

APPENDIX C

CORRESPONDENCE

AGENCY CORRESPONDENCE*			
Contact	Environmental Resource Information		Comment/ Response Page #
	County Action	Agency Action	
USDA DESIGNATED IMPORTANT FARMLAND			
United States Department of Agriculture	Requested Farmland Review	Farmland Conversion Impact Rating Form, 8-31-09	C-2
FLOODPLAINS			
Department of Homeland Security Federal Emergency Management Agency / United States Department of Agriculture		Standard Flood Hazard Determination Form (Form 81-93), 2-19-10	C-4
United States Department of Agriculture		Private Party Floodplain Notice, 3-3-10	C-9
WETLANDS			
U.S. Army Corps of Engineers, Regulatory Branch, Ventura	Jurisdictional determination request for Giacomazzi site, 12-22-09	Determination regarding requirement for Department of the Army Permit 4-12-10	C-10, C-12
HISTORIC PROPERTIES			
Native American Heritage Commission	Request for project Native American contacts	Consultation list provided, 5-5-08	C-14
Native American Heritage Commission	Provided Draft EIR to State Clearinghouse	Second Native American list provided in response to Draft EIR, 1-29-09	C-16
State of California Office of Historic Preservation Department of Parks and Recreation	SWRCB request for APE approval and adverse effects determination	"Adverse Effect" determination provided, APE approved, 4-15-10	C-21
BIOLOGICAL RESOURCES			
NOAA National Marine Fisheries Service, Southwest Region	Provided Draft EIR to State Clearinghouse	Draft EIR Comment Letter, 1-15-09	C-25
NOAA National Marine Fisheries Service, Southwest Region	USDA Request for Informal Consultation, 1-8-10	Request for Additional Information, 2-18-10	C-35, C-37
NOAA National Marine Fisheries Service, Southwest Region	Response to Information Request, 3-5-10	"Not Likely to Adversely Affect" determination provided, 4-15-10	C-39, C-51
U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office	Provided Draft EIR to State Clearinghouse	Draft EIR Comment Letter, 1-29-09	C-54
U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office	USDA Request for Formal Consultation, 2-16-10	Biological Opinion, 4-14-10	C-71, C-73
COASTAL RESOURCES			
California Coastal Commission	Requested Federal Consistency Review	Jurisdiction/ Federal Consistency Letter, 1-25-10	C-107
SOCIO-ECONOMIC ISSUES/ENVIRONMENTAL JUSTICE			
United States Department of Agriculture		Rural Development Environmental Justice and Civil Rights Impact Analysis Certification (Form RD 2006-38), 2-26-10	C-109

*Maps within the correspondence section may not be to scale.

10/05/2009 15:54 18054340284

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PAGE 02

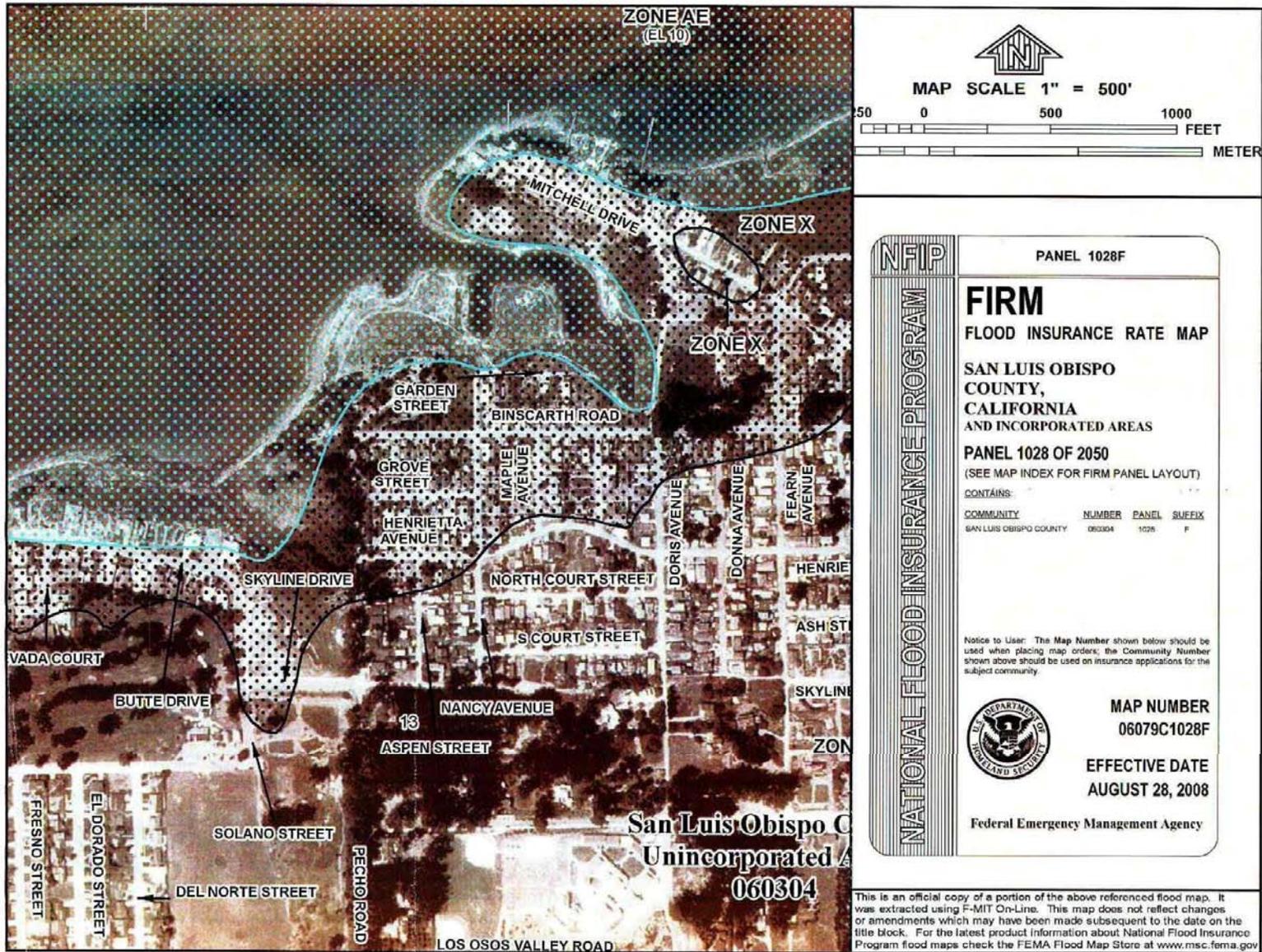
U.S. Department of Agriculture							
FARMLAND CONVERSION IMPACT RATING							
PART I (To be completed by Federal Agency)				Date Of Land Evaluation Request 8/31/09			
Name of Project Los Osos Wastewater Project				Federal Agency Involved USDA Rural Development			
Proposed Land Use Treatment/Disposal Facilities				County and State San Luis Obispo, CA			
PART II (To be completed by NRCS)				Date Request Received By NRCS 9/14/09		Person Completing Form: TINA YANDER HCEK	
Does the site contain Prime, Unique, Statewide or Local Important Farmland? (If no, the FPPA does not apply - do not complete additional parts of this form)				YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		Acres Irrigated 47,479	
Major Crop(s) WINE GRAPES, BARLEY, BROCCOLI				Famable Land In Govt. Jurisdiction Acres: 13.2% 304,740 AC		Average Farm Size 704 AC	
Name of Land Evaluation System Used CALIFORNIA STORE INDEX				Name of State or Local Site Assessment System NONE		Date Land Evaluation Returned by NRCS 10/5/2009	
PART III (To be completed by Federal Agency)				Alternative Site Rating			
				Site A 3		Site B 5	
A. Total Acres To Be Converted Directly				306		268	
B. Total Acres To Be Converted Indirectly				166		158	
C. Total Acres In Site				472		426	
				70(?)		30	
PART IV (To be completed by NRCS) Land Evaluation Information							
A. Total Acres Prime And Unique Farmland				173		155	
B. Total Acres Statewide Important or Local Important Farmland				90		76	
C. Percentage Of Farmland In County Or Local Govt. Unit To Be Converted				.086%		.076%	
D. Percentage Of Farmland In Govt. Jurisdiction With Same Or Higher Relative Value				DATA NOT AVAILABLE		.073%	
PART V (To be completed by NRCS) Land Evaluation Criterion							
Relative Value of Farmland To Be Converted (Scale of 0 to 100 Points)				41		40	
				44		43	
PART VI (To be completed by Federal Agency) Site Assessment Criteria				Maximum Points			
<i>(Criteria are explained in 7 CFR 658.5 b. For Corridor project use form NRCS-CPA-100)</i>				Site A		Site B	
1. Area In Non-urban Use (15)							
2. Perimeter In Non-urban Use (10)							
3. Percent Of Site Being Farmed (20)							
4. Protection Provided By State and Local Government (20)							
5. Distance From Urban Built-up Area (15)							
6. Distance To Urban Support Services (15)							
7. Size Of Present Farm Unit Compared To Average (10)							
8. Creation Of Non-farmable Farmland (10)							
9. Availability Of Farm Support Services (5)							
10. On-Farm Investments (20)							
11. Effects Of Conversion On Farm Support Services (10)							
12. Compatibility With Existing Agricultural Use (10)							
TOTAL SITE ASSESSMENT POINTS				180		65	
PART VII (To be completed by Federal Agency)							
Relative Value Of Farmland (From Part V)				100		43	
Total Site Assessment (From Part VI above or local site assessment)				180		65	
TOTAL POINTS (Total of above 2 lines)				280		108	
Site Selected: Site D				Date Of Selection 10/16/09		Was A Local Site Assessment Used? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
Reason For Selection: See attached for the criteria used in scoring the selected site. Since the selected site received a total score of less than 160, no additional sites need to be evaluated, see 7 CFR Part 658.4.							
Name of Federal agency representative completing this form: <i>(See instructions on reverse side)</i>						Date:	

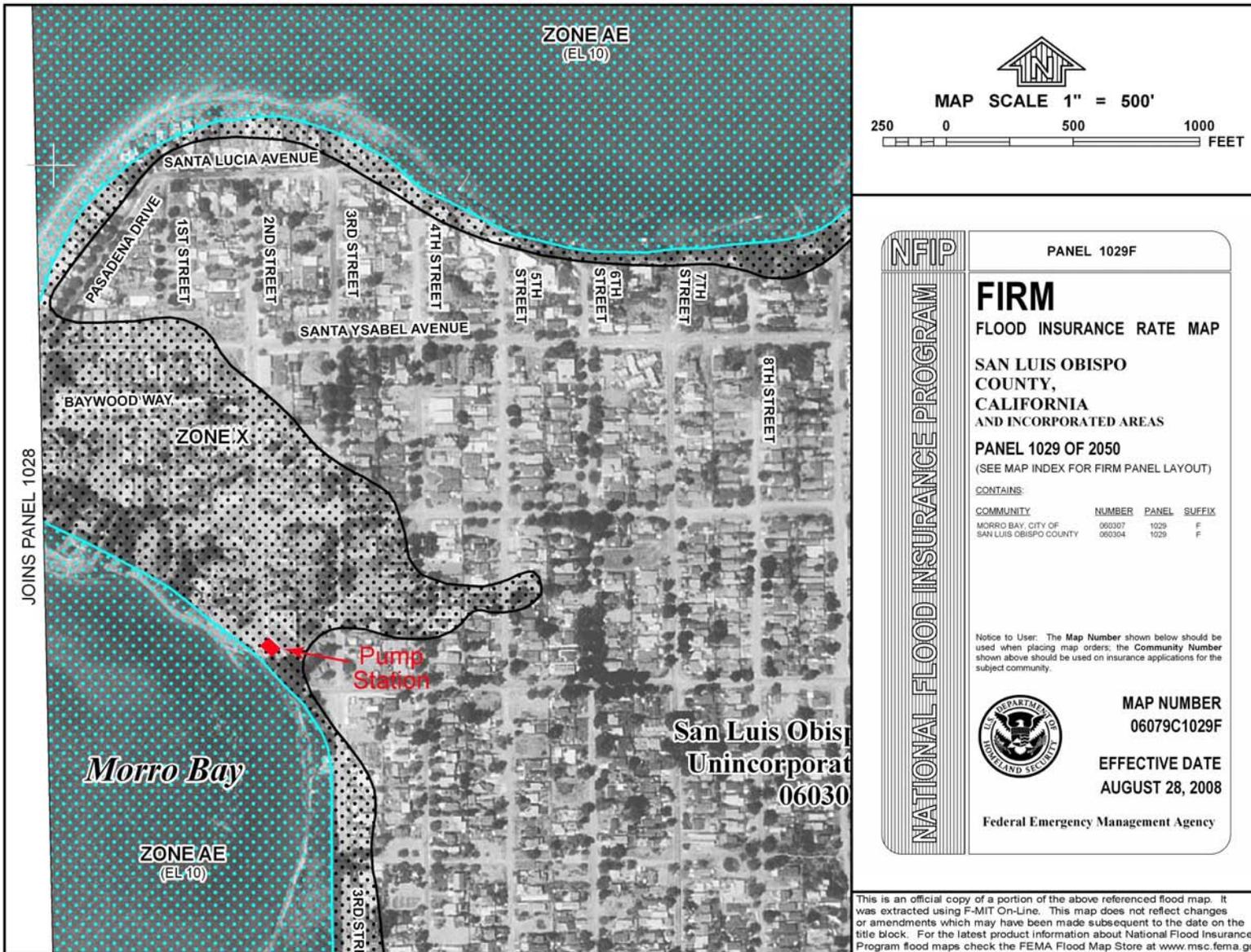
**LAND EVALUATION SITE ASSESSMENT CRITERION
SITE D—ALTERNATIVE 7
LOS OSOS WASTEWATER PROJECT**

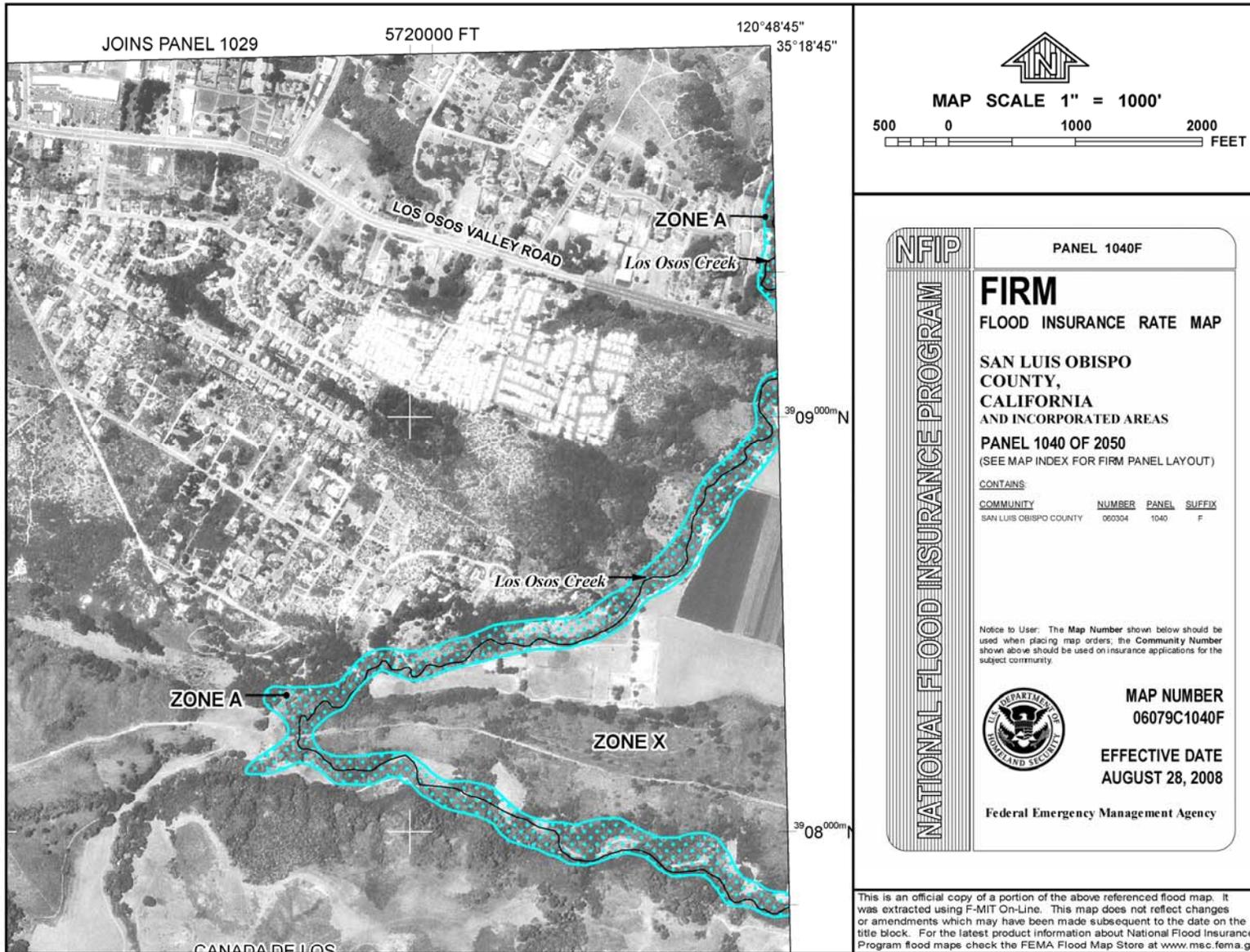
As the Federal Agency involved in the proposed project, USDA Rural Development has assigned the following points to the site:

