

CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Julie Tacker

Mailing Address: P.O. Box 6070

City: Los Osos

Zip Code: 93412

Phone: 805-528-3569

SECTION II. Decision Being Appealed

1. Name of local/port government:

San Luis Obispo County

2. Brief description of development being appealed:

Los Osos Wastewater Project

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

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

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

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

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

RECEIVED

OCT 19 2009

CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SLO-09-055

DATE FILED: October 19, 2009

DISTRICT: Central Coast

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

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

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

7. Local government's file number (if any): DRC2008-00103

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

San Luis Obispo County Board of Supervisors
San Luis Obispo County Government Center
San Luis Obispo, CA 93408

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

(1) See Attached List

(2)

(3)

(4)

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

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

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SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

The Approved Project fails to comply with the following sections of The California Coastal Act/Public Resources Code/s.

Section 30001 Legislative findings and declarations; ecological balance

(d) That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of the state and especially to working persons employed within the coastal zone.

Section 30001.5 Legislative findings and declarations; goals

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of this state.

Section 30604 Coastal development permit; issuance prior to certification of the local coastal program; finding that development in conformity with public access and public recreation policies; housing opportunities for low and moderate income persons

(g) The Legislature finds and declares that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.

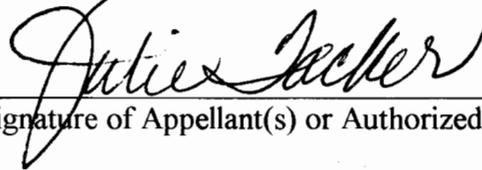
Significant portions of the Los Osos Wastewater Project are being deferred to another project and/or to future mitigation measure, in violation of CEQA and the spirit of the Coastal Act.

Please see the attached discussion related to specific appeal contentions.

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SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: October 16, 2009

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date: _____

California Coastal Commission
725 Front Street
Santa Cruz, CA

October 16, 2009

Attention: Jonathan Bishop

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

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

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

As a longtime resident (1971-current), property owner and former Director of the Los Osos Community Services District (2004-2008) I have been fully engaged in all aspects of the Los Osos Wastewater Project over the last 8 years.

I support a wastewater project for Los Osos and have participated as an involved citizen during the project development throughout the County of San Luis Obispo's current effort beginning in June 2006. At every turn in the public process I have raised my concerns, yet to date remain unsatisfied with the resulting project.

To have my concerns adequately considered I am forced to appeal the San Luis Obispo County Board of Supervisors approval of the Los Osos Wastewater Project of September 29, 2009 to the California Coastal Commission.

I respectfully request a de Novo review of the project.

Thank you for your consideration, Julie Tacker

The Los Osos Wastewater Project as approved violates:

Section 30001 Legislative findings and declarations; ecological balance

(d) That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of the state and ***especially to working persons employed within the coastal zone.***

Section 30001.5 Legislative findings and declarations; goals

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the ***social and economic needs of the people of this state.***

Section 30604 Coastal development permit; issuance prior to certification of the local coastal program; finding that development in conformity with public access and public recreation policies; housing opportunities for low and moderate income persons

(g) The Legislature finds and declares that it is important for the commission to ***encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.***

AB2701 the bill passed by the Assembly in 2006 gives the County of San Luis Obispo specific authority to best meet the needs of Los Osos and its water ***and*** wastewater issues.

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

The project as presented by the applicant fails to address the serious threat of seawater intrusion to the Los Osos Groundwater Basin. This has resulted in the Certification of a Level III Severity for supply in the lower basin under the Resource Management System. It appears the rate of intrusion is increasing rapidly in a manner that threatens the continued use of the lower basin for domestic supplies. A goal of this appeal is to ask the California Coastal Commission to further address the water supply

issues in Los Osos by implementing programs and projects for replenishing aquifers, preventing seawater intrusion, and managing groundwater resources to the extent that they are related to the construction and operation of the community wastewater collection and treatment system. AB2701 enables the County through implementation of the wastewater project to concurrently address groundwater management issues including the method of effluent disposal that maximizes mitigation to seawater intrusion occurring in the lower basin this includes construction of all necessary conveyance systems, acquisition of necessary real property or easements and permitting.

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

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

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

Over many years the Los Osos Wastewater Project (LOWWP) has risen in price from under \$40 million in the 1980's to \$70 million in 1998 to \$165 million today. This growing number has desensitized the community to cost and in 2007 the majority of developed property owners who "just want it over" voted to assess themselves \$127 million or \$25,000 per home. Many of those who voted in the affirmative can not afford the project and anticipated taking advantage of the Senior Citizens' Property Tax Deferral Program which is now defunct. (See Exhibit 2 from LOWWP website). The project applicant used the \$25,000 benefit price tag in a 218 assessment ballot proceeding calling it a "cap", when in fact the operations and maintenance costs are excluded.

