

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: **Keith Wimer**

Mailing Address: **1101 14th Street**

City: **Los Osos, CA**

Zip Code: **93402**

Phone: **805-528-2027**

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.):

Los Osos, CA

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-3-510-09-055

DATE FILED: October 19, 2009

DISTRICT: Central Coast

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

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): DRC 2008-00103

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 Public Works Department
County Government Center
San Luis Obispo, CA

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)

(2)

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**SECTION IV. Reasons Supporting This Appeal****PLEASE NOTE:**

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

Please see attached reasons--14 pages, plus 4 pages of attachments.

LOGS Appeal of the LOWWP EIR and Coastal Development Permit, August 24,
Page 10 or 10

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

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

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

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

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

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

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

**LOGS Appeal of the LOWWP EIR and Coastal Development Permit, August 24,
Page 9 or 10**

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

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

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

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

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

Appeal of LOWWP Coastal Development Permit, Attachment #2, Keith Wimer, October 16, 2009

Page 2 of 2

- A program to retrofit homes, commercial buildings and public facilities with high-efficiency water saving fixtures and appliances (and to stop leaks as needed) in all homes, commercial and public buildings using the basin as a water source, targeting an average 25% reduction in indoor water use basin wide.
 - A program to install xeriscape measures and other measures and devices (e.g., rainwater harvesting and graywater reuse systems) to reduce outdoor potable water use an average of 50% basin wide among non-farm users. (Potable water-use reduction on farms will be set at appropriate achievable levels.)
 - Total indoor and outdoor potable water use targets shall be set at 60 gallons per capita per day (gpcd) for residential use monitored monthly by meter (with water use levels set for commercial and institutional that achieve at least a 33% reduction where feasible).
 - Homes and private wells without meters shall have meters installed.
 - Adequate retrofit options, and appropriate incentives and consequences will be included in the ordinance to ensure compliance and to meet water use targets within one year of the LOWWP start up.
4. Urban reuse and ag exchange programs shall be implemented to reduce the pumping of the aquifers by supplying a supplemental water source for outdoor urban and agricultural uses. The ag exchange program will provide supplemental water in the form of well water from portions of the basin (Creek Compartment) not currently affected by SWI, also allowing a net reduction in the water pumped from those parts of the basin (because less well water is pumped than recycled water exchanged). Both programs will be developed concurrent with LOWWP development, so they can be implemented at start up of the LOWWP to provide at least 350 AFY of reduced pumping from the Western Compartment within one year of project start up.
 5. On-going seawater intrusion monitoring and assessment will be part of a program to managed the basin, measure progress toward goals and benchmarks, and ensure the sustainability of the resource.
 6. To preserve the health of aquatic ecosystems dependent upon the basin at pre-LOWWP levels an LID program shall be implemented using on-site and community recharge/infiltration systems to support freshwater subsurface flows to aquatic ecosystems. Highly treated recycled water may also be used as a secondary source of water, where safe and appropriate, to supply flows to sensitive aquatic ecosystems.
 7. No further development within the basin shall be allowed until SWI stops (or until 900 AFY of reduced pumping occurs in the lower aquifers of the Western Compartment).
 8. All applicable grants, rebates, and low cost funding options shall be sought and used to reduce costs for property owners and water purveyors.
 9. All costs to property owners not covered by the options in #7 shall be funded by available means, including assessments, to ensure timely implementation of the plan.
 10. All costs shall be shared basin-wide according to SWI mitigation and/or other appropriate benefits.

Appeal of LOWWP Coastal Development Permit, Attachment #2, Keith Wimer, October 16, 2009
Page 1 of 2

Attachment #2

Sample language for a basin-wide management plan ordinance to stop seawater intrusion (SWI) within two years of LOWWP final approval (Draft)

Purpose/Objective:

The purpose of the ordinance is to stop SWI intrusion in the Los Osos Valley Water Basin within two years of start up of the Los Osos Wastewater Project. SWI is rapidly destroying the freshwater Los Osos Valley Water Basin. It has progressed through at least one-third of the available freshwater capacity of the basin since the 1970's, permanently destroying much of the freshwater in the basin for beneficial uses. Recent data indicates it is apparently accelerating and the basin grown less stable. The sustainability of the sole source of water for the community of Los Osos and overlying farms and properties is in jeopardy without immediate and aggressive action.