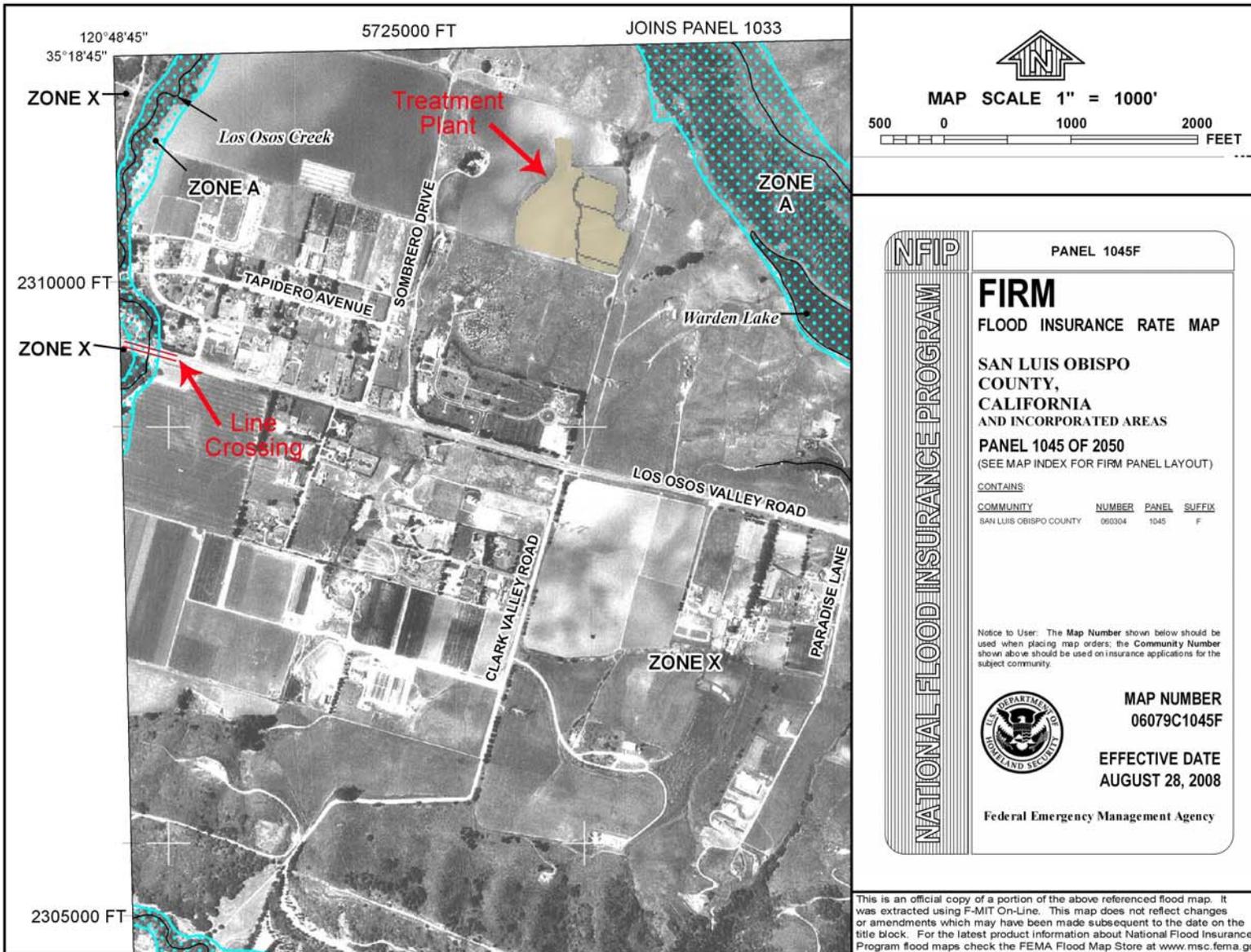
1. Based on an aerial photo of the proposed site, one could reasonably conclude that 75% of the land within a one mile radius is nonurban. Therefore, **12 points** were assigned ($15 \times .75 = 11.25$).
2. Three sides of the land that borders the proposed site is nonurban, and the site is relatively square. The land adjacent to the south of the site is reserved for cemetery expansion; therefore, **8 points** were assigned ($10 \times .75 = 7.5$).
3. According to the land manager, the site has not been in agricultural production for at least 10 years. Therefore, **0 points** were assigned.
4. There are State Coastal Plan and Local County policies in place to protect farmland. **20 points** assigned.
5. The site is approximately $\frac{1}{2}$ a mile from the urban boundary. **5 points** assigned.
6. Water service exists approximately $\frac{1}{2}$ a mile from the site, and the proposed site will support a sewer plant. Since only some of the services currently exist, **10 points** are being assigned.
7. According to Form AD-1006, completed by NRCS, the average-size farm is 704 acres. This 30 acre site is less than 50% of the average sized farm; therefore, **0 points** are being assigned.
8. A total of 30 acres will be directly converted. No additional land is anticipated to become non-farmable. The land is not currently being farmed. **0 points** assigned.
9. The County has a \$600 million agricultural industry with all the required farm support services and farmers markets available. **5 points** assigned.
10. The only improvements on the proposed site include a modular home. This would not necessarily be considered an on-farm investment, but **5 points** are being assigned.
11. Given the size of the site and the fact that it has not been farmed in over 10 years, it would not appear to jeopardized the viability of the remaining farms in the area. **0 points**.
12. Measures are in place to ensure that the proposed use of the site will not contribute to the conversion of surrounding farmland. In fact, treated water from the site could be used on surrounding farm land. **0 points**.

DEPARTMENT OF HOMELAND SECURITY FEDERAL EMERGENCY MANAGEMENT AGENCY STANDARD FLOOD HAZARD DETERMINATION FORM (SFHDF)		See The Attached Instructions	O.M.B. No. 1660-0040 Expires December 31, 2011	
SECTION I - LOAN INFORMATION				
1. LENDER NAME AND ADDRESS USDA Rural Development 3530 W. Orchard Ct. Visalia, CA 93277		2. COLLATERAL (Building/Mobile Home/Personal Property) PROPERTY ADDRESS (Legal Description may be attached) No property. Secured by bonds		
3. LENDER ID NO.	4. LOAN IDENTIFIER	5. AMOUNT OF FLOOD INSURANCE REQUIRED		
SECTION II				
A. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) COMMUNITY JURISDICTION				
1. NFIP Community Name	2. County(ies)	3. State	4. NFIP Community Number	
San Luis Obispo County	San Luis Obispo	CA	06079	
B. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) DATA AFFECTING BUILDING/MOBILE HOME				
1. NFIP Map Number or Community-Panel Number (Community name, if not the same as "A")	2. NFIP Map Panel Effective/ Revised Date	3. LOMA/LOMR <input type="checkbox"/> YES _____ Date	4. Flood Zone	5. No NFIP Map
1028F, 1029F, 1040F, and 1045F	08/28/2008		A	
C. FEDERAL FLOOD INSURANCE AVAILABILITY (Check all that apply)				
1. <input checked="" type="checkbox"/> Federal Flood Insurance is available (Community participates in NFIP). <input checked="" type="checkbox"/> Regular Program <input type="checkbox"/> Emergency Program of NFIP 2. <input type="checkbox"/> Federal Flood Insurance is not available because community is not participating in the NFIP. 3. <input type="checkbox"/> Building/Mobile Home is in a Coastal Barrier Resources Area (CBRA) or Otherwise Protected Area (OPA). Federal Flood Insurance may not be available. CBRA/OPA Designation Date: _____				
D. DETERMINATION				
IS BUILDING/MOBILE HOME IN SPECIAL FLOOD HAZARD AREA (ZONES CONTAINING THE LETTERS "A" OR "V")? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
If yes, flood insurance is required by the Flood Disaster Protection Act of 1973. If no, flood insurance is not required by the Flood Disaster Protection Act of 1973.				
E. COMMENTS (Optional)				
Only area within 100-year flood zone is utility line work crossing Los Osos Creek. This line work will not impact the natural and beneficial floodplain values. Some areas are within the shaded Zone X area (500-year).				
This determination is based on examining the NFIP map, any Federal Emergency Management Agency revisions to it, and any other information needed to locate the building/mobile home on the NFIP map.				
F. PREPARER'S INFORMATION				
NAME, ADDRESS, TELEPHONE NUMBER (If other than Lender) Pete Yribarren 3530 W. Orchard Ct. Visalia, CA 93277			DATE OF DETERMINATION 02/19/2010	











**United States Department of Agriculture
Rural Development
California
www.rurdev.usda.gov/ca**

March 3, 2010

MR MARK HUTCHINSON
ENVIRONMENTAL PROGRAMS MANAGER
COUNTY OF SAN LUIS OBISPO
COUNTY GOVERNMENT CENTER ROOM 207
SAN LUIS OBISPO CA 93408

Re: Proposed Los Osos Wastewater Project
Private Party Floodplain Notice

Dear Mr. Hutchinson:

In accordance with Executive Order 11988 - Floodplain Management, Section 4, this letter serves to notify you of the hazards of locating a facility in a floodplain.

Section 4.

In addition to any responsibilities under this Order and Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

If you have any questions, feel free to contact this office at (559) 734-8732.

Sincerely,

A handwritten signature in black ink, appearing to read 'Pete Yribarren'. The signature is written in a cursive, somewhat stylized script.

PETE YRIBARREN
Community Programs Specialist

3530 W. Orchard Ct • Visalia, CA 93277
Phone: (559) 734-8732 ext. 4 • Fax: (559) 732-3481 • TDD: (530) 792-5848

Committed to the future of rural communities

Rural Development is an Equal Opportunity Lender, Provider, and Employer. Complaints of discrimination should be sent to USDA, Director, Office of Civil Rights, Washington, D. C. 20250-9410



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PUBLIC WORKS

Paavo Ogren, Director

County Government Center, Room 207 • San Luis Obispo, CA 93408 • (805) 781-5252

Fax (805) 781-1229

email address: pwd@co.slo.ca.us

December 22, 2009

Bruce Henderson
Regulatory Branch
U.S. Army Corps of Engineers
2151 Alessandro Drive, Suite 110
Ventura, CA 93001

Subject: Jurisdictional Determination Request for the Los Osos Wastewater Project, 300337

Dear Mr. Henderson:

The County of San Luis Obispo is proposing to construct a wastewater treatment plant on the Giacomazzi site, and an access road and possible construction staging area on the Andre site west of the community of Los Osos, California. Thank you for joining Kate Ballantyne and me on the December 21, 2009, site visit.

The attached aerial photo shows the area with the approximate location of the new access road, a possible construction staging area, and drainages (highlighted with red dashed lines). We didn't walk the southeastern drainage on the Andre site with you, but the attached photos document its similarity to the others, and it appears to be non-jurisdictional. The access road alignment has not been firmed-up, but I learned after our visit that it will likely be further east than I thought. The alignment shown on the attached figure is a good approximation at this point.

The water from the highlighted drainages is tributary to Warden Lake and Creek, Los Osos Creek, and Morro Bay (see overall Project figure). As part of the Environmental Impact Report for the Project, a formal delineation was prepared (*Delineation of Jurisdictional Waters and Wetlands, Los Osos Wastewater Project, Los Osos, San Luis Obispo County, California*; Michael Brandman Associates, June 30, 2008). The pages we provided you in the field are from the referenced delineation report.

We are seeking your confirmation that the portions of the drainages, which may be impacted by the Project (red dashed lines), are not jurisdictional. The portions of

the drainages to be affected by the Project appear to be erosional features of the landscape with slumping banks and no evidence of an ordinary high water mark.

Thank you in advance for your time and assistance with this matter.

Sincerely,



ERIC N. WIER
Environmental Resource Specialist

Attachments: Annotated aerial photo
 Overall project site plan
 Photos of southeastern drainage on Andre site
 Treatment plant site plan

File: WBS# 300337.02

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DEPARTMENT OF THE ARMY

VENTURA REGULATORY FIELD OFFICE
2151 ALESSANDRO DRIVE, SUITE 110
VENTURA, CA 93001

April 12, 2010

REPLY TO
ATTENTION OF

Regulatory Division

Paavo Ogren, Director
County of San Luis Obispo, Department of Public Works
County Government Center, Room 207
San Luis Obispo, California 93401

SUBJECT: Determination regarding requirement for Department of the Army Permit

Dear Mr. Ogren:

Reference is made to your request (Corps File No. SPL-2009-00159-BAH) for a determination whether a Department of the Army Permit is required for the Los Osos Wastewater Project located within the unincorporated town of Los Osos, San Luis Obispo County, California. The project entails construction of a mid-town collection site and conveyance by pipeline to facultative ponds, oxidation ditches, and storage facilities on the Cemetery, Giacomazzi, Branin and Tonini properties east of the town.

The Corps' evaluation process for determining whether or not a Department of the Army permit is needed involves two tests. A permit is required if both tests are met. The first test determines whether or not the proposed project is located in a water of the United States (i.e., it is within the Corps' geographic jurisdiction). The second test determines whether or not the proposed project is a regulated activity under Section 10 of the River and Harbor Act or Section 404 of the Clean Water Act. As part of our evaluation process, we have made the determination below.

I conducted a site visit to the Cemetery and Giacomazzi properties on 21 December 2009 with Eric Wier and Kate Ballantyne of your staff to determine the presence of and potential extent of jurisdictional waters of the United States on those two properties. The Giacomazzi property includes two incised drainages that eventually connect with Los Osos Creek off of the property. The drainages appeared to be the result of tilling practices that prevent establishment of a suitable cover crop to hold the soil in place, allowing it to be eroded with seasonal rainfall events. It is determined that these two drainages on the Giacomazzi property within the project boundaries do not constitute waters of the U.S. and as such, are not subject to regulation by the Corps of Engineers under Section 404 of the Clean Water Act. Note that this determination applies only to the project boundaries as was understood on the date of the site visit. Jurisdiction may be present as the drainages approach the tributary to Los Osos Creek to the east and northeast of the facultative ponds anticipated for the Giacomazzi property. Furthermore, we examined an additional drainage that exited the northeastern corner of the Cemetery property. It was observed that this drainage did not exhibit an ordinary high water

-2-

mark indicative of the extent of Corps jurisdiction in many channels, nor did it appear to have the three factors necessary to determine the area is a wetland potentially under Corps jurisdiction. Therefore, it was determined that this drainage did not constitute a water of the U.S. and a Section 404 permit would not be necessary for construction of the proposed treatment and storage facilities associated with the Los Osos wastewater project, or the road necessary to access the project facilities in this area.

Also discussed was the pipeline over Los Osos Creek along Los Osos Valley Road. Mr. Wier informed me the expectation was to affix the new pipeline to or suspend it from the existing bridge structure. Because this method would not result in a discharge of fill material into Los Osos Creek, a near perennial creek directly tributary to Morro Bay and thence to the Pacific Ocean, a navigable water of the U.S. and otherwise subject to Corps jurisdiction, a Corps permit would not be required for the proposed work at this location.

Therefore, in closing and to reiterate the above, we have determined your proposed project is not subject to our jurisdiction under Section 404 of the Clean Water Act and a Section 404 permit would not be required from our office if the activity is performed in the manner described.

If you have any questions, please contact me at 805-585-2145 or via e-mail at Bruce.A.Henderson@usace.army.mil. Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at: <http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,



Bruce Henderson
Sr. Project Manager
North Coast Branch
Regulatory Division

STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 688-4082
Fax (916) 687-8390



May 5, 2008

Clinton Blount
County of San Luis Obispo
1414 Soquel Avenue, Suite 205
Santa Cruz, CA 95062

VIA FAX: 831-469-9137
of Pages: 2

RE: SB 18 Tribal Consultation, Los Osos Sewer Project, County of San Luis Obispo.

Dear Mr. Blount:

Government Code §65952.3 requires local governments to consult with California Native American tribes identified by the Native American Heritage Commission (NAHC) for the purpose of protecting, and/or mitigating impacts to cultural places. Attached is a consultation list of tribes with traditional lands or cultural places located within the requested plan amendment boundaries.

As a part of consultation, the NAHC recommends that local governments conduct record searches through the NAHC and California Historic Resources Information System (CHRIS) to determine if any cultural places are located within the area(s) affected by the proposed action. NAHC Sacred Lands File requests must be made in writing. All requests must include county, USGS quad map name, township, range and section. Local governments should be aware, however, that records maintained by the NAHC and CHRIS are not exhaustive, and a negative response to these searches does not preclude the existence of a cultural place. A tribe may be the only source of information regarding the existence of a cultural place.

If you receive notification of change of addresses and phone numbers from Tribes, please notify me. With your assistance we are able to assure that our consultation list contains current information.

If you have any questions, please contact me at (916) 653-4040.

Sincerely,

Katy Sanchez
Program Analyst

Attachment

05/05/2008 08:31 FAX 818 05 380 NARC 002

Native American Contacts
 San Luis Obispo County
 May 5, 2008

Lei Lynn Odom
 1339 24th Street
 Oceano , CA 93445
 (805) 489-5390
 Chumash

Matthew Darlan Goldman
 660 Camino Del Rey
 Arroyo Grande , CA 93420
 (805) 550-0461 Home
 Chumash

San Luis Obispo County Chumash Council
 Chief Mark Steven Vigil
 1030 Rittchie Road
 Grover Beach , CA 93433
 cheifmvgll@fix.net
 (805) 481-2481
 (805) 474-4729 - Fax
 Chumash

Northern Chumash Tribal Council
 Fred Collins, Spokesperson
 1177 Marsh Street, Suite 110
 San Luis Obispo , CA 93401
 (805) 801-0347 (Cell)
 Chumash

Peggy Odom
 1339 24th Street
 Oceano , 93445
 (805) 489-5390
 Chumash

Mona Olivas Tucker
 660 Camino Del Rey
 Arroyo Grande , CA 93420
 (805) 489-1052 Home
 (805) 748-2121 Cell
 Chumash

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7060.6 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed Los Osos Sewer Project; San Luis Obispo County.

STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-4082
(916) 657-5390 - Fax



January 29, 2009

RECEIVED

FEB - 2 2009

Mark Hutchinson
County of San Luis Obispo, Department of Public Works
1050 Monterey, County Govt. Center, Room 207
San Luis Obispo, CA 93408

COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PUBLIC WORKS

RE: SCH#2007121034 Los Osos Wastewater Project (LOWWP); San Luis Obispo County.

Dear Mr. Hutchinson:

The Native American Heritage Commission (NAHC) has reviewed the Notice of Completion (NOC) referenced above. The California Environmental Quality Act (CEQA) states that any project that causes a substantial adverse change in the significance of an historical resource, which includes archeological resources, is a significant effect requiring the preparation of an EIR (CEQA Guidelines 15064(b)). To comply with this provision the lead agency is required to assess whether the project will have an adverse impact on historical resources within the area of project effect (APE), and if so to mitigate that effect. To adequately assess and mitigate project-related impacts to archaeological resources, the NAHC recommends the following actions:

- ✓ Contact the appropriate regional archaeological Information Center for a record search. The record search will determine:
 - If a part or all of the area of project effect (APE) has been previously surveyed for cultural resources.
 - If any known cultural resources have already been recorded on or adjacent to the APE.
 - If the probability is low, moderate, or high that cultural resources are located in the APE.
 - If a survey is required to determine whether previously unrecorded cultural resources are present.
- ✓ If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum, and not be made available for public disclosure.
 - The final written report should be submitted within 3 months after work has been completed to the appropriate regional archaeological Information Center.
- ✓ Contact the Native American Heritage Commission for:
 - A Sacred Lands File Check. USGS 7.5 minute quadrangle name, township, range and section required.
 - A list of appropriate Native American contacts for consultation concerning the project site and to assist in the mitigation measures. Native American Contacts List attached.
- ✓ Lack of surface evidence of archeological resources does not preclude their subsurface existence.
 - Lead agencies should include in their mitigation plan provisions for the identification and evaluation of accidentally discovered archeological resources, per California Environmental Quality Act (CEQA) §15064.5(f). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American, with knowledge in cultural resources, should monitor all ground-disturbing activities.
 - Lead agencies should include in their mitigation plan provisions for the disposition of recovered artifacts, in consultation with culturally affiliated Native Americans.
 - Lead agencies should include provisions for discovery of Native American human remains in their mitigation plan. Health and Safety Code §7050.5, CEQA §15064.5(e), and Public Resources Code §5097.98 mandates the process to be followed in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery.