A local comparison of public works project in San Luis Obispo County

Nacimiento Water Pipeline Project \$175,000,000
Divided by 110,000 (5 communities) people = \$1,500 per capita

Los Osos Wastewater Project \$165,000,000
Divided by 12,500 (Prohibition Zone) people = \$13,200 per capita
(nearly 9X greater)

The LOWWP's exclusion of vacant properties triggers additional economic hardship for the residents/property owners of the Prohibition Zone. The already high cost of the project will increase significantly without the shared cost by vacant properties expected to be served by the project. These 500 +/- vacant properties have not been, and will not be, assessed to pay for their share of project for many years. This approach leaves the entirety of \$165,000,000 to be paid wholly by the 12,500 current residents of the Los Osos Prohibition Zone. The loss of 'economies of scale' is staggering; an additional \$27+ million dollars will be borne by the current population for a project that narrowly addresses water resources.

Conditions of Approval (COA) 86 and 92 underscore the inability of vacant properties to participate and benefit from the project, further reinforcing un-affordability for the current population. As approved, no infill development will take place until a Groundwater Management Plan (GWMP), Habitat Conservation Plan (LOHCP) and amendments to the Estero Area Plan have all been adopted, certified and incorporated into the Local Coastal Plan. The timeline for each of these hurdles is unknown.

1. The Groundwater Management Plan is being pursued through the ISJ agreement. The applicant suggests the current efforts to, prepare, evaluate and draft a Ground Water Management Plan for the Los Osos basin will be completed by the end of this calendar year (2009), sources within the ISJ disagree. (See Exhibit 1 ISJ Work Program) These efforts, while important, do not identify who will do what and with what funds. Recent studies (publicly released July 29, 2009) have yet to be peer reviewed. No parties of the ISJ have "signed off" on their conclusions as set forth by the hydrogeologist consultants. It will likely take years to have agreement among purveyors and costs associated for implementation will be borne by the same Los Osos residents (but for 6% of the community outside the PZ that receive community water from Golden State Water Company primarily) via their water bills.

Customers served by water purveyors in the area "outside the Prohibition Zone" are fewer than once thought. While 13% of the community resides outside the RWQCB Prohibition Zone (PZ) boundary, just 6% of those are served by community water. The remaining 7% are served by their own private wells. There is little benefit in entering into a legal battle with private well owners to achieve so little in cost sharing for basin management. Credible legal opinions suggest the cost to litigate would be greater than

the benefit received.

2. The LOHCP had been drafted several times and nearly \$300,000 spent in pursuit of the 2005 LOCSD's LOWWP. On June 23, 2009, the County accepted \$385,000 in grants from California Department of Fish and Game and the Morro Bay National Estuary Program and allocated \$135,000 of matching funds to reconvene work on the communitywide LOHCP. San Luis Obispo County Planning staff estimates completion dates that vary from 3-5 years. A significant complication relates to the Morro Kangaroo Rat and the inability of an HCP to allow incidental take. Given its protective status.

3. The amendments to the Estero Area Plan can not and will not begin until the previous tasks are complete.

Several conditions and mitigation measures drive the cost of the project up and should be better scrutinized to reduce economic impacts of the project. These conditions were raised at the County level but were ignored or not adequately answered.

Condition 87: Monitoring Wetlands

Monitoring wetland health/preserving artificial wetlands along the bay fringe. While this a noble effort, much of these wetlands were established by septic discharge and urban runoff, competing sea level rise will make it nearly impossible to delineate and very expensive to mitigate for losses over time.

Condition 61: Revegetating Broderson

An estimated \$200,000 in native plants, watered, and monitored for success, then stripped and replanted every 5 years for leachfield maintenance is counterproductive. This area will be fenced as part of the leachfield utility yard, workmen will be accessing this area regularly; to invite endangered species back to the property just to "take" them again is very expensive and contrary to protection of the species. The intent of preserving the 72 (or 73 as the current project proposes) acres of Broderson adjacent to the leach field was to mitigate for project impacts. Drainage and erosion mitigation can be accomplished less expensively through engineering design (i.e. Low Impact Development).

Condition 17: Hours of Construction

a. The approval allows construction to take place from 7:00am – 9:00pm on weekdays and 8:00am – 5:00pm on weekends. Construction during daylight hours is optimal for the environment; wildlife can be confused by unfamiliar lighting. There are no mitigation measures provided for these activities.

b. These extended hours of construction are in excess for a bedroom community.

The project approved fails to adequately address:

1. Growth Inducing potential:

- a. The project failed to analyze all feasible treatment site alternatives, including the Gorby site, uniquely positioned adjacent to the Urban Reserve Line, alleviating growth inducing concerns.
- b. As required for the Millennium High School in Watsonville, this project should be a conditioned to develop a utility easement/“Utility Donut” or “Watsonville Straight Jacket” restricting service to only those served by the project within the Prohibition Zone.

