaged constituents;
 - ii. Utilize District resources where possible;
 - iii. Cooperate where possible to minimize District project and other administrative and legal costs

Los Osos Wastewater Project



Alternatives Analysis

Engineering Estimates

Funding Authorizations - State Constitution Article XIIIID (Proposition 218 of 1997)

Environmental Studies and Reports - California Environmental Quality Act (CEQA) Compliance

Advisory Committee and Advisory Election

Due Diligence

Cost Escalation (\$ Millions)

\$ 0.5 \$ 1.0 \$ 1.5 \$ 2.0 \$ 2.5 \$ 3.0 \$ 3.5 \$ 4.0 \$ 4.5 \$ 5.0 \$ 5.5 \$ 6.0

Assumptions: (1) See Project Objectives and Strategies (2) No litigation