A12-1

Sincerely,
Katy Sanchez
Katy Sanchez
Program Analyst

CC: State Clearinghouse

A12-1

Native American Contact
 San Luis Obispo County
 January 29, 2009

Beverly Salazar Folkes
 1931 Shadybrook Drive
 Thousand Oaks , CA 91362
 805 492-7255
 (805) 558-1154 - cell
 folkes9@msn.com

Chumash
 Tataviam
 Fernandeño

Judith Bomar Grindstaff
 63161 Argyle Road
 King City , CA 93930
 (831) 385-3759-home

Salinan

Santa Ynez Band of Mission Indians
 Vincent Armenta, Chairperson
 P.O. Box 517
 Santa Ynez , CA 93460
 varmenta@santaynezchumash.org
 (805) 688-7997
 (805) 686-9578 Fax

Chumash

San Luis Obispo County Chumash Council
 Chief Mark Steven Vigil
 1030 Ritchie Road
 Grover Beach , CA 93433
 cheifmvigil@fix.net
 (805) 481-2461
 (805) 474-4729 - Fax

Chumash

Julie Lynn Tumamait
 365 North Poli Ave
 Ojai , CA 93023
 jtumamait@sbcglobal.net
 (805) 646-6214

Chumash

Diane Napoleone and Associates
 Diane Napoleone
 6997 Vista del Rincon
 La Conchita , CA 93001
 dnaassociates@sbcglobal.net

Chumash

Lei Lynn Odom
 1339 24th Street
 Oceano , CA 93445
 (805) 489-5390

Chumash

Salinan Tribe of Monterey, San Luis Obispo and San Benito Counties
 John W. Burch, Traditional Chairperson
 8315 Morro Rd, #202
 Atascadero , CA 93422
 salinantribe@aol.com
 805-460-9202
 805 235-2730 Cell
 805-460-9204

Salinan

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This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH# 2007121034 Los Osos Wastewater Project (LOWWP); San Luis Obispo County.

Native American Contact
 San Luis Obispo County
 January 29, 2009

Santa Ynez Tribal Elders Council
 Adelina Alva-Padilla, Chair Woman
 P.O. Box 365 Chumash
 Santa Ynez , CA 93460
 elders@santaynezchumash.org
 (805) 688-8446
 (805) 693-1768 FAX

Salinan Nation Cultural Preservation Association
 Robert Duckworth, Environmental Coordinator
 Drawer 2447 Salinan
 Greenfield , CA 93927
 dirobduck@thegrid.net
 (831) 385-1882
 (831) 674-5019

Randy Guzman - Folkes
 4577 Alamo Street, Unit C
 Simi Valley , CA 93063 Chumash
 ndnrandy@hotmail.com
 (805) 905-1675 - cell
 Fernandefio
 Tataviam
 Shoshone Paiute
 Yaqui

Salinan Nation Cultural Preservation Association
 Jose Freeman, President
 15200 County Road, 96B Salinan
 Woodland , CA 95695
 josefree@ccio1.com
 (530) 662-5316

Xolon Salinan Tribe
 Donna Haro
 110 Jefferson Street Salinan
 Bay Point , CA 94565
 (925) 709-6714
 (925) 458-0341 FAX

Coastal Band of the Chumash Nation
 Janet Garcia, Chairperson
 P.O. Box 4464 Chumash
 Santa Barbara , CA 93140
 805-964-3447

Salinan Nation Cultural Preservation Association
 Doug Alger, Cultural Resources Coordinator
 PO Box 56 Salinan
 Lockwood , CA 93932
 fabbq2000@earthlink.net
 (831) 262-9829 - cell
 (831) 385-3450

Mona Olivas Tucker
 660 Camino Del Rey Chumash
 Arroyo Grande , CA 93420
 (805) 489-1052 Home
 (805) 748-2121 Cell

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH# 2007121034 Los Osos Wastewater Project (LOWWP); San Luis Obispo County.

Native American Contact
San Luis Obispo County
January 29, 2009

Matthew Darian Goldman
660 Camino Del Rey
Arroyo Grande , CA 93420
(805) 550-0461 Home
Chumash

Northern Chumash Tribal Council
Fred Collins, Spokesperson
67 South Street
San Luis Obispo , CA 93401
(805) 801-0347 (Cell)
Chumash

Santa Ynez Band of Mission Indians
Sam Cohen, Tribal Administrator
P.O. Box 517
Santa Ynez , CA 93460
(805) 688-7997
(805) 686-9578 Fax
Chumash

Salinan Nation Cultural Preservation Association
Gregg Castro, Administrator
5225 Roeder Road
San Jose , CA 95111
glcastro@pacbell.net
(408) 864-4115
Salinan

Salinan-Chumash Nation
Xielolixii
3901 Q Street, Suite 31B
Bakersfield , CA 93301
xielolixii@yahoo.com
661-864-1295
408-966-8807 - cell
Salinan
Chumash

This list is current only as of the date of this document.

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This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH# 2007121034 Los Osos Wastewater Project (LOWWP); San Luis Obispo County.

Native American Heritage Commission, Katy Sanchez, February 2, 2009

Response to Comment A12-1

This comment expresses recommendations to assess and mitigate archaeological resources. Appendix H-2 and H-3 of the Draft EIR provide the requested information. A full records search was completed, an archaeological survey of the properties was completed where access was available and mitigation measures were developed. Contact with the NAHC was made in late April 2008. A letter from your office was received on May 5, 2008. The changes in the list of Native American contacts between the May 2008 and January 2009 letters was substantial. As a result, not all of the tribes on your newer list have been contacted, however, those groups with the closest ties to the project area have been involved in the development of the current project and contacts with the appropriate Native American groups will continue.

**OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION**

P.O. BOX 942896
SACRAMENTO, CA 94296-0001
(916) 653-6624 Fax: (916) 653-9824
calshpo@ohp.parks.ca.gov
www.ohp.parks.ca.gov



April 15, 2010

In Reply Refer To: EPA021022A

Cookie Hirn
Cultural Resources Officer
State Water Resources Control Board
Division of Financial Assistance
1001 I Street
Sacramento, California 95814

Re: Los Osos Wastewater Project, San Luis Obispo County, California.

Dear Ms. Hirn:

Thank you for continuing to seek my consultation regarding the Los Osos Wastewater Project. You are seeking my concurrence on your determination of the effects that the subject undertaking will have on historic properties, pursuant to 36 CFR Part 800 (as amended 8-05-04) regulations implementing Section 106 of the National Historic Preservation Act. Under the nationwide 1990 *Programmatic Agreement Among the Environmental Protection Agency, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers Concerning Compliance with the National Historic Preservation Act under EPA's State Water Pollution Control Revolving Fund Program (PA)*, the State Water Resources Control Board (SWRCB) has been delegated the authority to act for the EPA regarding Section 106 compliance.

At this time you are informing me that the undertaking, as described in earlier consultation, has substantially changed, both regarding the proposed Area of Potential Effects (APE) and in the parties that will be involved. The EPA is still involved as represented by the State Water Resources Control Board (SWRCB), but the additional parties now include the U.S. Department of Agriculture (USDA) and the County of San Luis Obispo (County). The USDA is providing partial funding for this undertaking through the American Recovery and Reinvestment Act (ARRA). At this time you are also requesting my concurrence regarding the delineation of an APE and the determination of a finding of effect pursuant to 36 CFR Part 800. Additionally you are requesting my evaluation of your proposed route of compliance with 36 CFR Part 800.4 regarding your identification and evaluation of historic properties and your proposed assessment of effects and resolution of adverse effects pursuant to 36 CFR Parts 800.5 and 800.6. In addition to your letter of March 23, 2010 (received on April 12, 2010), you have submitted the following documentation in support of your efforts to comply with Section 106:

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- *Draft Memorandum of Agreement Among the California State Water Resources Control Board, United States Department of Agriculture, and the California State Historic Preservation Officer Regarding the Los Osos Wastewater Project, San Luis Obispo County, California.*(March 2010).
- *Historic Properties Evaluation and Treatment Plan for the Los Osos Wastewater Project, San Luis Obispo County, California* (Deborah Jones, Patricia Mikkelsen, and William R. Hildebrandt, Far Western Anthropological Research Group, Inc.: March 2010 Draft Final).
- *Supplemental Archaeological Report for the Preferred Project Evaluation—Los Osos Wastewater Project, San Luis Obispo County, California* (Deborah Jones and Patricia Mikkelsen with John Berg and Vikkie Clay, Far Western Anthropological Research Group, Inc.: January 2010).
- *Archaeological Supplemental Survey of Portions of the Andre Parcels (APN 067-031-008 and 067-031-011) for the proposed Los Osos Wastewater Project* (Deborah Jones, Far Western Anthropological Research Group, Inc.: January 6, 2010).
- *Archaeological Survey Report and Sensitivity Study for Proposed Projects and Alternatives for the Los Osos Wastewater Project, San Luis Obispo County, California* (Deborah Jones and Patricia Mikkelsen with D. Craig Young and Clinton Blount (Albion Environmental), Far Western Anthropological Research Group, Inc.: September 2008).

After reviewing your current letter and supporting documentation, I have the following comments:

- 1) I concur that the APE, as delineated in Figures 6a, 6b, 6c, and 6d in Jones, Mikkelsen and Hildebrandt (March 2010 Draft Final) has been appropriately determined in accordance with 36 CFR Parts 800.4(a)(1) and 800.16(d).
- 2) I further concur that the finding of effect proposed by the SWRCB, that of Adverse Effect, is appropriate pursuant to 36 CFR Part 800.5(d)(2). In the interests of moving this ARRA project forward, I am concurring with this finding of effect at this time even though I do not agree (see item #4) that your efforts to evaluate historic properties under the National Register of Historic Places eligibility criteria have been completed pursuant to 36 CFR Part 800.4(c)(1). However, after reviewing your supporting documentation, it is evident that a finding of Adverse Effect is unavoidable.
- 3) The project description does not mention any schedule for the construction/ completion of this undertaking. Please provide details on approximate project scheduling so that a reasonable estimate of the duration for the proposed MOA can be made.
- 4) As discussed in several phone conversations (two on Tuesday, April 13 and one on Wednesday April 14) between Bill Soule of my staff and yourself, I do not concur that your efforts to identify and evaluate historic properties in the APE can be entirely addressed through phased identification and evaluation pursuant to 36 CFR Part

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800.4(b)(2) and the employment of a Memorandum of Agreement (MOA) executed pursuant to 36 CFR Part 800.6(c). I agree that a phased approach can be employed for those sites that are completely obscured by urban development (paving, etc.) in the collections areas of Los Osos and that the SWRCB can treat those historic properties that can be clearly avoided by project developments as eligible for the NRHP for the purposes of this undertaking. However, after reviewing your supporting documentation, it is obvious that archaeological work completed for the earlier version of this undertaking, and that accomplished to date for the current version, include significant data recovery efforts completed at numerous sites, largely those that will be affected by the main wastewater transmission pipelines that will convey effluent from the City of Los Osos to the proposed Wastewater Treatment Plant. I believe that the SWRCB has sufficient data in hand for NRHP eligibility determinations for many of those archaeological sites.

5) You have not compiled either a list or a description of the 49 historic properties located within the APE which would facilitate the review of this complex undertaking. When the information I have requested in item #4 is available, the SWRCB must present this data to the SHPO, identifying all sites in the APE, stating which sites are/are not eligible for the NRHP (and why, based on the four eligibility criteria), which sites will be assumed eligible for the NRHP for this project, which ones can be avoided, which ones cannot be avoided, which sites will be adversely affected, and which sites are buried under urban development and will be subject to phased evaluation and treatment. By not addressing this in your letter of March 23, you have essentially asked the SHPO to interpret all of this from the consultant reports only. This is not the SHPO's role in the Section 106 process, but is the statutory obligation of the federal agency (SWRCB) official. Please refer to 36 CFR Part 800.2(a) regarding the SWRCB role as lead federal agency.

6) As the County of San Luis Obispo is being identified as having responsibilities under the proposed Memorandum of Agreement, they should be an invited signatory in accordance with 36 CFR Part 800(c)(2)(iii), not a concurring party as stated in the draft MOA.

7) When you have received the edits/comments on the draft MOA, please forward the edited MOA to me via email as a Word document.

8) Although it is acknowledged in the Historic Properties Evaluation and Treatment Plan (HPETP), it should also be clearly stated in the MOA that it is the SWRCB's and the County's obligation to ensure that the processing, analysis, reporting, and curation of the archaeological materials that resulted from the earlier, aborted, version of this undertaking will be completed.

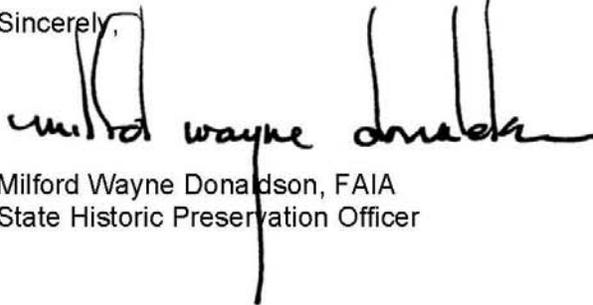
9) Please elaborate on the County's role in implementing the construction of the wastewater collection system from the individual urban properties and how the identification, evaluation, and treatment of historic properties will be managed for this aspect of the undertaking.

I will be available to continue this consultation following your submittal of the additional information/documentation as requested above. Additionally, pursuant to 36 CFR Part

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800.6(a)(1), the SWRCB must notify the Advisory Council on Historic Preservation of this finding of adverse effect, provide appropriate documentation pursuant to 36 CFR Part 800.11(e), including a copy of the draft MOA, and request that the Council respond with a written statement of their decision regarding participation in this consultation and MOA. Thank you for seeking my comments and for considering historic properties in planning your project. If you require further information, please contact Susan K Stratton, Supervisor, Project Review Unit at phone 916-651-0304 or email sstratton@parks.ca.gov or William Soule, Associate State Archeologist, at phone 916-654-4614 or email wsoule@parks.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Milford Wayne Donaldson". The signature is written in a cursive style with a long vertical line extending downwards from the end of the name.

Milford Wayne Donaldson, FAIA
State Historic Preservation Officer



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

In reply refer to:
2008/08508:MRM

JAN 15 2009

Paavo Ogren
San Luis Obispo County
Department of Public Works
County Government Center, Room 207
1050 Monterey St.
San Luis Obispo, California 93408

Dear Mr. Ogren:

NOAA's National Marine Fisheries Service (NMFS) reviewed the draft Environmental Impact Report (EIR) for the Los Osos Wastewater Project (Project) near Los Osos, California. As requested in the draft EIR, NMFS provides the following information to assist San Luis Obispo County (County) in formulating the final EIR. There is a continuing need for County to collaborate with NMFS beyond the comment period because as revealed below the Project is expected to have implications for threatened steelhead (*Oncorhynchus mykiss*) and require Section 7 consultation with NMFS. Accordingly, the information contained herein should be used to develop the final EIR and minimize adverse effects on steelhead.

The Project is of concern because threatened steelhead and critical habitat for this species are present in the action area. The final EIR should therefore clearly identify and describe the Project including interrelated and interdependent actions to the extent that NMFS may develop an understanding of the potential effects (offsite, onsite, direct, indirect, temporary, permanent) of the Project on steelhead and critical habitat. The draft EIR has included some of this information though there is some additional information NMFS will need to fully analyze effects of this Project on steelhead in the context of the Section 7 consultation. NMFS recommends that the following information be included in final EIR:

- Conduct and provide results from a survey to assess presence of steelhead in the Project area. Another survey should be conducted no later than 2 weeks prior to implementing Project activities to gain more recent information of steelhead presence at these locations just prior to undertaking the Project.
- Provide greater detail on how culvert removal and bridge installation will be conducted (i.e. design drawings, dewatering plan, time line for implementation, etc.) and the impacts expected (i.e. loss of service to the species, handling and moving steelhead, etc) from these activities. NMFS will need specifics on disturbance area including access points and extent construction vehicles will be used in the creek in order to determine the level of Project impacts to steelhead and critical habitat during section 7 consultation.

A1-1

A1-2



- Clarify whether collection pipelines will be trenched or suspended at stream crossings. The level of disturbance and threat to steelhead and critical habitat is significantly different between the two. NMFS would prefer bridge suspension as it reduces the level of disturbance to the stream during installation and eliminates the possibility of the pipeline becoming exposed due to scour and potentially creating a barrier to steelhead or need for further instream disturbance or maintenance.

A1-3
- Include risk analysis of spills to steelhead and critical habitat over long term operation of plant and collection lines (identify level of risk, likelihood of spill, spill contingency plan, etc.). Spills could result from such events as damaged pipes, big rain events that flood facilities, cause extensive uncontained runoff, or possible inundation of plant facilities with more water than it can process.

A1-4
- Include a discussion as to how the installation of this facility may influence water use or anthropogenic growth and development of the area surrounding and resulting impacts to steelhead and critical habitat.

A1-5
- Clarify in the effects to steelhead discussion whether there is any way that the Project will affect the amount and extent of surface flow in steelhead bearing streams. If so, these impacts need to be included in the analysis.

A1-6
- NMFS understanding of the project is that it is intended that there will be no direct discharge of wastewater or treated effluent to steelhead bearing streams or water bodies that connect with steelhead bearing streams. Please confirm this understanding in the discussion with effects to the species. If there is a possibility of or project component that results in the discharge of wastewater or treated effluent to steelhead bearing streams, a detailed description of the action and its effects should be developed including the water quality characteristics of the discharged water.

A1-7
- Discuss and identify potential risk or impacts due to runoff from the facility site, leach fields, or spray fields into steelhead bearing waters and critical habitat. How is runoff from these sites contained or treated?