The basin provides freshwater to highly valued ecosystems in the area, including Morro Bay Estuary, and it is the sole source of water for the community of Los Osos and farms overlying the basin. Desalinated and imported alternative water sources are economically and technically infeasible for the community for a number of reasons. Furthermore, predicted sea level rises (five feet in this century) will add SWI pressure to the basin, requiring that aquifer levels are brought up to match sea levels (i.e., five feet above the levels needed to prevent SWI; in some areas 15 feet or more). Finally, the Los Osos Valley Water Basin is a relatively small coastal basin. Therefore, urgent action is required to 1) stop the progress of SWI and preserve as much of the basin as possible 2) to prepare the uncertainties of climate change, e.g., sea level rises and changing weather patterns.

Provisions:

1. All pumping contributing to SWI will stop within two years of final approval of enactment of this ordinance, and water levels in aquifers vulnerable to SWI will be allowed to rise to levels needed to prevent SWI with sea level rises. This will require reducing the pumping from wells tapping the lower aquifers in the Western Compartment of the Los Osos Valley Water Basin (LOVWB) by about 900 AFY. The approximately 900 AFY of reduced pumping will be replaced by the following water sources:

An water-use efficiency program integrating LID, graywater reuse, and rainwater harvesting strategies—550 -700 AFY

Increased pumping of the upper aquifer and creek alluvium—200-350 AFY

2. Conservative safe yield estimates protective of the finite resource will be used for all water sources (e.g., upper aquifer, lower aquifer, and creek alluvium) to avoid harm to these resources, restore them where necessary, and ensure their long-term viability.
3. Because water use efficiency (conservation) provides the most cost effective source of supplemental or "new water" and reduces lower aquifer pumping, indoor and outdoor conservation programs will be implemented within one year of the enactment of this ordinance to achieve at least 550 AFY of reduced pumping from the Western Compartment within two years of LOWWP project approval enactment of the ordinance. The conservation program will have the following general components/provisions:

Appeal of LOWWP Coastal Development Permit, Attachment #1, Keith Wimer, October 16, 2009

Attachment #1

Recommended Project Conservation Condition Language

Within one year of the adoption of a due diligence resolution by the BOS electing to proceed with the wastewater project, the applicant shall implement an integrated indoor-outdoor water use efficiency (conservation) program, in consultation with local water purveyors, within the prohibition zone of Los Osos. The applicant will provide 5 million dollars of funding towards the program. The program will be implemented with an ordinance that targets 1) a 45 gallon per capita per day (gpcd) average for residential indoor use, 2) a 60 gpcd average for indoor-outdoor use, 3) a 33% reduction in Class II indoor-outdoor potable water use, and 4) a 30% reduction in overall water use within the Prohibition Zone (based on 87% of the total purveyor production figures, e.g., 1906.4 acre feet in 2008). The program shall be designed to maximize funding and achieve targets within the first two years of program implementation. Property owner participation will be a condition of hook up to the wastewater project. However, incentives, including generous rebates and free installation will be offered to assure early participation in the program. Grant funding shall be pursued to augment program funding, and funding may be used as matching funds to leverage grants. Administrative and personnel costs will be limited to no more than 15% of program costs. Measures and funding will be applied where they can achieve the greatest water saving benefits and the program will include water auditing services to maximize funding and program effectiveness. Provisions for low income households to receive free retrofits and installation shall be provided. Indoor strategies shall include a range of the most cost-effective retrofits, including high efficiency toilets, washers, faucet aerators and shower heads. Outdoor strategies shall include the most cost-effective Xeriscape options and appropriate technologies, including LID systems and graywater reuse. Leak detection and repair will also be included in the program. Other best management practices may be considered if they can be demonstrated to provide greater benefits for the cost. The water savings from the program will be applied to reduce the pumping causing seawater intrusion.

Appeal of LOWWP Coastal Development Permit, Keith Wimer, October 16, 2009**Page 14 of 13**

6. **Willow Creek Drainage impacts (loss of flows) per the DEIR, Appendix D-2 (file label "LOSG EcoSysImpacts" pdf.)**
7. **2009 ISJ Technical Memorandum ("Flow Model Conversion and Urban Area Yield Update") Cleath-Harris Geologist, Inc. (file label "Urban+Area+Yield+TM" pdf)**
8. **Los Osos Water Purveyor Interlocutory Stipulated Agreement (ISJ) (file label: "ISJ 8.08")**
9. **Letter from the Golden State Water Company Attorney to the SLO County Planning Commission, dated May 27, 2009 (file label "GoldenStAttnLet" pdf)**
10. **2007 *Resource Capacity Study* for the Los Osos Valley Water Basin (file label "LOVWB RCS 2007" pdf)**
11. **LOSG Appeal comments before the SLO County Board of Supervisors, September 29, 2009 (file label "LOSGappealcomments 9.29.09" pdf)**
12. **LOSG letter to the SLO County Planning Commission dated August 10, 2009 (file label "LOSGPLComm let 8.10.09" pdf)**

Appeal of LOWWP Coastal Development Permit, Keith Wimer, October 16, 2009

Page 13 of 13

Osos Sustainability Group's appeal of the project to the SLO County Board of Supervisors, which I incorporated by reference. I also incorporate by reference the Sierra Club and Surfrider appeals to the Coastal Commission. STEP system design and construction provide a higher level of mitigation for virtually all of the most of serious environmental impacts associated with collections systems—and they are considerably less expensive than the proposed hybrid gravity system.