2. Decommissioning Septic systems.

- a. The contents of septic tanks is different than wastewater, this material is concentrated and requires special handling. The LOWWP removes the contents of 4,770 septic tanks and does not specify where these materials will go. The project does not specify the interval in which individual homes will hook up to the wastewater collection system. The response to comments by the EIR author claims *“A typical part of the building of any new treatment works is the development of an **initial operations plan**. As part of the plan, issues dealing with septage disposal will certainly be considered and coordinated with the Santa Maria plant and others”*. Local treatment facilities are ill-equipped to handle large volumes of this concentrated material. Deferring this analysis violates CEQA by segmenting the “Initial Operations Plan” to future analysis and unknown mitigation.
- b. In 2006, the Air Pollution Control District deemed a similar proposal by a Regional Water Quality Control Board enforcement action levied on the Los Osos Prohibition Zone, pumping of thousands of septic systems ‘a project in and of itself’ and needed CEQA analysis. The DEIR does not adequately analyze the truck trips and air quality impacts associated with hundreds of trips to the Santa Maria Wastewater Treatment Facility (the local facility that currently taking septage from Los Osos and other areas within SLO Co.).
- c. The EIR author responds to this question in the FEIR saying septic tanks can be pumped at some other time, after hook up. (P24-33) This duplicative on lot disturbance is not only impractical, costly, unanalyzed and infeasible.

3. Wetland Impacts/pump stations:

- a. Staff admits that wetland surveys have not been done since 2005. The 18th and Paso is well within the necessary 75 ft. set back. To move the pump

station after the permitting constitute a Change Order, thus increasing the cost of the project.

b. Additionally, the Paso and 3rd St. pump station was located at 4th and Paso in the 1998 project, using hybrid technologies to locate away from the bay fringe. This pump station is also vulnerable to sea level rise.

4. Staging Areas

a. The only staging area analyzed in the DEIR within the urban area of Los Osos is the 6 acre parcel at Pismo and South Bay Blvd., this parcel is **inconsistent** with COA 35.j, (air quality) receptors are not to be within 1000 feet of staging areas. The Los Osos Middle School and numerous homes surround the site. This location is also **inconsistent** with COA 54 (aesthetics) relative to the highly visual nature in the public view to travelers on South Bay Blvd., a 'scenic highway' as defined by the Estero Area Plan, updated and approved by the California Coastal Commission in July 2008.

b. The LOWWP Notice does not mention the intensity of such an operation within a neighborhood and the impacts staging heavy equipment for several years at that location. The average public would not know that the project impact them as such without being notified to read the DEIR.

5. Private Property Lateral Connections

Archeologists/monitors and biologists may be necessary for private home lateral excavations in sensitive areas (both habitat and archeological). Some wetland indicating plants (i.e. willow trees) have been established on private properties directly due to leachfield use. How does the project mitigate for sensitive resources on private property and costs associated with professional consultants?

6. Treatment Facility Water Use

The treatment facility will use fresh drinking water for some operations; employee breakroom, restrooms, showers, etc. This use has not been quantified, nor has it been mitigated for. Recent amendments to Title 19 require any new development within the Los Osos Groundwater Basin retrofit existing homes to offset its use on a 2:1 ratio. This mitigation appears to have been overlooked by the applicant and permitting authorities.

Tacker Exhibit 1

ISJ Participants Work Program For Los Osos Groundwater Basin

Task 1

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

Task 2

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

Task 3

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

Task 4

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

Task 5

- **Annual Groundwater Monitoring**
- **Transient Model Updates Every Two Years**

Tacker Exhibit 2 From LOWWP project website

**Appellants comments are in italics.*

Affordability Assistance

The following links provide households (homeowners and renters) within Los Osos loan and/or grant opportunities and financial assistance for the wastewater project. Unless otherwise noted, the household is responsible for contacting and applying for the assistance.

California State Controller's Office

Property Tax Postponement for Senior Citizens, Blind or Disabled Citizens

Synopsis: Allows eligible homeowners to postpone payment of the property taxes on their principle place of residence. Special assessments are eligible for postponement.

Additional Information: <http://www.sco.ca.gov/col/taxinfo/ptp/index.shtml>

How to Apply: Visit the link above and complete the required application, or call 1-800-952-5661

THIS PROGRAM HAS BEEN SUSPENDED INDEFINITLY

California State Franchise Tax Board

Homeowner and Renter Assistance

Synopsis: Once-a-year payment to qualified individuals for part of their property taxes or portion of their rent that indirectly covers property taxes. Special assessments are not eligible for postponement, however, qualifying individuals can lower their overall tax liability by receiving the payment.

Additional Information: <http://www.ftb.ca.gov/individuals/hra/index.shtml>

How to Apply: Visit the link above and complete the required application or call 1-800-868-4171

SPECIAL ASSESSMENTS ARE NOT ELIGIBLE FOR POSTPONEMENT

United States Department of Agriculture, Rural Development

Single Family Housing Repair Loans/Grants - Section 504

Synopsis: Loan and/or grant to low income households for home improvements. Qualifying households may use funds for "on-lot" costs.

Additional Information: <http://www.rurdev.usda.gov/CA/pdf files and documents/SFH Repair504.pdf>

APPLIES TO COMMUNITIES OF LESS THAN 10,000 per capita. Only applies to "on lot" costs. Ongoing wastewater related expenses are not eligible.