A1-8
- The EIR should disclose that consultation with NMFS is necessary prior to undertaking the Project, in accordance with Section 7 of the Endangered Species Act. To this degree NMFS should also be included on the list of federal agencies being consulted with.

A1-9

NMFS appreciates the opportunity to provide information that would assist the County in the development of the final EIR for the subject Project. Matt McGoogan is NMFS' representative for this specific Project. Please call him at (562) 980-4026 if you have any questions concerning this letter or if you require additional information.

Sincerely,

FOR 
 Rodney R. McInnis
 Regional Administrator

Agency Comments

Commentor United States Department of Commerce National Oceanic and Atmospheric Administration, Rodney R. McInnis, January 15, 2009

Response to Comment A1-1

This comment suggests that baseline surveys and a pre-construction survey be conducted to assess the presence of steelhead within the project area. Los Osos Creek represents the only known steelhead bearing stream within the study area due to its direct connectivity with Morro Bay, lack of fish barriers, and suitable habitat elements. The preferred project no longer proposes any in-stream work within Los Osos Creek or Warden Creek, as discussed in the supplemental evaluation for the preferred project contained within Appendix Q of the Draft EIR. The crossing of Los Osos Creek and Warden Creek for conveyance pipelines will be conducted by bridge suspension, and installation of pipelines will be conducted from the road right-of-way on top of the Los Osos Creek and Warden Creek bridges. Los Osos Creek will be dry at the time of construction. The crossing will be made by securing the pipelines to the existing bridge structure. The raw wastewater pipeline will be secured to the north edge of the existing bridge using conventional pipe hangers. The treated wastewater pipeline will cross the creek on its south side through existing voids within the bridge abutments. It is anticipated that all construction activities, including access and staging, will be restricted to existing developed areas on the Los Osos Creek and Warden Creek bridge crossings and rights-of-way. It will be necessary to support the pipeline during installation. This could be accomplished from above with an excavator or similar equipment, from below with a small backhoe/loader, or with hand-built falsework. If equipment is used in the creek bed, it would be lowered into place and retrieved with a crane without the use of construction equipment within the stream. No construction access ramp would be required. It is anticipated that trimming of trees will be required during installation. No trees will be removed and the functions and values of the supporting riparian habitat will remain unaffected.

Therefore, with the implementation of reasonable and prudent measures developed through the consultation process, the project is not likely to adversely affect steelhead or critical habitat, and surveys or sampling would not be required to further analyze potential project effects.

Mitigation Measure 5.5-A6 is modified to include all measures necessary to minimize potential impacts to steelhead and critical habitat:

- 5.5-A6** ~~Additional specific avoidance measures, preconstruction survey requirements, and mitigation measures, if required, shall be provided by the NMFS consultation with regard to southern steelhead. Any impacts within Los Osos Creek shall be minimized to the maximum extent feasible. If the project proposes to use open-cut trenching or bridge suspension methods for installation of the conveyance pipeline system, the project shall perform all construction associated with the crossing of Los Osos Creek during the dry~~

~~months when the creek bed is entirely dry and there is no sign of standing water.~~

~~Project activities shall be required to occur during times when there is the least potential for southern steelhead to occur in Los Osos Creek (July-September).~~

~~If project construction is to occur within any portions of Los Osos Creek or any adjacent upland areas within 100 feet of the Creek, the project shall implement erosion, sediment, material stockpile, and dust control Best Management Practices (BMPs) at all times during construction to minimize the potential for fill or runoff to enter Los Osos Creek. Construction vehicles shall be restricted within Los Osos Creek to the maximum extent feasible required for either open cut trenching or bridge suspension methods. All construction equipment shall be maintained to prevent leaks of fuel, lubricants, or other fluids into Los Osos Creek.~~

~~Service and re-fueling procedures shall be restricted to disturbed or developemdupland areas at least 50 feet from Los Osos Creek to prevent potential spills of hazardous material. The project shall confine all heavy equipment, vehicles, and construction work to approved roads and work areas around Los Osos Creek. Stream channel work for open cut trenching or activities associated with pipe suspension shall limit disturbance to Los Osos Creek to what is necessary for construction. If the project proposes to use HDD methods, the project shall implement a frac-out contingency plan to manage the inadvertent release of any drilling muds into Los Osos Creek.~~

~~All project work areas within and around Los Osos Creek shall be restricted to pre-existing contours upon completion of work. Any impacts to riparian and wetland habitat shall be mitigated for through replacement mitigation at a set ratio as determined through consultation with the regulatory and wildlife agencies. Where themitigation requirements of separate ppolcya under the CZLUC, or the requiriemenrts of the UASACWE, RWQCB, and DCFG or other agency with jurisdiction over an area are different, the more restrictive regulations shall apply.~~

All construction activities across Los Osos Creek shall be restricted to low-flow periods of June 15 through November 1. If the channel is dry, construction can occur as early as June 1. Restricting construction activities to this work window will minimize impacts to migrating adult and smolt t steelhead, if present.

Prior to construction, the County shall retain a qualified biological monitor to be on site during all stream crossing activities associate with Los Osos Creek. The

biological monitor will be authorized to halt construction if impacts to steelhead are evident.

Prior to construction, a spill prevention plan for potentially hazardous materials shall be prepared and implemented. The plan shall include the proper handling and storage of all potentially hazardous materials, as well as the proper procedures for cleaning up and reporting of any spills. If necessary, containment berms shall be constructed to prevent spilled materials from reaching the creek channel.

Prior to construction, silt fencing shall be installed in all areas where construction occurs within 100 feet of known or potential steelhead habitat. All silt fencing, erosion control and landscaping specifications shall only include natural-fiber, biodegradable products for meshes and coir rolls to minimize impacts to species and the environment during use.

During construction, spoil sites shall be restricted to upland locations so they do not drain directly into Los Osos Creek. If a spoil site drains into a water body, catch basins shall be constructed to intercept sediment before it reaches the channels. If required, spoil sites shall be graded to reduce the potential for erosion.

During construction, equipment and materials shall be stored at least 50 feet from Los Osos Creek. No debris such as trash and spoils shall be deposited within 100 feet of waterways. Staging and storage areas for equipment, materials, fuels, lubricants and solvents, shall be restricted to locations outside of the stream channel and banks. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the stream shall be positioned over drip pans at all times. Any equipment or vehicles driven and/or operated within or adjacent to the stream shall be checked and maintained daily to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. Vehicles shall be moved away from the stream prior to refueling and lubrication.

During construction, proper and timely maintenance for all vehicles and equipment used shall be provided to reduce the potential for mechanical breakdowns leading to a spill of materials into or around the creek. Maintenance and fueling shall be restricted to safe areas away from Los Osos Creek that meet the criteria set forth in the spill prevention plan.

Immediately following construction, all construction work areas shall be restored to pre-construction channel conditions, including streambed

composition, compaction, and gradient. If required, channel banks shall be returned to original grade slope and appropriate bank stabilization techniques shall be implemented to reduce the potential for erosion and sedimentation. A plan describing pre-project conditions and restoration methods shall be prepared prior to construction.

Immediately following construction, all appropriate construction work areas will be revegetated with an appropriate assemblage of native upland vegetation, and if necessary, riparian vegetation, suitable for the area. A plan describing pre-project conditions, restoration and monitoring success criteria shall be prepared prior to construction.

Response to Comment A1-2

This comment requests that greater detail be provided on how culvert removal and bridge installation will be conducted and the impacts expected from these activities. Los Osos Creek represents the only known steelhead bearing stream within the study area due to its direct connectivity with Morro Bay, lack of fish barriers, and suitable habitat elements. The commentor is directed to the preferred project description contained within Appendix Q of the Draft EIR for a detailed description of the creek crossing method at Los Osos Creek. Specific engineering designs for the bridge suspension elements have been prepared for the project's Coastal Development Permit application. No loss to steelhead is anticipated and no handling or moving of steelhead will be required. Critical habitat within Los Osos Creek shall be avoided. The trimming of a few mature willow trees represent a temporary impact that will not result in the loss of function and value of the riparian habitat.

Response to Comment A1-3

This comment is requesting clarification on the installation method for the collection pipelines. The collection pipelines at Los Osos Creek and Warden Creek will be installed by bridge suspension and no in-stream work will be required during construction. See Response to Comment A1-1.

Response to Comment A1-4

This comment requests that a risk analysis of spills be conducted that addresses the long-term operation of the treatment facility and the collection lines. It is acknowledged that there is a level of risk associated with the unlikely event of a spill, and in some project areas, the risk may be elevated due to the proximity to steelhead bearing streams. It would be speculative to quantify the likelihood of a spill and whether such a spill would result in adverse effects to steelhead and critical habitat. The overall level of risk during project operation is greatly reduced when one considers the project design and operational requirements. The preferred project description indicates that a stormwater plan is prepared and that stormwater storage with the capability of reprocessing stormwater through the treatment plant is possible (Appendix Q, Exhibit Q3-1 of the Draft EIR). The operation of the project will be subject to an operations manual that includes an action plan to implement contingency measures in the unlikely event of a spill. Project developments have been

sited to avoid steelhead bearing streams and their tributaries with adequate setbacks. Project designs incorporate elements to curtail and contain spills in an unlikely spill event. The commentor is directed to the preferred project description contained within Appendix Q of the Draft EIR for a detailed description of the design elements. Specific engineering designs for all elements have been prepared for the project's Coastal Development Permit application.

See also Topical Response 10, Infiltration, Inflow, and Exfiltration, addressing infiltration, inflow, and exfiltration, and Topical Response 12, Sewer System Management Plan, addressing the project's Sewer System Management Plan.

Response to Comment A1-5

This comment requests that a discussion be provided that addresses how the installation of the facility may influence water use or anthropogenic growth and development, in-turn resulting in impacts to steelhead and critical habitat over the long-term. It is anticipated that the proposed project would result in an increase in anthropogenic growth but a decrease in water use within the community of Los Osos. The Los Osos Community Services District Urban Water Conservation Plan would result in a 10 percent per capita water demand reduction. See also Topical Response 9, Water Conservation Measures.

Response to Comment A1-6

This comment seeks clarification on whether the project will affect the amount and extent of surface flow in any steelhead bearing streams. The project would not affect the amount and extent of surface flow in steelhead bearing streams. Project impacts to steelhead bearing streams will be limited to the trimming of a few trees during installation of pipelines at the Los Osos Creek bridge crossing and Warden Creek bridge crossing. No in-stream work will be required and no developments are proposed within steelhead bearing streams. Project operation will not result in a change in runoff values from pre-project conditions. Post-project surface flows are anticipated to be the same as pre-project flows including the treatment plant site with its stormwater storage and storm drain outfall to a tributary of Warden Creek.

Response to Comment A1-7

This comment is seeking confirmation that there will be no direct discharge of wastewater or treated effluent into steelhead bearing streams or water bodies that connect to steelhead bearing streams. The proposed project would not result in any discharge, direct or indirect, of wastewater or treated effluent into steelhead bearing streams or tributary waters to steelhead bearing streams. All wastewater will be contained within the collection and conveyance system pipelines and treatment facility during operation. Some of the treated effluent will be contained within conveyance pipelines that will directly connect to the leachfield element on the Broderson property. The remaining treated effluent will be discharged via sprayfields for evapotranspiration within upland areas on the Tonini property. It should be acknowledged that the tributaries to Warden Creek on the Tonini property will be enhanced from their current state as a result of the land use conversion resulting from the project. The removal of grazing and agricultural activities within and around the drainages on the Tonini

property will result in an increase in water quality and stream function. Under pre-project conditions, these resources are exposed to direct disturbance and degradation from agricultural activities (in-stream equipment use, stream course diversion, disruption of natural hydrology, etc) and cattle use (excessive trampling, direct water contact, fecal deposition, grazing, etc.). These adverse uses under pre-project conditions would no longer occur under post-project conditions. The project's beneficial effects would have immediate and long-term value to downstream waters within Warden Creek and flows discharging into Morro Bay and steelhead-bearing waters.

Response to Comment A1-8

This comment requests that potential risks and impacts that may result from runoff at the facility site, leachfields, and sprayfields into steelhead bearing streams be discussed and identified. The comment further asks how runoff from these sites is to be contained or treated. See Draft EIR Section 5.3, Drainage and Surface Water Quality, and Appendix E of the Draft EIR, Drainage and Surface Water Quality, for discussion on drainage and surface water quality.

For all project elements, runoff during construction will be maintained through the implementation of project specific stormwater runoff Best Management Practices, in accordance with objectives outlined in the County of San Luis Obispo Storm Water Management Plan. Adherence to the Storm Water Management Plan would ensure that water quality standards and waste discharge requirements are not violated and the project is in compliance with National Pollutant Discharge Elimination System and Central Coast Regional Water Quality Control Board requirements. A Storm Water Pollution Prevention Plan shall also be prepared in accordance with the guidelines and requirements provided by the State Water Resources Control Board. The project would also adhere to the requirements outlined in the project specific Sedimentation and Erosion Control Plan. Compliance with these standard conditions during construction would prevent runoff-related impacts to steelhead bearing streams.

The leachfield and sprayfield elements of the project are not anticipated to result in risks or impacts associated with runoff during operation. The leachfield element does not include the development of any permanent aboveground structures or other developments that would result in an increase in surface runoff. Surface runoff would remain relatively unchanged during the operation of the leachfield due to the shallow excavation depths required and the use of gravel and native soil substrate to promote continued percolation of surface water flows. The sprayfields will not be operated during rain events and therefore would not contribute to excessive runoff. Evapotranspiration during operation would not result in any excessive runoff during the remaining portions of the year.

The treatment facility for the preferred project is not anticipated to result in risks or impacts associated with runoff during operation. The treatment facility is designed to ensure that water quality standards are met and that pre-project runoff values remain unchanged during project operation. Stormwater runoff will be collected within the project's storm drain system and then directed into detention ponds for storage and treatment onsite. As such, operation of the treatment

facility will not result in the discharge of untreated runoff or result in a change in runoff values from pre-project conditions. No runoff-related impacts to steelhead bearing waters and critical habitat are anticipated to result from treatment facility operation. See also Topical Response 11, Construction and Post-Construction Stormwater.

Response to Comment A1-9

This comment states that the Draft EIR should disclose that consultation with NMFS is necessary prior to undertaking the project, and that NMFS should be included on the list of federal agencies to be consulted with. NMFS is included as a federal agency being consulted with in Section 5.5 of the Draft EIR and Appendix G of the Draft EIR as well as under the project's discretionary actions and responsible agencies in Section 3.4.2 of the Draft EIR.

Due to the fact that the preferred project is not likely to adversely affect steelhead or critical habitat, formal consultation with NMFS may not be necessary. Informal consultation with NMFS would likely be undertaken by the State Water Resources Control Board, who may, in turn, defer informal consultation responsibilities to the County.

Mitigation Measure 5.5-A1 is modified to state the following:

5.5-A5

~~The proposed project may result in take of federally listed species and their habitat. Prior to project approval, the County shall enter into formal consultation with the USFWS and NMFS. A Biological Opinion (BO) will be prepared by the USFWS and NMFS for any proposed action which may result in potential take of a listed species and its habitat. Pending the determinations made by the USFWS and NMFS in a forthcoming BO, the proposed project will be required to fulfill all mitigation obligations and conservation measures conditioned in the BO regarding federally listed species and the their habitat. This will include preconstruction survey and avoidance measures, and compensatory mitigation for loss of occupied habitat to be incorporated and implemented prior to project development.~~

~~Specific avoidance measures, preconstruction survey requirements, and mitigation measures, if required, will be provided by the USFWS through Section 7 (or possibly Section 10) consultation with regard to federally listed species.~~

The proposed project may affect federally-listed species (Morro shoulderband snail and California red-legged frog) and as such, the USEPA shall initiate formal consultation with USFWS pursuant to Section 7(a)(2) of the federal ESA. All mandatory terms and conditions, and reasonable and prudent measures pertaining to incidental take prescribed within the

Biological Opinion and Nationwide Permit for the project the shall be fulfilled _____ and _____ implemented.



**United States Department of Agriculture
Rural Development
California
www.rurdev.usda.gov/ca**

January 8, 2010

MR ANTHONY P SPINA
NOAA NATIONAL MARINE FISHERIES SERVICE
PROTECTED RESOURCES DIVISION
501 WEST OCEAN BLVD STE 4200
LONG BEACH CA 90802

Subject: Request For Informal Consultation
Los Osos Wastewater Project
San Luis Obispo County

Dear Mr. Spina:

In accordance with 50 C.F.R. Part 402, the United States Department of Agriculture (USDA) Rural Development hereby requests informal consultation with the National Marine Fisheries Service (NMFS) regarding a not likely to adversely affect finding for the subject project. The proposed funding for this project is being considered from USDA and the State Water Resources Control Board's Clean Water State Revolving Fund Program. More specifically, USDA is considering funding for the project under the American Recovery & Reinvestment Act of 2009 (ARRA).

Information and analysis pertaining to the biological findings for this project is found in the enclosed "Biological Assessment - Fisheries" (January 2010), prepared by the County of San Luis Obispo.

As this is a not likely to adversely affect finding, and written concurrence is required from NMFS, we will wait 30 days before completing our environmental review. If you have any comments or would like additional information, please contact me at (559) 734-8732, ext. 108

Sincerely,

PETE YRIBARREN
Community Programs Specialist

3530 W. Orchard Ct. • Visalia, CA 93277
Phone: (559) 734-8732, ext. 4 • Fax: (559) 732-3481 • TDD: (530) 792-5848

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NOAA NMFS
January 8, 2010
Page 2 of 2

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JAN 13 2010

COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PUBLIC WORKS

Attachment

cc: Mark Hutchinson
Environmental Programs Manager
County of San Luis Obispo
Department of Public Works
County Government Center Room 207
San Luis Obispo, CA 93408

Kyle Ochendusko, EIT
Water Resources Control Engineer
State Water Resources Control Board
Division of Financial Assistance
1001 I Street
Sacramento, CA 95814



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 Southwest Region
 501 West Ocean Boulevard, Suite 4200
 Long Beach, California 90802-4213

FEB 22 2010

SWR/2010/00163:MRM

FEB 18 2010

Pete Yribarren
 Community Programs Specialist
 United States Department of Agriculture
 3530 W. Orchard Ct.
 Visalia, CA 93277

Dear Mr. Yribarren:

NOAA's National Marine Fisheries Service (NMFS) reviewed the U.S. Department of Agriculture's (USDA), January 8, 2010, letter concerning the County of San Luis Obispo's (County) proposed wastewater project for the coastal community of Los Osos. NMFS understands that the federal action for this consultation is USDA's funding of the project. The project involves replacing the old septic-tank system throughout most of the community with a gravity and pump-based sewage-collection system and wastewater-treatment plant. The community of Los Osos and proposed action area are located within the Los Osos Creek watershed.