Project facilities should be sized using current flow estimates with phasing to accommodate future buildout: The project, as currently proposed, uses buildout flow estimates to calculate costs and size facilities (e.g., treatment and recycled water storage facilities). Designing the project for buildout flows will induce future development by suggesting a sustainable basin can be established when it may not be possible to do so. The sizing of facilities should use current flows, and facilities should be phased to accommodate buildout, when, and if, a sustainable water supply is established.

The STEP option should be added to the design build process: This is needed to enable the project to be fundable using only the current 218 assessment, in case a sustainable water supply cannot be established and/or the second 218 doesn't pass. Whether or not it is selected, having it in the process will increase competition, help ensure a cap on costs, and keep the project as affordable as possible.

Attachments:

- #1 "Recommended Conservation Condition Language"
- #2 "Sample language for a basin-wide management plan and ordinance..."
- #3 "Project Conditions Needed" from LOSG Appeal of the LOWWP EIR and Coastal Development Permit, August, 24, 2009, Pages 9 & 10

Supporting documents sent as email attachments:

1. Los Osos Sustainability Group (LOSG) Appeal of the LOWWP Coastal Development to the San Luis Obispo County Board of Supervisors, dated August 24, 2009 (file label "LOSG Appeal of LOWWP to BOS" pdf) (*Note: I would like this incorporated by reference into my Coastal Commission Appeal.*)
2. LOSG seawater intrusion progress estimates based on Palisades Well data (250 mg/l of chlorides) (three files labeled "LOSG SWI progress 1,2 & 3 pdfs)
3. "Lower Aquifer Ground Water Elevations" (large pumping depression) and discussion from the 2005 *Seawater Intrusion Assessment* by Cleath & Associates and LOWWP DEIR (file label "SWI lower aquifer levels" pdf)
4. Discussion of the upper aquifer stability: "...relatively stable...with a potential for active intrusion" from the 2005 *Seawater Intrusion Assessment* and DEIR (file label "SWIUpper Aq" pdf.)
5. Changes in safe yields from 2002 to 2007 for the upper and lower aquifers as shown in 2007 *Resource Capacity Study and 2009 ISJ Technical Memorandum* (file label "Upper Aq Safe Yields" pdf) (Note: These documents also show lower aquifer safe yield changes).

Appeal of LOWWP Coastal Development Permit, Keith Wimer, October 16, 2009

Page 12 of 13

Some of the impacts that must be maximized to help ensure greater benefits than harm from the project include:

1. *Mitigations for the loss of groundwater flows to wetlands.* Mark Hutchinson, project environmental coordinator, acknowledged during the appeal hearing on September 29, 2009, that groundwater levels supplying bayside wetlands would drop one foot. These impacts were not acknowledged in the EIR, and they are estimates; loss groundwater flows to wetlands could be worse. The proposed project calls for deferring mitigation until the impacts are confirmed although the proposal may result in permanent harm to ecosystems. Another proposal is for homeowners to voluntarily redirect rain gutter down spouts to abandoned septic leach fields to help restore groundwater flows. These proposed mitigations are not likely to be as effective as community LID features installed at strategic locations to augment flows, in conjunction with on-site LID systems implemented as part of an integrated water use efficiency program.
2. *Mitigations for lost of groundwater flows to the Willow Creek Drainage:* According to Spencer Harris, of Cleath-Harris Geologists, Inc., consultant for the LOWWP and ISJ, several hundred acre feet of groundwater will stop flowing to Willow Creek, a riparian habitat, with the elimination of septic systems. The proposed mitigation is 36 AFY of recycled water discharged in Bayridge Estates leach fields and the voluntary redirection of rain gutter downspouts to septic leach field mentioned above. A better solution is a community LID system, possibly redirecting run off from near by commercial development.
3. *Mitigations for increased seawater intrusion:* All project review documents acknowledge the project will have potentially significant negative impacts on seawater intrusion. Broderon leach fields discharging about 450 AFY in one location, according the LOWWP EIR, will fully mitigate for these impacts (i.e., provide the recharge benefits of about 5000 septic systems discharging 1000 AFY throughout the basin). Spencer Harris, of Cleath-Harris Geologists, Inc., consultant for the LOWWP and ISJ, acknowledged during the Planning Commission review on June 30, 2009, that the leach fields may not perform as expected. The benefits of Broderon leach fields on the lower aquifer are based on basin modeling with a relatively high degree of uncertainty. The benefits were calculated prior to a recent well test showing SWI is accelerating and is now further inland than Broderon leach fields, suggesting Broderon leach field benefits should be re-evaluated using current data. Furthermore, according to the EIR and *Fine Screening Report*, Broderon leach fields provide less seawater intrusion mitigation than conservation, ag exchange, and urban reuse. They're also energy intensive and result in significant destruction of environmentally sensitive habitat as the leach fields are installed initially and refurbished over time. Conservation, ag reuse, and urban reuse provide better mitigation for seawater intrusion impacts, with conservation affording the most immediate and significant potential benefits because it can be implemented before the project goes on line. Given the unstable condition of the basin and the project's uncertain impacts on seawater intrusion, the project must maximize mitigation of seawater intrusion with an aggressive, integrated conservation program. The implementation process should begin upon project approval (see recommended conservation condition).
4. *Mitigations for collection system impacts: installation, leaks, cleaning, and overflows:* The benefits of STEP collection over the gravity system are well documented in the Los