This project is of concern because Los Osos Creek lies within the threatened South Central California Coast Distinct Population Segment of steelhead (*Oncorhynchus mykiss*) and is designated critical habitat for the species. The USDA determined that the proposed action is not likely to adversely affect steelhead, and requested NMFS' concurrence with this determination. NMFS cannot concur with the USDA's determination at this time because additional information regarding the proposed action is necessary to develop a complete understanding of the possible effects to threatened steelhead and critical habitat. To this end, the USDA should submit the following information to NMFS:

- Greater detail about the process for decommissioning the old septic systems and what, if any, lasting contamination effects are expected in Los Osos Creek after decommission.
- Greater detail on the composition of the treated effluent leaving the wastewater facility for reuse in the community. The submittal should fully describe the degree to which this reused water would be harmful to steelhead in Los Osos Creek, and the description should address cumulative effects as well (i.e., the treated effluent acting in combination with runoff entering the creek). Also, include a description of any protective measures that would be used to detect and prevent harmful contaminants from leaving the wastewater facility in the reused water.



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- Greater detail on the composition of treated water sent to the leach fields and possible effects to steelhead if this water entered Los Osos Creek. Discuss the measures to keep this water contained onsite and the likelihood of runoff into Los Osos Creek.
- Because the ability of the wastewater facility to service current and future residents within the collection zone appears to be dependent on goals for substantially reducing indoor water use from current averages, the submittal should include a description of the likelihood that these water-use goals will be met and potential implications and effects on the watershed if the capacity of the facility is surpassed.
- Details on the type of sewer line being proposed and the degree it is susceptible to leaks or will need maintenance over the long term. The discussion should include the types of maintenance involved, expected impacts to steelhead from such maintenance, and the monitoring and response protocols that will be implemented for the purposes of detecting leaks, cleaning spills, and ensuring that the collection system is working as intended.
- NMFS understands that the new-collection system will not allow for more population growth in the community than is currently planned for. However, part of the expected growth depends on the collection system being completed and therefore potential impacts from this growth on steelhead need to be considered as part of this consultation. Please include in the submittal a description of the anticipated effects that this growth will have on steelhead.

Thank you for your willingness to support NMFS' review of the proposed action. Once the foregoing information is received, NMFS will continue with its review of the proposed action. Please call Matt McGoogan at (562) 980-4026 if you have a question concerning this letter or if you require additional information.

Sincerely,



for Rodney R. McInnis
Regional Administrator

cc: Margaret Paul, CDFG, San Luis Obispo, California
Roger Root, FWS, Ventura, California
Copy to Admin. File#: 151422SWR2009PR00037



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**United States Department of Agriculture
Rural Development
California
www.rurdev.usda.gov/ca**

SENT VIA FEDEX

March 5, 2010

MR RODNEY R MCINNIS
REGIONAL ADMINISTRATOR
NOAA NATIONAL MARINE FISHERIES SERVICE
501 WEST OCEAN BLVD STE 4200
LONG BEACH CA 90802-4213

Subject: Informal Consultation Response
Los Osos Wastewater Project
Application for ARRA Funding

Dear Mr. McInnis:

Thank you for your review letter of February 18, 2010 requesting additional information on the Los Osos Wastewater Project. Please find attached correspondence from the County of San Luis Obispo that addresses each of the points in your letter. As indicated in this letter, the possible effects to threatened steelhead and critical habitat have been previously evaluated.

After reviewing this information, our Agency is still of the opinion that the proposed project is not likely to adversely affect steelhead. We again respectfully request written concurrence from the NMFS on this determination. We will wait 30 days before completing our environmental review.

If you have any questions, feel free to contact me at (559) 734-8732, ext. 108.

Sincerely,

PETE YRIBARREN
Community Programs Specialist

3530 W. Orchard Ct. • Visalia, CA 93277
Phone: (559) 734-8732, ext. 4 • Fax: (559) 732-3481 • TDD: (530) 792-5848

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NOAA NMFS Response
March 5, 2010
Page 2 of 2

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MAR - 8 2010

COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PUBLIC WORKS

Attachments

cc: Mark Hutchinson
Environmental Programs Manager
County of San Luis Obispo
Department of Public Works
County Government Center Room 207
San Luis Obispo, CA 93408

Kyle Ochendusko, EIT
Water Resources Control Engineer
State Water Resources Control Board
Division of Financial Assistance
1001 I Street
Sacramento, CA 95814

March 3, 2010

Pete Yribarren
Community Programs Specialist
3530 West Orchard Court
Visalia, CA 93277-7360

Subject: Response to Questions from NOAA Fisheries

Dear Mr. Yribarren:

This letter provides responses to the questions from the National Marine Fisheries Service in response to your January 8, 2010, request for consultation.

Question 1: Greater detail about the process for decommissioning the old septic systems and what, if any, lasting contamination effects are expected in Los Osos Creek after decommission.

Response:

The methods required to “abandon” (formally discontinue use of) an existing underground septic tank are specified in the uniform plumbing code. The requirements are fairly straightforward:

- a) Remove all contents of the tank by employing the services of a licensed pumper who can provide documentation that the tank was properly emptied.
- b) Break or punch holes in the bottom of the tank. This will allow rainwater or irrigation return to flow through into the underlying groundwater, and prevent the tank from holding water and developing a subsurface sump. Depending on the tank, the top may also need to be broken (to facilitate filling), but tank lid materials are then typically placed into the abandoned tank.
- c) Fill the tank with an inert material that will flow into any voids, convey percolating water, and remain relatively stable when saturated. Typically this means sand, gravel, or concrete slurry.
- d) If the area where the tank is located is to be built over at a later date, special requirements to ensure proper soil compaction may apply.

There is no requirement to dig up the entire tank and remove it from the ground. There is also no requirement, and no need, to dig up existing leach fields or leach pits once their use is discontinued. Because there are no industrial uses in Los Osos that discharge known

toxins into leach fields, there should be no lasting contamination effects. In the short term, the higher biological activity currently occurring below the leach fields will rapidly diminish as biological materials associated with domestic wastewater are no longer discharged into the soil.

It is important to note (see Figure 2 in the Biological Assessment) that the wastewater service area does not extend to the septic systems located closest to Los Osos Creek. The wastewater project will serve only those parcels within the Central Coast Regional Water Quality Control Board's designated wastewater discharge prohibition zone. Septic systems outside the service area currently meet the basin plan standards for density, depth to groundwater, etc. As you may be aware, the Central Coast Regional Water Quality Control Board has adopted pathogen, nutrient, and sediment TMDL (Total Maximum Daily Load) orders for Los Osos Creek and adjacent water bodies. To the extent that existing septic systems may be contributing nutrients and/or pathogens to Los Osos Creek, our understanding is that these impacts will be addressed through statewide septic system management plans, and not by connecting rural septic systems to the proposed wastewater system in Los Osos.

Question 2: Greater detail on the composition of the treated effluent leaving the wastewater facility for reuse in the community. The submittal should fully describe the degree to which this reused water would be harmful to steelhead in Los Osos Creek, and the description should address cumulative effects as well (i.e., the treated effluent acting in combination with runoff entering the creek). Also, include a description of any protective measures that would be used to detect and prevent harmful contaminants from leaving the wastewater facility in the reused water.

Response:

The wastewater treatment plant will produce Disinfected Tertiary Recycled Water as defined at Section 60301.230 of Title 22 of the California Code of Regulations, which means a filtered and subsequently disinfected wastewater that meets the following criteria:

- (a) The filtered wastewater has been disinfected by either:
 - (1) A chlorine disinfection process following filtration that, provides a CT (the product of total chlorine residual and modal contact time measured at the same point) value of not less than 450 milligram-minutes per liter at all times with a modal contact time of at least 90 minutes, based on peak dry weather design flow; or
 - (2) A disinfection process that, when combined with the filtration process, has been demonstrated to inactivate and/or remove 99.999 percent of the plaque-forming units of F-specific bacteriophage MS2, or polio virus in the wastewater. A virus that is at least as resistant to disinfection as polio virus may be used for purposes of the demonstration.
- (b) The median concentration of total coliform bacteria, measured in the disinfected effluent, does not exceed an MPN of 2.2 per 100 milliliters utilizing the bacteriological results of the last seven days for which analyses has been completed, and the number of total coliform bacteria does not exceed an MPN of 23 per 100 milliliters in more than one sample in any 30 day period. No sample shall exceed an MPN of 240 total coliform bacteria per 100 milliliters.

The recycled water will be suitable for irrigation of food crops, irrigation of school grounds, and irrigation of urban landscapes. In keeping with California health codes, the recycled water distribution lines are required to maintain a chlorine residual, the same as drinking water lines.

The threat to steelhead posed by the recycled water is the same as that posed by domestic drinking water: disinfectants (chlorine), temperature, pH, and lower dissolved oxygen. All of the water leaving the plant will be subject to the monitoring and testing requirements specified by the Regional Water Quality Control Board in the plant's Waste Discharge Requirements (WDR's), and by the State Water Resources Control Board, Order No. 2009-0006-DWQ; General Waste Discharge Requirements for Landscape Irrigation Uses of Municipal Recycled Water (General Permit). Note that the General Permit contains substantial use and monitoring requirements that apply to the use of recycled water produced by the project.

Recycled water used for urban irrigation, together with water placed at the Broderson and Bayridge leach fields, will pose no threat to steelhead or Los Osos Creek. Only one of the urban irrigation sites (Los Osos Middle School) drains to Los Osos Creek, and no recycled water will be provided during wet weather, to any user.

Agricultural irrigators would replace groundwater currently pumped from Los Osos Creek underflow with recycled water. Although the initial amount available to agriculture will only reduce groundwater pumping, in the creek zone, by a fraction, each user will be subject to the irrigated agricultural waiver requirements of the Regional Water Quality Control Board, in addition to monitoring requirements included in the WDRs issued for the wastewater project. As with urban irrigation, no recycled water will be provided to any user during wet weather. In the unlikely event that an agricultural user allowed recycled water to runoff irrigated lands, the impact on Los Osos Creek would be no different than would occur if the farmer irrigated solely with groundwater.

Question 3: Greater detail on the composition of treated water sent to the leach fields and possible effects to steelhead if this water entered Los Osos Creek. Discuss the measures to keep this water contained onsite and the likelihood of runoff into Los Osos Creek.

Response:

All water leaving the treatment plant is of the same treatment level and quality (see above). The only concern for impacts to steelhead is a rupture in the treated water line where it crosses Los Osos Creek on Los Osos Valley Road. Consequently, this line will be located above ground at the creek crossing, to facilitate regular ongoing inspection and maintenance. This section of the pipe will be constructed of ductile iron or an equivalent material, which, being stronger than the buried pipe material, will better resist wear or damage. As noted above, the threat to steelhead from a spill into the creek is essentially the same as that posed by domestic drinking water.

We are aware of potential issues involving emerging contaminants (pharmaceuticals, etc.) contained in recycled water. However, the project itself will remove substantial amounts of septage containing the same elements from the local hydrologic cycle. As noted above, recycled water is used in a much more controlled manner than currently occurs with the

operation of numerous residential septic systems. Consequently, the potential negative impacts of emerging contaminants on steelhead, especially those fish that move through the Morro Bay Estuary, should be reduced by the project over existing conditions.

Question 4: Because the ability of the wastewater facility to service current and future residents within the collection zone appears to be dependent on goals for substantially reducing indoor water use from current averages, the submittal should include a description of the likelihood that these water-use goals will be met and potential implications and effects on the watershed if the capacity of the facility is surpassed.

Response:

The indoor per capita water use goal is 50 gallons per day per person. Although the County has no water purveyor authority in Los Osos, the proposed project includes retrofitting every building connecting to the wastewater system with low-flow toilets, showerheads, and faucets. These measures alone should bring indoor use very close to or below the 50 gallons per day goal. In addition, the project will implement a comprehensive and on-going water conservation program (in cooperation with the community water purveyors). Note that water conservation measures are included in both the project description, and as conditions of approval in the project's Coastal Development Permit.

At the same time, and as confirmed by the County Board of Supervisors, the treatment plant design includes additional redundancy above and beyond traditional design standards by maintaining a design dry-weather flow based on current statewide average indoor water use rates of 76 gallons per day per capita. (Note that the dry-weather flow design standard also includes the ability to handle the worst case wet-weather flow as well). Consequently, if the community fails to meet water conservation goals, the treatment plant will still operate in a conservative mode relative to capacity.

Two additional factors are important in understanding the treatment plant capacity relative to population growth and potential impacts to steelhead:

1. The wastewater service area is currently 85% built out with an estimated population of 12,500. As reflected in the Coastal Development Permit Conditions of Approval, "to prevent the wastewater treatment system from inducing growth that cannot be safely sustained by available water supplies, the sewer authority is prohibited from providing service to existing undeveloped parcels within the service area, unless and until the Estero Area Plan is amended to incorporate a sustainable build out target that indicates that there is water available to support such development without impacts to wetlands and habitats." It is clear from existing available information that a sustainable water supply is at least partly dependent on the community achieving the desired level of water conservation. If the water conservation goals are not met, then no additional growth can occur.
2. The treatment plant design includes 46 acre feet of on-site storage. The storage would typically be used to supplement irrigation demands during summer months. In the event effluent leaving the plant failed to meet discharge standards, the storage ponds can be used to hold water for re-treatment. This element of the project design is included in recognition of the plant location within the coastal zone and in the watershed of the Morro Bay Estuary.

Question 5: Details on the type of sewer line being proposed and the degree it is susceptible to leaks or will need maintenance over the long term. The discussion should include the types of maintenance involved, expected impacts to steelhead from such maintenance, and the monitoring and response protocols that will be implemented for the purposes of detecting leaks, cleaning spills, and ensuring that the collection system is working as intended.

Response:

The majority of the collection system is expected to be constructed with Polyvinyl Chloride (PVC) pipe. These pipe systems are designed and built with water tight, flexible seals, following international specifications issued by the ASTM. The flexible seals themselves are designed to prevent leaks in the event of pipe deformation, settling, or shifting. ASTM International, originally known as the American Society for Testing and Materials, is an international standards organization that develops and publishes technical standards for a wide range of materials, products, systems, and services. Studies of PVC gravity sewer pipes have found that the pipes perform as new, with no evidence of wear or deterioration, after decades in service and in adverse conditions. (A. J. Whittle and J. Tennakoon, "Predicting the Residual Life of PVC Sewer Pipes" *Plastics, Rubber and Composites*, V.34, No. 7, Sept. 2005, pp 311-317) ("Maintenance of PVC Sewer Pipe" Uni-Bell PVC Pipe Association, May 2003). Inferences by some community members that these pipelines are not sealed are incorrect. In the event of line breaks resulting from earthquakes and other catastrophic events, these pipelines would infiltrate water, rather than exfiltrate, which would occur in a primarily pressurized type of system.

As required by the Coastal Development Permit, where the collection system pipes will be located in areas of high groundwater, or areas subject to future 5 foot sea level rise, and as identified in the field during construction; the gravity collection system will utilize fusion welded pipes or chemically sealed pipes. In areas of high groundwater, additional inspections to ensure proper installation will be completed prior to backfilling the trenches. All laterals to individual residences will utilize fusion welded pipes or chemically sealed pipes. Lateral connections at the property line will also utilize fusion welded pipes, chemically sealed pipes, or collars.

Portions of the collection system consist of pressurized force mains. The most common pipe system used for force mains is High Density Polyethylene (HDPE) with fusion welded joints to maintain watertight integrity. This type of pressurized piping system has a strong record of performance operating in a leak free condition.

In the unlikely event that spills and leaks in the collection and recycled water distribution system occur, system operators would respond immediately. Normal staffing hours are 8-5 Monday thru Friday, with operators on-call 24 hours/day seven days/week. Various automated systems monitor water levels in pump vaults, pump operations, and pipe pressures on a continuous basis. Alarms, if they occur, are sent to the treatment plant and, in off hours, to the on-call operator(s). Spill and repair response is conducted by the operators; all such spills and leaks are reported to the Regional Water Quality Control Board. Measures to modify the system and/or operational methods are then incorporated into operating procedures to avoid reoccurrences. At the same time, it should be noted that, as shown on Figure 2 in the Biological Assessment, the vast majority of the collection system is

located away from Los Osos Creek. Any spill or overflow from the collection system would have minimal chance of directly impacting the Creek.

Routine maintenance involves regular inspections (including video inspections of pipeline interiors) along with scheduled cleaning and/or replacement of pumps, valves, monitoring equipment etc. No impacts to water quality or steelhead habitat should occur from regular maintenance. Repairs to pipelines, if needed, could occur in the streets using methods similar to the initial construction process, or by using any one of a number on in-situ pipe repair systems that do not require street excavation. These methods have a proven track record and are becoming the standard for wastewater systems nationwide.

With respect to regular maintenance and inspection, California regulations require all sewer systems to be inspected and maintained on an ongoing basis, through the preparation and implementation of a Sewer System Management Plan. Although a new wastewater collection system built and maintained to current standards will be water tight, regular inspection and maintenance is an integral part of operating any such system. The project will develop and implement a Sewer System Management Plan with the overall objective of facilitating proper funding and management of the sewer system. The Plan will include provisions to provide proper and efficient management, operation, and maintenance of the sewer system, while taking into consideration risk management and cost benefit analysis. Additionally, the Plan will contain a spill response plan that establishes standard procedures for immediate response to a spill in a manner designed to minimize water quality impacts and potential nuisance conditions. The Plan will address the following elements required by California regulations:

Goal: The goal of the SSMP is to provide a plan and schedule to properly manage, operate, and maintain all parts of the sanitary sewer system. This will help reduce and prevent overflows, as well as mitigate any spills that do occur.

Organization: The SSMP must identify:

- (a) The name of the responsible or authorized representative;
- (b) The names and telephone numbers for management, administrative, and maintenance positions responsible for implementing specific measures in the SSMP program. The SSMP must identify lines of authority through an organization chart or similar document with a narrative explanation; and
- (c) The chain of communication for reporting spills, from receipt of a complaint or other information, including the person responsible for reporting spills to the State and Regional Water Board and other agencies if applicable (such as the County Health Officer, County Environmental Health Agency, Regional Water Board, and/or State Office of Emergency Services (OES)).

Legal Authority: The County must demonstrate, through sanitary sewer system use ordinances, service agreements, or other legally binding procedures, that it possesses the necessary legal authority to:

- (a) Prevent illicit discharges into its sanitary sewer system;
- (b) Require that sewers and connections be properly designed and constructed;
- (c) Ensure access for maintenance, inspection, or repairs for portions of the laterals owned or maintained by the County;
- (d) Limit the discharge of fats, oils, grease and other debris that may cause blockages; and
- (e) Enforce any violation of its sewer ordinances.

Operation and Maintenance Program: The SSMP must include those elements listed below that are appropriate and applicable to the system:

- (a) Maintain an up-to-date map of the sanitary sewer system, showing all gravity line segments and manholes, pumping facilities, pressure pipes and valves, and applicable stormwater conveyance facilities;
- (b) Describe routine preventive operation and maintenance activities by staff and contractors, including a system for scheduling regular maintenance and cleaning of the sanitary sewer system with more frequent cleaning and maintenance targeted at known problem areas. The Preventative Maintenance (PM) program should have a system to document scheduled and conducted activities, such as work orders;
- (c) Develop a rehabilitation and replacement plan to identify and prioritize system deficiencies and implement short-term and long-term rehabilitation actions to address each deficiency. The program should include regular visual and TV inspections of manholes and sewer pipes, and a system for ranking the condition of sewer pipes and scheduling rehabilitation. Rehabilitation and replacement should focus on sewer pipes that are at risk of collapse or prone to more frequent blockages due to pipe defects. Finally, the rehabilitation and replacement plan should include a capital improvement plan that addresses proper management and protection of the infrastructure assets. The plan shall include a time schedule for implementing the short- and long-term plans plus a schedule for developing the funds needed for the capital improvement plan;
- (d) Provide training on a regular basis for staff in sanitary sewer system operations and maintenance, and require contractors to be appropriately trained; and
- (e) Provide equipment and replacement part inventories, including identification of critical replacement parts.

Design and Performance Provisions:

- (a) Design and construction standards and specifications for the installation of new sanitary sewer systems, pump stations and other appurtenances; and for the rehabilitation and repair of existing sanitary sewer systems; and
- (b) Procedures and standards for inspecting and testing the installation of new sewers, pumps, and other appurtenances; and for rehabilitation and repair projects.

Overflow Emergency Response Plan: The County will develop and implement an overflow Emergency Response Plan that identifies measures to protect public health and the environment. At a minimum, this plan must include the following:

- (a) Proper notification procedures so that the primary responders and regulatory agencies are informed of all overflows in a timely manner;
- (b) A program to ensure an appropriate response to all overflows;
- (c) Procedures to ensure prompt notification to appropriate regulatory agencies and other potentially affected entities;
- (d) Procedures to ensure that appropriate staff and contractor personnel are aware of and follow the Emergency Response Plan, and are appropriately trained;
- (e) Procedures to address emergency operations, such as traffic and crowd control and other necessary response activities; and
- (f) A program to ensure that all reasonable steps are taken to contain and prevent the discharge of untreated and partially treated wastewater to waters of the United States, and to minimize or correct any adverse impact on the environment resulting from the overflow, including such accelerated or additional monitoring as may be necessary to determine the nature and impact of the discharge.

FOG (Fats, Oils & Grease) Control Program: The County will evaluate the service area to determine whether a FOG control program is needed. If FOG is found to be a problem, the County will prepare and implement a FOG source control program to reduce the amount of these substances discharged to the sanitary sewer system. This plan shall include the following as appropriate:

- (a) An implementation plan and schedule for a public education outreach program that promotes proper disposal of FOG;
- (b) A plan and schedule for the disposal of FOG generated within the sanitary sewer system service area. This may include a list of acceptable disposal facilities and/or additional

facilities needed to adequately dispose of FOG generated within a sanitary sewer system service area;

(c) The legal authority to prohibit discharges to the system and identify measures to prevent spills and blockages caused by FOG;

(d) Requirements to install grease removal devices (such as traps or interceptors), design standards for the removal devices, maintenance requirements, BMP requirements, record keeping and reporting requirements;

(e) Authority to inspect grease producing facilities, enforcement authorities, and whether the Enrollee has sufficient staff to inspect and enforce the FOG ordinance;

(f) An identification of sanitary sewer system sections subject to FOG blockages and establishment of a cleaning maintenance schedule for each section; and

(g) Development and implementation of source control measures for all sources of FOG discharged to the sanitary sewer system for each section identified in (f) above.

System Evaluation and Capacity Assurance Plan: The County will prepare and implement a Capital Improvement Plan (CIP) that will provide hydraulic capacity of key sanitary sewer system elements for dry weather peak flow conditions, as well as the appropriate design storm or wet weather event. At a minimum, the Plan must include:

(a) Evaluation: Actions needed to evaluate those portions of the sanitary sewer system that are experiencing or contributing to an overflow discharge caused by hydraulic deficiency. The evaluation must provide estimates of peak flows including flows from overflows associated with conditions similar to those causing overflow events, estimates of the capacity of key system components, hydraulic deficiencies (including components of the system with limiting capacity) and the major sources that contribute to the peak flows associated with overflow events;

(b) Design Criteria: Where design criteria do not exist or are deficient, undertake the evaluation identified in (a) above to establish appropriate design criteria; and

(c) Capacity Enhancement Measures: The steps needed to establish a short- and long-term CIP to address identified hydraulic deficiencies, including prioritization, alternatives analysis, and schedules. The CIP may include increases in pipe size, I/I reduction programs, increases and redundancy in pumping capacity, and storage facilities. The CIP shall include an implementation schedule and shall identify sources of funding;

(d) Schedule: The County will develop a schedule of completion dates for all portions of the Capital Improvement Program developed in (a)-(c) above.

Monitoring, Measurement, and Program Modifications: The County will:

(a) Maintain relevant information that can be used to establish and prioritize appropriate SSMP activities;

(b) Monitor the implementation and, where appropriate, measure the effectiveness of each element of the SSMP;

(c) Assess the success of the preventative maintenance program;

(d) Update program elements, as appropriate, based on monitoring or performance evaluations; and

(e) Identify and illustrate SSO trends, including: frequency, location, and volume.

SSMP Program Audits: As part of the SSMP, the County will conduct periodic internal audits, appropriate to the size of the system and the number of spills. At a minimum, these audits must occur every two years and a report must be prepared and kept on file. This audit shall focus on evaluating the effectiveness of the SSMP and the compliance with the SSMP, including identification of any deficiencies in the SSMP and steps to correct them.

Communication Program: The County will communicate on a regular basis with the public on the development, implementation, and performance of the SSMP. The communication system shall provide the public the opportunity to provide input as the program is developed and implemented. The County will also create a plan of communication with systems that are tributary and/or satellite to the sanitary sewer system (roads, drainage, etc.).

Question 6: NMFS understands that the new-collection system will not allow for more population growth in the community than is currently planned for. However, part of the expected growth depends on the collection system being completed and therefore potential impacts from this growth on steelhead need to be considered as part of this consultation. Please include in the submittal a description of the anticipated effects that this growth will have on steelhead.

Response:

The current population of the wastewater service area is estimated at 12,500. Build out of the service is estimated at 14,428; a potential increase of 1,928 persons (about 15%). The current population is evenly spread over the service area such that additional population growth will occur as infill within the existing urban area. Consequently, any minor increases in urban runoff that might occur would incrementally increase existing flows rather than create new areas of development and runoff.

The County, all seven cities, and CalPoly State University are designated communities under the federal Clean Water Act's NPDES Phase II Urban Stormwater mandate. As a result, all are implementing Storm Water Management Plans, which will result in improvements to water quality in receiving streams and rivers. Los Osos is designated as an "urbanized" area in the County's Stormwater Management Plan. As such, the community is subject to all of the provisions of the Plan, including public education, public participation, construction and post construction storm water management, illicit discharge prohibitions, and municipal operations. Significantly, the County's Plan contains new requirements for all new development to implement Low Impact Development (LID) measures designed expressly to protect and improve urban storm water quality. Overall, the growth attributable to the project is not substantial and will be limited to infill in the existing urban area. Water quality impacts will be subject to new post construction stormwater standards, including LID, which will serve to mitigate potential stormwater impacts on steelhead.

It should also be noted that the majority of the area where the growth would occur drains directly to the Morro Bay estuary, and not to Los Osos Creek. This is not to say that stormwater drainage into the estuary is not an important issue, rather, it is to note that there will be no substantial increase in stormwater runoff to Los Osos Creek as a result of growth attributable to this project.

Water to support the additional growth will come primarily from two sources: conservation programs and revisions in the groundwater pumping programs currently being used by the local water purveyors. A key to this issue is the requirement, set by the Coastal Commission in 2004 and carried forward in the current project's CDP, that no growth can occur until a "sustainable build out target that indicates that there is water available to support such development without impacts to wetlands and habitats" is identified (see #4 above). The Water Management Plan, once developed, will be subject to public and agency review and approval through the process of amending the County's Local Coastal Plan to set the growth limit. Clearly, any water management plan that negatively impacts steelhead could not be approved, given the "without impacts to wetlands and habitats" requirement. Because the process of amending the Local Coastal Plan is a public process that requires the involvement of resource agencies, we expect that NOAA Fisheries will have ample opportunity to fully participate in that process.

Therefore, with the protective measures already in place to address urban runoff, and the established process required to identify an appropriate water source to support further growth, the potential growth that may result from the project, however limited, could not result in an adverse impact to steelhead or their habitat.

Project Purpose

The overarching objective of the Los Osos Wastewater Project is to end the ongoing water pollution impacts of over 4,200 substandard septic systems currently in use in Los Osos. While the water quality impacts associated with these systems has been linked to issues in Morro Bay, and not directly to Los Osos Creek, there is no question that improving water quality in the Morro Bay Estuary, by any increment, will result in benefits to steelhead. In addition, using high quality recycled water to irrigate crops currently irrigated with creek underflow will also provide habitat benefits to the species. The potential construction, operational, and secondary effects on Los Osos Creek are documented in the Biological Assessment, as well as in the project's Environmental Impact Report. All such effects have been carefully considered; the majority have been completely avoided through project planning and with the inclusion of key design elements. Remaining effects resulting from construction at the Los Osos Creek Bridge are clearly minor and fully mitigated.

We hope the information contained in this letter is sufficient for the consultation process to continue. If you have any additional questions, require additional discussion of the issues discussed, or need more information from us, please do not hesitate to contact me at (805) 781-5458. We are available to meet with you and/or representatives of NOAA Fisheries at any time.

Sincerely,

MARK HUTCHINSON
Environmental Programs Manager

Enclosures: State Water Resources Control Board Order No. 2009-0006-DWQ, General Waste Discharge Requirements for Landscape Irrigation Uses of Municipal Recycled Water (General Permit)

cc: Paavo Ogren, Director of Public Works
John Waddell, Project Manager
Margaret Paul, CDFG
Roger Root, USFWS

File: LOWWP (300337.03)

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

April 15, 2010

2010/00163:MRM

Pete Yribarren
Community Programs Specialist
United States Department of Agriculture
3530 W. Orchard Ct.
Visalia, CA 93277

Dear Mr. Yribarren:

NOAA's National Marine Fisheries Service (NMFS) reviewed the supplemental information provided with the U.S. Department of Agriculture's (USDA), March 5, 2010, letter concerning the County of San Luis Obispo's (County) proposed wastewater project for the coastal community of Los Osos. This supplemental information was provided in response to NMFS' February 18, 2010, letter that requested additional information about this project. The supplemental information has allowed NMFS to develop a complete understanding of the possible effects of the project on the threatened South Central California Coast (SCCC) Distinct Population Segment (DPS) of steelhead (*Oncorhynchus mykiss*) and designated critical habitat for this species. As such, NMFS can now render a determination with respect to the consultation being performed under Section 7 of the U.S. Endangered Species Act.

NMFS understands that the federal action for this consultation is the USDA's funding of the project. The project involves replacing the old septic-tank system throughout most of the community with a gravity and pump-based sewage-collection system and wastewater-treatment plant. Project activities include construction of a wastewater treatment plant; implementation of a water conservation program; installation of low-flow toilets, showerheads, and faucets to every building that is connected to the wastewater system; installation of monitoring wells; installation of wastewater and recycled-water pipelines; attachment of wastewater and recycled-water pipelines to the bridge at Los Osos Valley Road where it crosses Los Osos Creek; installation of several small pump-stations to pump wastewater collected at low elevations; and construction of two leachfields. The community of Los Osos and proposed action area are located within the Los Osos Creek watershed, which drains into Morro Bay.

This project is of concern because Morro Bay and the Los Osos Creek watershed are within the threatened SCCC DPS of steelhead and are designated critical habitat for the species. The USDA determined that the proposed action is not likely to adversely affect steelhead or critical habitat, and requested NMFS' concurrence with this determination. NMFS concurs with the USDA's determination for reasons described as follows.



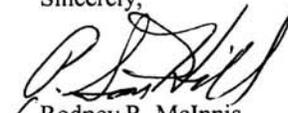
The project activities will be largely confined to upland areas away from steelhead and designated critical habitat for this species. Construction activities to attach wastewater and recycled-water pipelines to the Los Osos Valley Road Bridge will occur only when the stream is dry. Therefore, no dewatering or moving of steelhead will need to occur as a result of this project. If a small backhoe or other equipment is needed in the creek to support the pipelines during installation, equipment will be lowered into place and retrieved with a crane. No access ramp will need to be constructed, thereby reducing the magnitude and degree of potential disturbance to riparian habitats.

The greater part of the collection system is far removed from Los Osos Creek and Morro Bay, reducing the likelihood that operating the system would directly impact steelhead or critical habitat for this species in either water-body. In addition, the majority of the collection system will be constructed with Polyvinyl Chloride pipe, which has been found to be less susceptible to deterioration and is designed to be flexible so that watertight seals are maintained even in the event of pipe deformation, settling, or shifting. At portions of the collection system where there are pressurized force-mains, joints will be fusion welded to maintain watertight integrity. The use of such materials and construction methods along with monitoring protocols, alarm systems, and the development and implementation of a Sewer System Management Plan will further reduce the likelihood of any contaminants escaping from the collection system or entering Los Osos Creek or Morro Bay.

With regard to potential population-inducing effects on steelhead and designated critical habitat, the new wastewater system is expected to support an increase in population of about 10-15%, but only within areas that drain to Morro Bay, not Los Osos Creek. While Morro Bay is an important estuarine area for steelhead, any new development will be limited to small parcels at locations that are already designated throughout the community. Because the parcels are small in size and already exist in an urbanized area, development of the parcels is not anticipated to significantly alter runoff patterns or increase contaminants in runoff above existing levels. Furthermore, any development will be required to follow Low Impact Development measures designed specifically to protect and improve urban storm-water quality. Therefore overall growth attributed to the project is not expected to noticeably impact steelhead or critical habitat in Morro Bay.

This concludes informal section 7 consultation for this proposed action. Consultation must be reinitiated where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and: (1) if new information becomes available revealing effects of the action on listed species in a manner or to an extent not previously considered, (2) if the agency action is subsequently modified in a manner that causes an effect to listed species that was not considered, or (3) if a new species or critical habitat is designated that may be affected by this action. Please call Matt McGoogan at (562) 980-4026 if you have any questions concerning this letter or if you require additional information.

Sincerely,



for
Rodney R. McInnis
Regional Administrator

cc: Margaret Paul, CDFG, San Luis Obispo, California
Roger Root, FWS, Ventura, California
Copy to Admin. File#: 151422SWR2009PR00037



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003

IN REPLY REFER TO:
2009-FA-0048

January 29, 2009

RECEIVED

FEB - 2 2009

COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PUBLIC WORKS

Mark Hutchinson
Environmental Programs Manager
San Luis Obispo County Department of Public Works
County Government Center, Room 207
San Luis Obispo, California 93408

Subject: Comments on the Draft Environmental Impact Report, County of San Luis
Obispo, Los Osos Wastewater Project, SCH No. 2007121034

Dear Mr. Hutchinson:

This letter conveys the U.S. Fish and Wildlife Service's (Service) comments on the draft
environmental impact report (DEIR) prepared for the proposed Los Osos Wastewater Project
(LOWWP; MBA 2008). The DEIR, without appendices, was received in the Ventura Fish and
Wildlife Office on December 4, 2008.

The Service's responsibilities include administering the Endangered Species Act of 1973, as
amended (Act), including sections 7, 9, and 10. Section 9 of the Act prohibits the taking of any
federally listed endangered or threatened species. Section 3(18) of the Act defines "take" to
mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to
engage in any such conduct. Service regulations (50 CFR 17.3) further define harm to include
significant habitat modification or degradation which actually kills or injures wildlife by
significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.
Harassment is defined by the Service as an intentional or negligent act or omission that creates
the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt
normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.
The Act provides for civil and criminal penalties for the unlawful taking of listed species.
Exemptions to the prohibitions against take may be obtained through coordination with the
Service in two ways. If a project is to be funded, authorized, or carried out by a Federal agency
and may affect a listed species, the Federal agency must consult with the Service, pursuant to
section 7(a)(2) of the Act. If a proposed project does not involve a Federal agency but may
result in take of a listed animal species, the project proponent should apply to the Service for an
incidental take permit, pursuant to section 10(a)(1)(B) of the Act.

The LOWWP DEIR is intended to evaluate the potential environmental impacts associated with
a wastewater collection, treatment, and disposal system for the community of Los Osos and
includes an equal level of environmental analysis for four (4) preliminary project alternatives at a
conceptual design level of construction. Facility operational impacts for each are also provided

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to the degree that they are known. The preferred LOWWP alternative selected could be any one of the four alternatives or an alternative combination of project components. Current wastewater treatment for the community consists of individual septic systems serving each developed property, or in some cases multiple properties. The County of San Luis Obispo (County) is the lead agency for the preparation of this DEIR pursuant to the California Environmental Quality Act (CEQA).

The project is located within, and at the outskirts, of the community of Los Osos. Los Osos is an unincorporated coastal community of about 15,000 residents located in San Luis Obispo County at the south end of Morro Bay, approximately about 12 miles west of the City of San Luis Obispo. The City of Morro Bay lies about two miles to the north. The majority of Los Osos has been built on an ancient dune system formed by centuries of wind-blown beach sand deposited along the south end of Morro Bay. As a result, the terrain consists of gently rolling hills and sandy soil substrates that support twelve vegetation communities/habitat types: non-native annual grassland, coastal sage scrub, central (Lucian) coastal scrub, coast live oak woodland, central coast live oak riparian forest, central coast arroyo willow riparian woodland, vernal marsh, freshwater marsh, eucalyptus woodland, agriculture, disturbed/ruderal, and urban/disturbed.