Appeal of LOWWP Coastal Development Permit, Keith Wimer, October 16, 2009

Page 11 of 13

mitigations for reduced groundwater flows. The original Planning Commission measure could be made stronger by eliminating language that limits urban reuse options to those identified in the "Reuse" technical memorandum (i.e., the parenthetical phrase should be removed). Also, ag exchange and urban reuse should be specifically mentioned as options with the greatest seawater intrusion benefits.

A Basin-wide management plan: For a water management plan to be effective in controlling seawater intrusion, it must be basin-wide plan. Water purveyors control less than two thirds of the water in the basin, so a management plan developed within the ISJ process cannot solve the seawater intrusion problem. An effective plan would include an intensive basin-wide conservation program and provide for on-going seawater intrusion assessment, and monitoring of all water use within the basin, also placing a moratorium on building basin wide until seawater intrusion is stopped (or aggressive benchmarks in reduced pumping are achieved). LCP Policy 5 provides for the County to implement a basin-wide water management program, with the help of the Regional Water Board, and LCP Policy 7 provides for on going monitoring of wells.

A County administered plan is needed partly because purveyors have shown they will not support an intensive water use efficiency program. Although water use efficiency is the fastest, surest, and most cost-effective way to curb seawater intrusion, it can also reduce revenue for purveyors in the short term. Past purveyor agreements have failed to produce a strong cooperative program, and a letter submitted to the Planning Commission by a local water purveyor indicates the company's reluctance to pursue conservation measures (see emailed doc "GoldenStAttnLet").

Condition 34, a condition set on the prior Los Osos project by the Coastal Commission, requires a "comprehensive water management plan for the Los Osos Groundwater basin that identifies management strategies for achieving a sustainable water supply." The SLO County Board of Supervisors added a reference to Condition 34 to Development Permit Condition 86. Condition 86 designed to avoid "growth that cannot be sustained by available water supplies." However, Supervisor Gibson (Board Chair) made it clear he considers the "comprehensive" plan to be developed by water purveyor within the ISJ process, and he said any moratorium on building would be limited to new development within the Prohibition Zone.

Condition 86 is designed to limit unsustainable growth from the project. A condition requiring a basin-wide plan to stop seawater intrusion is needed—along with other conditions—to help assure the project is viable, to support a successful second Proposition 218 assessment, and to protect, maintain, and restore where possible, sensitive ecosystems.

Maximum mitigation for project impacts: Currently, many proposed mitigations for the project's significant potential impacts are deferred until the impacts are observed. Other proposed mitigations are not the maximum mitigations feasible. As a result, the potential project impacts to the basin and ecosystems outweigh the modest and somewhat uncertain environmental benefits provided by the project, i.e., an approximately 2 mg/l nitrate reduction in the upper aquifer over 30 years and the reduction and the potential elimination of seeps and run off to the bay possibly caused by septic systems.

Appeal of LOWWP Coastal Development Permit, Keith Wimer, October 16, 2009

Page 10 of 13

A seawater intrusion assessment using current data, followed by an analysis of various scenarios and options for developing a sustainable water supply, which applies a management asset strategy to determine the option with the greatest long-term value: Good decision making requires up-to-date information and objective analysis. The state of the basin is rapidly changing and new data showing the potential acceleration of seawater intrusion must be incorporated into basin models, with adequate analysis by independent, outside experts to determine the potential sustainability of the basin and various options for developing a sustainable water supply. Options should be prioritized using a triple bottom line asset management analysis, similar to the one used by Seattle Public Utilities (SPU), including a risk analysis to determine the option that offers the greatest long-term value. Options should also include a phased project option and a decentralized option. These can provide virtually all of the benefits of a centralized project at less than half the cost.