Based primarily on an assessment of those habitat types present within the project area, the DEIR and Appendix G (Biological Resources) identifies the following federally listed species as occurring, or having the potential to occur: the endangered Morro shoulderband snail (*Helminthoglypta walkeriana*; MSS), Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*; MBKR), Indian Knob mountainbalm (*Eriodictyon altissimum*); and the threatened south/central coast steelhead (*Onchorynchus mykiss irideus*: steelhead), California red-legged frog (*Rana aurora draytonii*; CRLF), Monterey spineflower (*Chorizanthe pungens*), and Morro manzanita (*Arctostaphylos morroensis*). As the steelhead falls under the jurisdiction of the National Marine Fisheries Service (NMFS), it will not be further addressed.

We offer the following comments to aid the County in planning for the conservation of sensitive wildlife habitats and federally listed species that could occur in the project area and as a means to assist you in complying with pertinent Federal statutes. The following comments are prepared in accordance with Act and other authorities mandating Department of the Interior concern for environmental values. It is not our primary responsibility to comment on documents prepared pursuant to CEQA, so our comments on the DEIR do not constitute a full review of project impacts. Rather, they focus on the accuracy of information, the analysis of project activities relative to their potential to affect listed species and critical habitat, and regulatory implications in accordance with our mandates under the Act. Some redundancy is apparent throughout the DEIR and Appendix G so if a comment references a particular section, it should be considered relevant to the same issue anywhere else in the DEIR that issue may be discussed.

Mark Hutchinson

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General Comments

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| <p>1. Nowhere in the DEIR is the period of public review specifically defined. The only date provided is that for the close of the comment period: January 20, 2009. While it was announced that the DEIR was available on the County’s website as of November 19, 2008, we do not consider this to be the commencement of our review period as we did not receive the DEIR until December 4, 2008, despite our request to be able to pick up a copy of the DEIR and Appendix G (Biological Resources) on November 21, 2009. We were told that this was not possible as the official letter necessary to accompany the documents had yet to be completed. When we received the DEIR on December 4, 2009, Appendix G was not included. As such, we had to assume the responsibility of printing out the 1,008-page document, inclusive of many over-sized color graphics. Given the complexity of the project, the size of the documents, and our role as a responsible agency under CEQA, we requested a two-week time extension for submittal of our comments on January 13, 2009. This request was denied on January 16, 2009.</p> | <p>A11-1</p> |
| <p>2. The discussion of project impacts to biological (and other) resources through the analysis and evaluation of how each of the proposed alternative related to the six questions posed in the thresholds of significance was repetitive and difficult to navigate. It would have been much easier to understand and review had an analysis of effects been provided for each project alternative</p> | <p>A11-2</p> |
| <p>3. While the DEIR mentions that a Federal nexus would be established by the disbursement of State Revolving Funds channeled to the County from U.S. Environmental Protection Agency (EPA) via the California State Water Board, it is our understanding that this has yet to be determined. Assuming that this would be the case, we have concerns that the all of the mitigation for impacts to federally-listed species and critical habitat are being deferred to some point in the future and that the Services would bear the majority of the responsibility as part of an interagency consultation process. During DEIR preparation, time would have been well-spent coordinating with the Services to identify avoidance and minimization measures as well as compensation to help offset impacts to listed species and critical habitat such that they could have been presented in the document and available for public review.</p> | <p>A11-3</p> |
| <p>4. Mitigation measure 5.5-A1 states that prior to project approval, the County shall enter into formal consultation with the Service and NMFS (Services); however, the Services would consult with the Federal action agency who, in this case, may be the EPA and not the County. The measure goes on to state that “Pending the derminations made by the USFWS and NMFS in a forthcoming BO, the proposed project will be required to fulfill all mitigation obligations and conservation measures conditions in the BO regarding federally-listed species and their habitat.” What is intended by this statement is not clear.</p> | <p>A11-4</p> |
| <p>5. No matter the project alternative selected, raw wastewater collection and treated effluent conveyance pipelines would cross Los Osos and Warden Creeks and associated, adjacent</p> | <p>A11-5</p> |

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| <p>wetlands. Information in the DEIR indicates that these will likely require U.S. Army Corps of Engineers (Corps) permits. Adverse effects and take of listed species would require Corps consultation with the Services as part of their permit process; however, it is unlikely that the Services would engage in two interagency consultations for the same project. The EPA and Corps would have to determine between them which agency has the lead for any consultation based upon the level of discretionary authority each has in the project.</p> | <p>A11-5
CONT</p> |
| <p>6. It should be noted that mitigation measures from the final EIR for the Los Osos Community Services District Wastewater Facilities Project (SCH# 9911103 certified March 1, 2001) and the Coastal Development Permit (A-3-SLO-03-113) were incorporated into the project description for biological opinion 1-8-04-F-48; however, some of these conditions remain unfulfilled. Two are of particular relevance: the 72 acres of the Broderson property not proposed for use as leach fields were never granted to an appropriate agency or conservation organization in perpetuity with deed guarantees of non-development or transfer and the \$10,000 per year that was to be allocated for the long-term management and monitoring of the Broderson parcel has yet to be set aside. Both the Final EIR and the CDP contain specific conditions to this effect. These conditions should be fulfilled prior to the approval of the current project.</p> | <p>A11-6</p> |
| <p>7. The DEIR appears to conclude that the 72 acres of land not needed for leach fields at Broderson are still available to provide mitigation opportunities to compensate for biological impacts associated with this currently proposed project. We disagree. These lands at Broderson constitute the mitigation required for take of MSS, as well as impacts to other state-listed and special status species and their habitats, that resulted from the clearing and grading of the Mid-Town site, clearing and use of staging and collection areas, and installation of pipelines that occurred in 2005 as part of the former project. Mitigation lands cannot be used to compensate for the impacts of multiple projects.</p> | <p>A11-7</p> |
| <p>8. The discussion of the draft Los Osos Habitat Conservation Plan (LOHCP) in section 3.5.2 of Appendix G-2 should clearly state that this document was an internal agency review draft and not circulated for public review and comment. The draft was prepared by Crawford, Multari & Clark on behalf of the Los Osos Community Services District. The County was not a participant in this process. The draft was reviewed by both the California Department of Fish and Game (CDFG) and the Service. Our comments, provided on November 29, 2005, have yet to be addressed and a number of significant issues remain outstanding. Any reference to compatibility or consistency of the proposed project with the LOHCP, or conclusionary statements regarding adequacy of mitigation or any other thing, should be removed. It should also be noted that this draft plan was not prepared pursuant to the Natural Community Conservation Planning Act.</p> | <p>A11-8</p> |
| <p>9. The discussion regarding wildlife agency consultation provided in section 4.1 of Appendix G-2 appears confused about how take/exemption of listed species would be authorized or exempted pursuant to the Act. The project does not enter into formal</p> | <p>A11-9</p> |

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consultation with the Services as this is the responsibility of the Federal action agency. Consultation is that specific process associated with section 7 of the Act and does not apply to section 10. It should be noted that there is no take prohibition for habitat, only species. Again, the discussion of what type and extent of mitigation/compensation would be assigned to the project is deferred to a later date and made the responsibility of the Services absent any prior coordination or initiation of informal consultation. In a number of locations throughout the documents, take of plant species is mentioned. Please note that while the Act and its implementing regulations prohibit the take of listed animal species, neither prohibits take of listed plant species unless removal constitutes a knowing violation of state law. Similarly, neither the Act nor its implementing regulations address take of habitat.

A11-9
CONT

10. Pre-construction surveys do not constitute mitigation. Species-specific surveys should be conducted such that the information can be provided for review in the DEIR and relevant appendices.

A11-10

Species-Specific Comments

The background information for each of the federally-listed species discussed in the DEIR (except the CRLF) needs to be expanded to include greater detail regarding the status of the species and its current distribution within the region and project area. The following species-specific comments represent those compiled after our review of the information contained in Appendix G and carried forward into the DEIR.

1. Morro Shoulderband Snail: Information in Section 5.5-4 and Table 5.5-2 should provide a more comprehensive picture regarding the presence of this species within the project area. Morro shoulderband snails are not restricted to coastal sage or coastal dune scrub habitat, having been discovered persisting in disturbed habitat and horticultural plantings. Both the Mid-Town and Broderson sites are currently occupied by MSS and, in 2005, the species (along with Chorro shoulderband snail; *Helminthoglypta morroensis*) was identified along Warden Creek near several of the proposed project alternative locations. As such, its potential for the occurrence of MSS in these areas should be included in the DEIR. It is also premature to assume that all MSS identified within the project area would be subject to relocation as the number of individuals is unknown but could be much higher than that associated with the previous project.
2. Morro Bay Kangaroo Rat: The discussion regarding the potential presence of this critically endangered species within the project area is extremely brief and does not appear to consider the extremely imperiled nature of its status. It is possible that the Service would not be able to exempt or authorize any take of MBKR as it could trigger a jeopardy determination. Rather, we would recommend that the County work with us to develop a project that would avoid all effects on this species.

A11-11

A11-12

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Table 5.5-2 concludes that the MBKR has a high potential to occur, noting that suitable habitat occurs on both the Broderson property and Mid-Town site. Text in section 5.5 of Appendix G-1 states that the species “has a high potential to occur within the coastal sage scrub habitat on the Broderson property.” While it is stated that no MBKR have been trapped since 1985, it does not include the caveat that there have been few, if any, protocol-level survey efforts since that time. Nowhere does the DEIR or Appendix G discuss that lands on, or surrounding, the Tonini and Branin parcels contain habitat that could be occupied by MBKR. Rather, on page 5.5-15 of the DEIR, it states that MBKR “is not likely to occur within any portions of the impact areas for all Proposed Projects 1 through 4.” We disagree. Based on the existence of a historic record for MBKR for lands on or contiguous with Tonini, and the presence of habitat characteristics (ranging from high to fair quality) suitable for kangaroo rats, these areas (e.g., Tonini, Branin, Lee) have been targeted in 2008 by Dr. Francis Villablanca and the Service for spot-trapping. These efforts began in 2008 and are anticipated to continue in 2009 pending the availability of funding. To propose that, prior to construction, protocol trapping for this species would be done and all trapped specimens retained for consideration of captive breeding does not consider how significant would be the discovery of MBKR. Protocol-level trapping for MBKR is a two-year process that requires prior approval by the Service and the CDFG. It does not appear that such an effort would likely to fit with the project’s projected construction timeline. More importantly, there are no facilities currently established to conduct captive breeding activities for this species and the last time this was attempted, the program was not successful. To determine the fate of any trapped individuals would require us to convene the recovery team (inclusive of CDFG) to discuss all available options.

A11-12
CONT

3. California Red-Legged Frog: The Biological Resources section of the DEIR states that the project site is not within critical habitat designated for the California red-legged frog in 2006; however, it should be noted that while the critical habitat units designated in 2006 are still valid, critical habitat was re-proposed on September 16, 2008. Any discussion of critical habitat should include the relationship of the project site to newly proposed units as well. Several of the creeks and drainages within the project area support California red-legged frogs, and it is reasonable to expect that individual California red-legged frogs make overland excursions between the drainages in this region. Under such circumstances, it is likely that California red-legged frogs disperse through the proposed project area when they move overland between aquatic habitats. Accessibility to sheltering habitat is essential for the survival of California red-legged frogs within a watershed, and can be a factor limiting population numbers and distribution. Most of these overland movements occur at night. These behaviors need to be considered when assessing the project’s potential to impact this species. It is unclear how night lighting that could be associated with the project would affect CRLF and other nocturnal species.
4. Southwestern Willow Flycatcher and Least Bell’s vireo: Appendix G includes a discussion of southwestern willow flycatcher (*Empidonax traillii extimus*) (“moderate

A11-13

A11-14

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potential to occur”); however does not discuss the potential for least Bell’s vireo (*Vireo bellii pusillus*), another riparian obligate species. This species has been expanding its range in recent years owing to the success of riparian restoration efforts and control of brown-headed cowbirds. As such, the potential for least Bell’s vireo to occur within riparian habitat within the proposed project area should be included. While the listed entity of willow flycatcher is not federally regulated north of Santa Barbara County, any detection of nesting willow flycatchers in this area would be noteworthy.

A11-14
CONT

5. Indian Knob Mountainbalm: Text in Appendix G states that Indian knob mountainbalm is restricted to lands within and around the community of Los Osos; however, this is not the case. The largest stands of this species occur on tarsands in the vicinity of Indian Knob and Price/Baron Canyons south of the City of San Luis Obispo. This species is actually quite rare in the Los Osos area, being known from only five occurrences that likely total less than 100 individuals. In other sections of the document, it states that Indian knob mountainbalm is found as part of coastal sage scrub habitat; however, it is a species wholly associated with chaparral. As this species is a perennial shrub detectable year-round, surveys for this species should have been conducted at the Broderson property such that the question of its presence or absence could have been included in the DEIR.

A11-15

6. Morro Manzanita: This species of manzanita does not have a burl and, as such, is not a likely candidate for salvage and transplant as part of any mitigation strategy.

A11-16

7. Table 5.5-1 states that the potential for the endangered marsh sandwort (*Arenaria paludicola*) to occur in the proposed project is low and that project alternatives avoid suitable habitat on the Branin property. It is likely that suitable habitat is present elsewhere within the proposed project area. The potential for the endangered Gambel’s watercress (*Rorippa gambelii*) to occur within the proposed project area was not addressed at all, despite the presence of suitable habitat. We recommend that the County review its determination for marsh sandwort and address the potential for impacts to Gambel’s watercress.

A11-17

In summary, the DEIR and Appendix G do not, for the most part, provide a sufficient level of detail regarding the actual presence of federally listed species within each of the proposed project alternatives. The collection of this level of information is largely deferred pre-construction surveys that preclude the use of such information in the design and implementation of a project that can avoid or minimize impacts to federally-listed species and critical habitat. As such, it is impossible to determine true effect of any alternative on these species. The DEIR defers mitigation and assigns the majority of the responsibility for its development and implementation to the Services. It appears that the County believes that the next step in the process is to initiate formal consultation with the Services; however, we have not been involved in this current project process until now and were not contacted for our input during the preparation of the DEIR. Initiation of formal consultation is the responsibility of the Federal action agency; however, we caution the County not to consider that the DEIR contains sufficient information to provide the

A11-18

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basis for the biological assessment or to initiate formal consultation. Rather, we would encourage the County to work with the Federal action agency to request informal consultation with the Services such that we can provide technical assistance to help in the development of a project alternative that could, to the extent possible, maximize take avoidance and minimize impacts to listed species and critical habitat.

A11-18
CONT

We appreciate the opportunity to provide comments on the proposed project and look forward to working with the County in the future. If you have any questions regarding these comments, please contact Julie M. Vanderwier of my staff at (805) 644-1766, extension 222.

Sincerely,



for Roger P. Root
Assistant Field Supervisor

cc:

Deborah Hillyard, California Department of Fish and Game
Bob Stafford, California Department of Fish and Game
Jonathan Bishop, California Coastal Commission
Juanita Licata, U.S. Environmental Protection Agency
Cookie Hirn, California State Water Board
Greg Haas, District Representative for Congresswoman Lois Capps

United States Fish and Wildlife Service, Roger P. Root, February 2, 2009 (Letter A11)*Response to Comment A11-1*

This comment expresses a concern regarding the time period for public review and commenting. CEQA provides for a minimum 45-day comment period for the public and commenting agencies. The EIR was made publicly available for all commentors on November 19, 2008, providing a 78-day comment period. Appendix G of the Draft EIR was included in electronic form with all hard copies of the document, and posted on the internet, in conformance with California recommendations for distribution of EIRs. Given the long history of various project efforts in Los Osos, the comment period is considered more than sufficient. Extensions of time were not granted because the County is working to meet funding deadlines which have the potential to result in substantial savings to the citizens of Los Osos.

Response to Comment A11-2

This comment states that the project impact discussions within the Draft EIR and appendices was repetitive and difficult to navigate, and that it would have been easier to understand and review had an analysis of effects been provided for each project alternative. This comment is noted.

Response to Comment A11-3

This comment states that the Federal nexus for the project, provided via funds channeled to the County from the U.S. Environmental Protection Agency (EPA), is yet to be determined. This comment raises further concern about deferred mitigation in the Draft EIR for impacts to federally-listed species and critical habitat, and as a result, the USFWS and NMFS (Services) would bear the majority of the responsibility of identifying mitigation during the consultation process. The comment further states that coordination with the Services during preparation of the Draft EIR would have been advantageous in identifying avoidance and minimization measures as well as compensations to help offset impacts to listed species and critical habitat.

The project would be funded through State Revolving Funds channeled to the County from the EPA via the California State Water Resources Control Board. As such, formal consultation with the Services would be initiated by the EPA regarding impacts to federally-listed species and critical habitat. Mitigation measures have been modified to accurately reflect the proposed consultation approach and the findings of recent surveys and ongoing efforts to address federally-listed species, including the Morro manzanita, Indian Knob mountainbalm, California red-legged frog, and Morro Bay kangaroo rat.

Mitigation Measure 5.5-A1 is provided as a standard condition for the project to ensure that formal consultation is initiated and carried out by the appropriate agencies. The measure identifies that the project would be subject to all mandatory reasonable and prudent measures that will be developed through the consultation process as part of the forthcoming Biological Opinion provided by the USFWS.

Mitigation Measure 5.5-A1 has therefore been modified to state the following:

5.5-A1 ~~The proposed project may result in take of federally listed species and their habitat. Prior to project approval, the County shall enter into formal consultation with the USFWS and NMFS. A Biological Opinion (BO) will be prepared by the USFWS and NMFS for any proposed action which may result in potential take of a listed species and its habitat. Pending the determinations made by the USFWS and NMFS in a forthcoming BO, the proposed project will be required to fulfill all mitigation obligations and conservation measures conditioned in the BO regarding federally listed species and the their habitat. This will include preconstruction survey and avoidance measures, and compensatory mitigation for loss of occupied habitat to be incorporated and implemented prior to project development.~~

~~Specific avoidance measures, preconstruction survey requirements, and mitigation measures, if required, will be provided by the USFWS through Section 7 (or possibly Section 10) consultation with regard to federally listed species.~~

The proposed project may affect federally-listed species (Morro shoulderband snail and California red-legged frog) and as such, the EPA shall initiate formal consultation with USFWS pursuant to Section 7(a)(2) of the federal ESA. All mandatory terms and conditions, and reasonable and prudent measures pertaining to incidental take prescribed within the Biological Opinion and Nationwide Permit for the project shall be fulfilled and implemented.