An Intensive, Integrated Conservation Program: The project's current conservation program does not maximize the benefits of integrated planning or the potential of an intensive water use efficiency program, apply indoor and outdoor high-efficiency retrofits, as well as LID, graywater reuse, and rainwater harvesting. An integrated approach emphasizing water use efficiency is recommended in the *California Water Plan*, and water use efficiency is now widely considered the most-cost effective way to provide a supplemental water source for thirsty communities. This approach also provides the fastest and surest way to develop the supplemental water needed to substantially reduce pumping of the lower aquifer and stop seawater intrusion. LID options are recognized as low-cost ways to enhance groundwater flows and reduced surface water pollution. As part of an integrated program, they will reduce water use, provide flows to sensitive ecosystems, mitigate for on-lot disturbance, and increase grant opportunities (among other benefits).

At the project appeal hearing on September 29, the SLO County Board of Supervisors substantially weakened the conservation condition set by the Planning Commission (Condition 99). The new language effectively delays program implementation and removes a definite funding source (i.e., LOWWP project funding) replacing these provisions with indeterminate timelines and funding mechanisms. The new language also limits measures to only indoor retrofits, and it eliminates a provision for water auditors. Even with the original Planning Commission language, the project's conservation element could be much stronger, providing significantly greater benefits to residents and the basin. An aggressive water use efficiency program, targeting about a 30% reduction in indoor-outdoor water use throughout the basin is achievable and is likely the only way to establish a sustainable basin (see attached recommended conservation condition language and the language for a basin-wide management ordinance).

A Reuse Program that Prioritizes Seawater Intrusion Mitigation: The SLO County Board of Supervisors also weakened the SLO County Planning Commission conditions relating (originally Conditions 97 and 103, combined into Condition 97) designed to prioritize reuse options to achieve the greatest possible seawater intrusion benefits and to protect sensitive ecosystems. The condition, as now written, allows purveyors through the adjudicated (ISJ) process to determine the uses of recycled water. Only recycled water not negotiated as part of that process is subject to the seawater intrusion priority language in the condition presently. This change does not ensure recycled water will be used to maximize seawater intrusion benefits or provide important

Appeal of LOWWP Coastal Development Permit, Keith Wimer, October 16, 2009

Page 9 of 13

4. Significantly increase the community's GHG production (septic systems use no energy)
5. Increase the community's sludge hauling and disposal by three times (septic systems break down solids by about 70%)
6. Cause impacts to community infrastructure, primarily roads (by open trench construction down 40 miles of roadways, requiring extensive dewatering, soil stabilization, disposal of contaminated water, and road repair).
7. Cause loss of area vegetation and trees (due to reduced groundwater flows)
8. Cause economic impacts to residents and businesses from \$250 per month plus project costs

Note: Although seeps from septic systems and surface run off to the bay from septic systems are often cited as environmental impacts of septic systems, the EIR did not target these issues as project objectives—and the data available do not directly link the nitrates and coliforms found in bayside test samples to septic systems (see Morro Bay National Estuary Program website).

Lack of a sustainable water supply reduces project funding and creates a burden on property owners

A second successful Proposition 218 assessment on undeveloped properties is not likely unless a sustainable water supply can be established. If the assessment does not pass, property owners in the Prohibition Zone will have to pay about 25% more for the project through sewer rates and changes. The current monthly costs for a typical home, as estimated by the LOWWP Project Team, is \$250. The added expense to property owners from an unsuccessful second 218 would raise costs to well over \$300. Additionally, Paavo Ogren, Public Works Director, has said project bid contracts will not put caps on costs, i.e., change orders will be allowed (untypical of design-build contracts). Therefore, costs could go much higher than estimated, even exceeding \$400 per month for Prohibition Zone residents. These high project costs will drive many working families from the area and have significant negative impacts on social and economic resources in the area. *To reduce the potential for this impact, the project should be conditioned on the inclusion of options which could be fully funded with the currently-approved Proposition 218 assessment, e.g., the first phase of a phased project and/or a STEP project. This would protect social and economic resources and promote orderly development (e.g., avoid a scenario in which the project cannot be completed due to funding shortages).*

How the project can best support orderly development and protect and maintain vital coastal resources

To justify its costs and help assure it does more good than harm, the project must optimize its potential to establish a sustainable basin and it must provide maximum feasible mitigations. Absent these benefits, it will deplete limited public funding needed to develop a sustainable water supply and contribute to the area's uncertain future as it deals with a basin in critical overdraft. The following are ways the project can help assure a sustainable basin and water supply:

Appeal of LOWWP Coastal Development Permit, Keith Wimer, October 16, 2009

Page 8 of 13

A major justification for the wastewater project has always been to allow more pumping from the upper aquifer to reduce pumping from the lower aquifer and stop seawater intrusion. However, the viability of the lower aquifer is clearly in question. Even if 900 AFY of pumping is stopped via intense conservation and some shifting of pumping, the resource may not be sustainable. Virtually all pumping from the lower aquifer in the Urban Compartment may need to be stopped for a period of time to allow the aquifer to recover. Under this scenario, other water sources (imported water and desalination) may have to be re-examined, and conservation would have to be maximized to extend the viability of the water basin.

The potential positive and negative impacts of the project on the upper aquifer and the overall basin sustainability of the basin as water source for the area must be examined, with cost-benefit and risk analysis completed for various options—as a condition of the project—to avoid a waste of public funds. Establishing a sustainable water supply cost-effectively may require implementing the first phase of a phased wastewater project as supplemental water is developed and other management options are pursued.

As proposed, the project will do more harm than good

The fact that project benefits can be summed up in one or two sentences (see the first paragraph of section above) and its impacts and proposed mitigations require 34 pages and over 100 conditions (see Coastal Development Permit—CDP—findings) says a lot about the project.

Mark Hutchinson, project environmental coordinator, acknowledged during the project appeal hearing before the SLO County Board of Supervisors (on September 29, 2009) that freshwater flows to bayside wetlands would drop by one foot with the project, and Spencer Harris of Cleath-Harris Geologists, Inc., acknowledged during the Planning Commission reviews on June 30, 2009, that several hundred acre feet of groundwater would stop flowing into the Willow Creek Drainage with the project. Willow Creek Drainage supports a mile-long stretch of riparian habitat feeding Willow Creek, Eto Lake, Los Osos Valley Creek, and Morro Bay National Estuary. On June 30, Spencer Harris also said that the Broderon leach fields are not sure to work as planned. The leach fields are supposed to completely replace the groundwater flow benefits of septic systems on the upper aquifer, lower aquifer, and bayside wetlands. Septic systems now dispense about 1000 AFY of water throughout the basin, and Broderon will dispense between 250-450 AFY of water.

The following is a partial list of potential negative project impacts:

1. Increase seawater intrusion (by removing septic return flows, reducing recharge to the upper aquifer and hydraulic pressure on the lower aquifer)
2. Cause seawater intrusion to begin in the upper aquifer (by reducing recharge to the upper aquifer and disrupting the recharge cycle)
3. Harm environmentally sensitive habitats (including several bayside wetlands, a large section of riparian habitat, dune scrub, creeks, and the National Estuary) (by reducing groundwater flows to these habitats and/or causing construction disturbance, e.g., system pump stations and leach field installation).

Appeal of LOWWP Coastal Development Permit, Keith Wimer, October 16, 2009

Page 7 of 13

liquefaction downhill) are not certain. The attorney for one of the local water purveyors expressed concern about Broderson on water quality in a letter to the SLO County Planning Commission (see emailed doc "ISJ 8.08") The project description and EIR include plans to limit the water going into the leach fields to 250 AFY initially as groundwater is monitored. Therefore, very limited additional pumping should occur from the upper aquifer until the aquifer's safe yield is established based on water level and quality tests.

The viability of the project requires a sustainable basin and sustainable management practices

The EIR states that the primary environmental objective of the project is to "alleviate groundwater contamination—primarily nitrates—that has occurred at least partially because of the use of septic systems throughout the community" (DEIR, p. 3-8). The EIR also points out that the reduction will be modest and gradual (i.e., reduced by about 2 mg/l over 30 years from an average now of about 10 mg/l, high drinking water standards, to about 8.3 mg/l)—and the EIR points out a large percentage of nitrates in the upper aquifer come from other sources, citing the 2003 Yates & Williams study (DEIR, Appendix D, p. 5.2-28 and Appendix D-2, p. 34). This long-term environmental goal will not provide a benefit to coastal resources unless the basin is sustainable.

Pressure to over pump the upper aquifer will increase as the lower aquifer becomes less viable. Overdraft of the Los Osos Valley Water Basin has occurred over many years to meet demand. There is no reason to believe the upper aquifer will not fall victim to the same pressures as the lower aquifer, resulting in its permanent loss to seawater intrusion. Avoiding this problem requires establishing more protective safe yields and better basin management practices. *The project can promote these changes with conditions requiring strong conservation and reuse programs for the project—and a basin-wide management program with similar programs. A basin-wide program would be implemented with an ordinance and set a specific goal of stopping seawater intrusion. It should also emphasize an integrated water use efficiency approach (see Attachments #1 & #2 for recommended language).*

Because pressure on the upper aquifer will occur within a relatively short timeframe, the water source will only be preserved if strong management measures are implemented in the near future. Determining safe yield estimates that err on the side of resource protection, developing cost-effective alternative water sources and feasible, safe pumping options—also treating upper aquifer water after it is pumped from the ground—are options that should be explored and developed to help assure basin sustainability. Some of the options would be developed by local purveyors. *However, a requirement for a basin-wide management plan that incorporates sustainable management options could be added as a condition of the project.*

Note: Golden State Water Company, one of the local water purveyors, has CPUC authorization and the equipment to treat the water currently although it is not being used. Paavo Ogren, SLO County Public Works Directory, pointed out the ability to treat water after pumping during a Planning Commission meeting on June 30, 2009.

Appeal of LOWWP Coastal Development Permit, Keith Wimer, October 16, 2009
Page 5 of 13

Although the County has adopted two conservation ordinances to address the Level III of Severity designation (a retrofit on sale ordinance and an ordinance requiring off-site retrofits for new building) the ordinances have raised concerns among the public because they give more credits for water savings than actually achieved, and they effectively allow a net increase in water use by failing to adequately account for outdoor water use (e.g., on large properties). Additionally, building permits and will-serve notices are still being authorized within the basin (e.g., for properties with existing, unused wells).

SLO County officials (e.g., County Supervisor Bruce Gibson) have stated that water purveyors are responsible for stopping seawater intrusion. They have also claimed the adjudicated, cooperative planning process involving water purveyors including the County (referred to as an interlocutory stipulated judgment or ISJ), will result in a sustainable water supply (see emailed doc "ISJ 8.08"). They make these claims despite the fact water purveyors control only about two-thirds of the water in the basin and cooperative efforts among purveyor since the early 1990's have not slowed seawater intrusion.

ISJ technical memoranda do not establish a sustainable basin

County officials, including Supervisor Gibson (e.g., at a July 2009 Coastal Commission meeting in San Francisco) have also claimed recent technical memoranda by Cleath-Harris Geologists, Inc., completed as part of the ISJ process, show the Los Osos Valley Water Basin is sustainable under current conditions (see emailed doc "CHGurban+area+yield+TM").

The Cleath-Harris memoranda are very preliminary, and water purveyors are currently negotiating peer reviews and/or further studies. Some of the problems with the memoranda are the following:

1. They do not use current data, so they do not account for apparent seawater intrusion acceleration.
2. They propose shifting and/or increasing a considerable amount of pumping (e.g., 900 AFY in the Urban Compartment from the lower aquifer to the upper) and the propose increasing pumping in the creek compartment by 600 AFY. However, these changes are likely to be infeasible due to major obstacles with land acquisition, water rights, permitting, water quality, and/or costs.
1. The memorandum for the Urban Area requires pumping the upper aquifer at 40% over the established safe yield (about 1600 AFY rather than the 1150 AFY) despite the fact the *Seawater Intrusion Assessment* states the upper aquifer is only "relatively stable," subject to seawater intrusion during periods of extended drought (p. 27) (see emailed docs "LOVWB RSC 2007," "Upper Aq Safe Yields," and "SWIUpper Aq").
2. The memoranda use a modified definition of "safe yield" (and "sustainable yield") that assumes seawater intrusion continues at 55 AFY chloride levels (i.e., seawater contamination) increase at many supply wells in the basin (e.g., pp. 5 & 7). The County's definition of "safe yield" stated in the 2007 *Resource Capacity Study* (p. 6) doesn't allow continued seawater intrusion, and the Clean Water Act prohibits water quality degradation.

Appeal of LOWWP Coastal Development Permit, Keith Wimer, October 16, 2009

Page 3 of 13

LCP Coastal Watershed Policy #1: "Preservation of Groundwater Basins"

"The long-term integrity of groundwater basins within the coastal zone shall be protected. The safe yield of the groundwater basin, including return and retained water, shall not be exceeded except as part of a conjunctive use or resource management program which assures that the biological productivity of aquatic habitats are not significantly adversely impacted."

LCP Environmentally Sensitive Habitat Policy #2 "As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat.

LCP Coastal Watershed Policy #3: "Monitoring of Resources"

In basins where extractions are approaching groundwater limitations, the county shall require applicants to install monitoring devices and participate in water monitoring management programs.

LCP Coastal Watershed Policy #5: "Los Osos Groundwater Management"

The county Planning and Engineering Departments should work with communities, property owners and the Regional Water Quality Control Board to develop and implement a basin-wide water management program for the Los Osos groundwater basin which addresses:

- existing and potential agricultural demand
- urban expansion in relation to water availability
- groundwater quality
- possible need for alternative liquid waste disposal
- protection of aquatic habitats including coastal waters, streams and wetlands.

The Resource Management System of the Land Use Element provides a framework for implementing this policy and an interim alert process for timely identification of potential resource deficiencies, so that sufficient lead time is allowed for correcting or avoiding a problem."

LCP Environmentally Sensitive Habitat Policy #7: "Coastal wetlands are recognized as environmentally sensitive habitat areas. The natural ecological functioning and productivity of wetlands and estuaries shall be protected, preserved and where feasible, restored."

(In addition to the Coastal Act/LCP/CZLUO policies/sections cited above, the project fails to conform/comply with Coastal Act Sections 30004, 30007.5., 30412, 30230, 30244, 30253, 30254; LCP Environmentally Sensitive Habitats Polices 1-8, 11, 12, 16, 17-23, 26-30, 36-39; LCP Coastal Watersheds Policies 1-3, 5, 10, 11; LCP Public Works Policies 1, 2, and 5-10; CZLUO Sections 23.01.010, 23.04.403, 23.07.172, 23.07.174, 23.07.176, 23.07.178, 23.08.288).

(See pages 4-12 for further reasons and support)

Appeal of LOWWP Coastal Development Permit, Keith Wimer, October 16, 2009

Page 2 of 13

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

Coastal Act Section 30231: The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Coastal Act Section 30251: The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Coastal Act Section 30253: New development shall... (e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

CZLUO 23.04.430: Availability of water supply and sewage disposal services.

A land use permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as provided by this section.

CZLUO Section 23.07.174 “Streams and riparian vegetation”

The provisions of this section apply to development proposed within or adjacent to (within one hundred feet of the boundary of) an environmentally sensitive habitat as defined by Chapter 23.11 of this title, and as mapped by the land use element combining designation maps.

(1) Application Content. A land use permit application for a project on a site located within or adjacent to an environmentally sensitive habitat shall also include a report by a biologist approved by the environmental coordinator that:

(A) Evaluates the impact the development may have on the habitat, and whether the development will be consistent with the biological continuance of the habitat. The report shall identify the maximum feasible mitigation measures to protect the resource and a program for monitoring and evaluating the effectiveness of the mitigation measures;

(B) Recommends conditions of approval for the restoration of damaged habitats, where feasible...

Appeal of LOWWP Coastal Development Permit, Keith Wimer, October 16, 2009
Page 1 of 13

Reasons for this Appeal

For the Los Osos Wastewater Project (LOWWP) to be viable, the Los Osos Valley Water Basin must be sustainable. However, recent data and basin studies show that the Los Osos Valley Water Basin may not be a sustainable water supply for the area due to serious seawater intrusion, which has progressed to the middle of the freshwater basin and appears to be accelerating.

Moreover, supplemental water sources (imported water and desalination) may not be feasible for Los Osos according to recent analyses. This fact has implications for project viability because about one-fourth of project funding must come from a second Proposition 218 assessment on undeveloped properties, and coastal land use policies require a sustainable water supply for new development. If the second 218 is not approved, an additional financial burden will fall on the people living within the Prohibition Zone, most of whom are low to middle income working families. The cost of the project is now well above state and federal affordability guidelines seriously threatening social and economic resources in the area. An additional financial burden will result in even greater harm.

Finally, the project will cause many potentially serious negative impacts to seawater intrusion and environmentally sensitive habitats, including wetlands, creeks, and Morro Bay National Estuary. Although numerous mitigations are proposed, many are deferred and do not provide the maximum feasible protections. When compared to the potential benefits of the project, the potential negative impacts clearly outweigh the benefits.

Thus, the project, as currently proposed, does not adequately protect and preserve coastal resources and assure orderly, balanced, and carefully planned development within the Coastal Zone. Without further conditions, the project fails to comply with the following Coastal Act, Local Coastal Plan, and Coastal Zone Land Use Ordinance sections and policies.

Coastal Act Section 30001: "Legislative findings and declarations; ecological balance"

The Legislature hereby finds and declares:

(c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.

(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 this state and especially to working persons employed within the coastal zone.

Coastal Act Section 30001.5: "Legislative findings and declarations; goals"

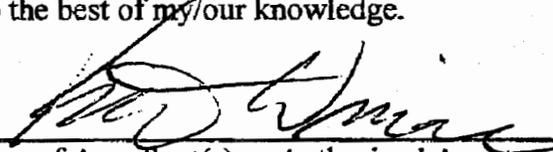
The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

(a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources

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

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: 10/16/09

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: _____