These measures are considered adequate in reducing impacts to listed species and critical habitat to less than significant levels for all project alternatives considered in the analysis. Avoidance and minimization measures were developed during the preparation of the Draft EIR that reflected initial project concerns presented by the USFWS and other agencies, as well as all concerns raised during the previously approved iteration of the project and preceding iterations.

Response to Comment A11-4

This comment provides clarification on the consultation process that is proposed within Mitigation Measure 5.5-A1 and raises a question with regard the language therein. The clarification is appreciated and is incorporated in the modified measure. The commentor is directed to Response to Comment A11-3.

Response to Comment A11-5

This comment addresses concerns and provides clarification on the consultation and permitting requirements for the project. The commentor is correct that the project's collection and conveyance pipeline elements would cross Los Osos and Warden Creeks and associated wetlands, however, the crossings (as discussed in Appendix Q.3 and Q5.5 of the Draft EIR for the Preferred Project) will be provided via suspension on the existing bridge crossings thereby avoiding any direct disturbance to waters and wetlands at those areas. The project would be impacting federally-regulated waters and wetlands in other areas however, and these impacts would require permitting with the USACE, as suggested in the comment. It is anticipated that the project will require a Nationwide Permit from the USACE. The commentor is directed to Mitigation Measure 5.5-C1 regarding permitting with the USACE.

As the federal action agency, the EPA, not the USACE, would take the lead in formally consulting with USFWS regarding adverse effects and take of federally-listed species. The commentor is directed to Response to Comment A11-3 for clarification on the consultation process for the project. If warranted, informal consultation with the USFWS could be undertaken by the State Water Resources Control Board, who may, in turn, defer informal consultation responsibilities to the County.

Response to Comment A11-6

This comment expresses that previous mitigation measures identified in the project description should be fulfilled prior to the approval of the current project. The County is aware of the situation regarding the status of past project mitigation measures and is committed to fulfilling all mitigation measures that apply to the current project efforts. Fulfilling past commitments made by other agencies in advance of approval of the current proposal is inappropriate.

Response to Comment A11-7

This comment expresses a concern regarding 72 acres of land not needed for leachfields at the Broderson site. The former project described a particular set of areas that would be impacted by the project; the agreed upon mitigation for those impacts included the elements of the Broderson site as described in this comment. Many of the impacts associated with pump stations and collection lines in the previous project never occurred, as those elements of the project were not built. To the degree that the current project results in the same or fewer impacts in the same locations as the previous project, the use of the same mitigation (Broderson) for the loss of habitat is appropriate.

Response to Comment A11-8

This comment states that the Los Osos Habitat Conservation Plan in section 3.5.2 of Appendix G-2 of the Draft EIR was an internal agency document and was not circulated for public review and comment. Because there are no comments on the contents of the Draft EIR, no further response is required.

Response to Comment A11-9

This comment provides clarification on the wildlife agency consultation process and the approach required for the proposed project. The comment states that consultation does not apply to Section 10 of the federal ESA, and that it should be noted that there is no take prohibition for habitat, only species. The commentor is directed to Response to Comment A11-3 for clarification on the consultation process and modified Mitigation Measure 5.5-A1.

The comment goes on to state that the discussion of what type and extent of mitigation/compensation to be assigned to the project is deferred to a later date and made the responsibility of the USFWS absent of any prior coordination or initiation of informal consultation. The commentor is directed to Mitigation Measure 5.5-A15 and 5.5-A16 which identify what type and extent of mitigation/compensation is being proposed. These measures were developed based on initial project concerns presented by the wildlife agencies in addition to what had been approved by the wildlife agencies as adequate and feasible mitigation for the previously approved iteration of the project. These measures are considered adequate as they represent measures to reduce essentially the same impacts to less than significant as what had been approved for the previous iteration of the project.

The commentor goes on to reference discussions regarding potential take of habitat and potential take of listed plant species in the Draft EIR, and provides clarification on the subject of take of habitat and listed plant species and the federal ESA. It is acknowledged that the federal ESA and its implementing regulations do not prohibit take of habitat or take of federally-listed plant species, unless the removal constitutes a knowing violation of state law (i.e. the plant is listed as state endangered or threatened). No federal- or state-listed listed plant species are anticipated to be impacted by the proposed project due to their confirmed absence or unlikelihood to occur within the impact area. Recent botanical surveys have been conducted for the Morro manzanita and Indian Knob mountainbalm in December 2008 and January 2009. These species are conspicuous perennial evergreen shrubs whose positive identification can be confirmed throughout all portions of the year. No naturally occurring specimens of Morro manzanita were observed within any portions of the study area that were determined to contain suitable habitat. Although some landscape specimens may occur within the collection system element of the project, these specimens are not protected. No impacts are anticipated to occur to Morro manzanita. Similarly, no Indian Knob mountainbalm were observed within any portions of the study area that were determined to contain suitable habitat. No impacts are anticipated to occur to this species either.

There is anecdotal evidence that suggests the federally-listed Monterey spineflower may occur on the Morro Dunes Ecological Preserve east of the Broderson property, and on the Broderson property itself. Surveys and expert identification is required and ongoing during the appropriate blooming season to finally determine presence/absence and if this plant's known range should be extended south. Currently, it is assumed a sparse population of Monterey spineflower exists in the Broderson leachfield area until further investigations confirm its presence/absence. Surveys will be conducted within appropriate habitat. If the species is discovered within the impact area, seeds will be

collected and later sown within suitable undeveloped portions of the Broderson that will be preserved in perpetuity. See Response to Comment A7-7 for specific language revisions to Mitigation Measure 5.5-A13.

Response to Comment A11-10

This comment states that pre-construction surveys do not constitute mitigation and that species-specific surveys should be conducted such that the information can be provided for review in the Draft EIR and relevant appendices. Information presented in the Draft EIR and Appendix G of the Draft EIR reflect the results of a variety of surveys, many of which represent protocol-level efforts. Pre-construction measures are proposed for listed species in which protocol surveys had already been completed to confirm species presence on or in the immediate vicinity of proposed developments. The commentor is reminded that numerous surveys along all aspects of the preferred project have been conducted between the years of 1997 and 2008 to determine the presence/absence of species that have the potential to occur within the study area. These surveys are referenced within the Draft EIR and Appendix G of the Draft EIR and were important in understanding known presence/absence, abundance, and species distribution in relation to the project areas. Most recently and as part of the Final EIR effort and the forthcoming Biological Assessment, biologists from the County Department of Public Works, MBA, and Villablanca Biological Consulting (Francis Villablanca) have conducted site-specific surveys within the preferred project. These recent surveys include the following:

- California red-legged frog surveys by MBA (5/20/08 and 5/21/08): T'Shaka Toure and Karl Osmundson
- California red-legged frog surveys by County Public Works staff (1/12/08): Eric Wier and Kate Ballantyne
- Plant surveys for Morro manzanita and Indian Knob mountainbalm by County Public Works staff (12/23/08): Eric Wier, Kate Ballantyne and Kelly Sypolt
- Plant surveys for Morro manzanita and Indian Knob mountainbalm by County Public Works staff (1/12/09): Eric Wier, Kate Ballantyne, and Katie Drexhage
- Habitat Assessment for Morro shoulderband snail at Tonini Property by County Public Works staff (2/2/09): Kate Ballantyne and Eric Wier
- Habitat Assessment for Morro Bay Kangaroo Rat at Tonini Property (2/2/09): Francis Villablanca
- General biological surveys of Tonini Property, Los Osos Creek at Los Osos Valley Road, and Mid-town property (2/20/09): Kate Ballantyne, Eric Wier and Karl Osmundson (MBA)

It should be acknowledged that recent protocol-level surveys for the California red-legged frog resulted in a confirmation of this species presence, abundance, and distribution within the study area. Due to the fact that there are recent protocol-survey results for this species, the proposed pre-construction measures are considered adequate and there is no need to repeat protocol-level surveys at this time. This information is included in the Draft EIR and Appendix G of the Draft EIR, and will be further discussed within the project's Biological Assessment.

Additionally, it should be acknowledged that substantial survey efforts for the Morro shoulderband snail, Morro Bay kangaroo rat, and other sensitive species had been conducted for the previously approved iteration of the project and in preparation of the Draft Los Osos Habitat Conservation Plan. Presence/absence of the Morro shoulderband snail within the community of Los Osos, the Mid-town site, and the Broderson site is well-understood as a result of these previous surveys. To not accept the proposed pre-construction measures and require that protocol-level surveys be repeated for this species is unreasonable given the current understanding of this species presence, abundance, and distribution throughout the proposed impact areas, and given the proposed avoidance/minimization and compensatory measures. The proposed pre-construction measures for this species are considered adequate. Greater detail regarding this and other listed species presence, abundance, and distribution is provided within the Biological Assessment prepared for the project.

Response to Comment A11-11

This comment is regarding discussions of the Morro shoulderband snail within the Draft EIR and Appendix G of the Draft EIR. The commentor is directed to the discussions for Impact 5.5-A in Appendix G of the Draft EIR for additional background information for species with the potential to be impacted by the proposed projects, including the Morro shoulderband snail. The Draft EIR and Appendix G of the Draft EIR do not claim that Morro shoulderband snails are restricted to coastal sage or coastal dune scrub habitat. The commentor is confusing reference to one of the primary constituent elements of this species critical habitat (i.e. "the presence of, or capacity to develop, native coastal dune scrub vegetation"). The discussion within Impact 5.5-A specifically states that in addition to coastal sage or coastal dune scrub habitat, the species has also been found within introduced ice plant and fig-marigold at suitable locations, as well as areas with dense veldt grass, thick leaf litter under shrub canopies, rocks, debris piles, downed wood, woody debris, and at the base of fence posts in moist pockets. It is acknowledged that this species has also been discovered persisting in disturbed habitat and horticultural plantings as the commentor suggests.

The commentor makes reference to the known presence of Morro shoulderband snail on the Mid-town and Broderson sites, in addition to an area along Warden Creek. The occupancy of snails on the Mid-town and Broderson sites is discussed within the Draft EIR and Appendix G of the Draft EIR. It is acknowledged that the species was identified in 2005 along Warden Creek near several of the proposed project alternative locations. The preferred project does not propose any developments in the vicinity of the 2005 occurrence the commentor is referencing, and any alternatives in the vicinity of the occurrence would have been abandoned to avoid impacts to the species within this expanded range. All potential impacts to the species will occur west of Los Osos Creek, and are anticipated to be limited to that which may result from the collection system (including pump stations) within the community of Los Osos, the leachfields on the Broderson site, and the pump station on the Mid-town site. The objective is to restrict Morro shoulderband snail impacts to areas identical to the previously approved iteration of the project to minimize potential issues with the mitigation strategy of acquiring the Broderson site.

The comment further states that it is premature to assume that all Morro shoulderband snail individuals identified within the project area would be subject to relocation, as the number of individuals is unknown, but could be much higher than that associated with the previously approved iteration of the project. The proposed mitigation for the Morro shoulderband snail represents a feasible and effective approach that was developed after many discussions with the USFWS for the previous project. Whether the number is higher or lower than that associated with the previously approved iteration of the project, the proposed measures ensure that all snails will be identified and relocated by a biologist authorized by the USFWS. A revised or additional measure is not necessary to mitigate impacts to this species to a less than significant level.

Response to Comment A11-12

This comment provides clarity on how to address potential impacts to the Morro Bay kangaroo rat.

The County is committed to avoiding any take and minimizing all potential adverse effects to this critically endangered and fully protected species. No effects to Morro Bay kangaroo rat are expected because this species has not been detected to date and is not expected to occur within the proposed impacts area for the preferred project. Previous habitat assessments conducted for the Broderson and Mid-town properties concluded that the sites do not provide suitable habitat for Morro Bay kangaroo rat. However, according to recent efforts headed by Dr. Francis Villablanca in conjunction with the CDFG and USFWS, suitable habitat is noted on portions of the proposed sprayfield area on the Tonini property.

Because the project will be constructed over multiple years prior to operation, there will be adequate time to complete protocol-level surveys within all suitable habitat within the proposed sprayfield area on the Tonini property. Portions of the proposed sprayfield area have been subject to the first year of protocol surveys by Dr. Francis Villablanca which resulted in negative findings. The second year of surveys within these areas result will proceed in the spring of 2009. If the second year of surveys also results in negative findings, as expected, this species will be presumed absent from those areas.

New suitable habitat areas were identified outside of the areas included in the first year of protocol surveys mentioned above, and these new areas will have to be surveyed for their first year beginning in the spring of 2009. If the species is not detected during the first year surveys in 2009, the second year of protocol surveys will be conducted in 2010. If the second year of surveys within the new suitable habitat areas also result in negative findings, this species will be presumed absent from all areas surveyed on the Tonini property.

If, at the end of the survey period, it is found that there are areas occupied by the Morro Bay kangaroo rat, the County shall avoid those areas by adjusting the sprayfield boundaries to be entirely contained within areas that are not suitable for the species.

As proposed within the modified Mitigation Measure 5.5-A5 below, the project proponent will enter into a “no take agreement” with USFWS or similar effective agreement with CDFG to avoid take and any adverse effects to the Morro Bay kangaroo rat. See Response to Comment A7-1

Response to Comment A11-13

This comment is regarding California red-legged frog, its critical habitat, and potential project effects to this species resulting from nighttime lighting. To minimize project effects on red-legged frogs, minimization measures have been proposed within the revised Mitigation Measure 5.5-A8 that will be required prior to and during construction at Los Osos Creek, Warden Creek and tributaries to Warden Creek. Implementing these measures will substantially reduce the risk of incidental “take” of California red-legged frog. See also Response to Comments A7-16 and A10-7.

Response to Comment A11-14

This comment provides new range information for the least Bell's vireo and is requesting that the potential for occurrence of the species be included in the environmental documentation. The data that supports the expansion of the least Bell's vireo's range is not readily available. If such data exists and suggests that the species has been detected north of Santa Barbara County, then similar to the potential for occurrence determination for southwestern willow flycatcher, the least Bell's vireo would also be considered to have a moderate potential to occur within the study area. The preferred project would not impact any suitable breeding habitat for the least Bell's vireo or willow flycatcher. The only riparian habitat within the study area considered suitable for these species' breeding requirements occurs within Warden Lake (Warden Creek wetland) on the Branin property. None of the preferred project developments proposed are within 1,000 feet of this area, therefore no impacts are anticipated to occur to either of these species.

Response to Comment A11-15

This comment provides clarification on the habitat requirements and known distribution of Indian Knob mountainbalm, and raises concerns regarding surveys for this species. Site-specific surveys for this species were conducted on the Broderson property by biologists with the County Department of Public Works in December 2008 and January 2009. This species was not detected and is considered absent from the proposed impact area. The project will not result in any impacts to Indian Knob mountainbalm. The commentor is directed to Response to Comment A11-9 and modified Mitigation Measure 5.5-A13.

Response to Comment A11-16

This comment states that Morro manzanita is not a likely candidate for salvage and transplantation as part of the mitigation strategy due to the fact it lacks a burl. Site-specific surveys for this species were conducted on the Broderson property by biologists with the County Department of Public Works in December 2008 and January 2009. This species was not detected and is considered absent from the proposed impact area. The project will not result in any impacts to any naturally-occurring Morro manzanita specimens. The commentor is directed to Response to Comment A11-9 and modified Mitigation Measure 5.5-A13.

Response to Comment A11-17

This comment recommends that determinations for marsh sandwort be reconsidered, and that the potential for occurrence and potential impacts to Gambel's watercress be identified. These species are not likely to occur within the study area due to their restricted range and lack of suitable habitat. Any potential habitat that may exist within the study area for either of these species will be avoided by all proposed projects, therefore no impacts are anticipated to occur.

Response to Comment A11-18

This comment provides a description of the current legal status of the Los Osos Habitat Conservation Plan. The County has recently secured grant funds to begin moving the Habitat Conservation Plan process forward associated with the project.

mtt



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COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PUBLIC WORKS

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

February 16, 2010

DIANE NODA
FIELD SUPERVISOR
US FISH & WILDLIFE SERVICE
2493 PORTOLA RD STE B
VENTURA CA 93003

Subject: Request for Formal Consultation Pursuant to Section 7 of the ESA
Los Osos Wastewater Project (San Luis Obispo County)

Dear Ms. Noda:

In accordance with 50 C.F.R. Part 402, the United States Department of Agriculture (USDA) Rural Development hereby requests formal consultation with the U.S. Fish and Wildlife Service (Service) for the proposed wastewater project in Los Osos, CA. Our Agency held an initial consultation meeting with the Service on December 10, 2009, and a Biological Assessment for the project was forwarded for comment on January 7, 2010.

At this time, the proposed funding for the project is being considered from USDA and the State Water Resources Control Board's Clean Water State Revolving Fund Program. More specifically, USDA is considering funding for the project under the American Recovery & Reinvestment Act of 2009 (ARRA). Time is of the essence since ARRA funding is only available through September 30, 2010 on a first-come, first-serve basis.

The objective of the project is to develop a community-wide wastewater system that will alleviate groundwater contamination and comply with prohibition of waste discharge from individual sewage systems issued by the California Regional Water Quality Control Board. Surfacing ground water, especially during the wet season, creates a public health threat by forcing wastewater to the ground surface. Increased bacteria in the Bay have contaminated shellfish and resulted in shellfish growing areas being downgraded by the California Department of Public Health.

3530 W. Orchard Ct. • Visalia, CA 93277
Phone: (559) 734-8732, ext. 4 • Fax: (559) 732-3481 • TDD: (530) 792-5848

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USFWS
February 16, 2010
Page 2 of 2

The enclosed Biological Assessment (January 2010), prepared by the County of San Luis Obispo, describes the proposed action and its effects on endangered, threatened, and candidate species and critical habitats that are known to occur in the vicinity of the project. The Biological Assessment also presents minimization and avoidance measures to reduce the effects to those species.

Accordingly, we concur with the findings in this Biological Assessment and ask that the Service prepare a Biological Opinion for the proposed action.

We look forward to working with the Service on this matter. If you have any questions, please contact me at (559) 734-8732, ext. 108.

Sincerely,

PETE YRIBARREN
Community Programs Specialist

Attachment

cc: Mark Hutchinson
Environmental Programs Manager
County of San Luis Obispo
Department of Public Works
County Government Center Room 207
San Luis Obispo, CA 93408

Kyle Ochendusko, EIT
Water Resources Control Engineer
State Water Resources Control Board
Division of Financial Assistance
1001 I Street
Sacramento, CA 95814

Julie Vanderwier
Fish & Wildlife Biologist
US Fish & Wildlife Service
2493 Portola Rd., Ste B
Ventura CA 93003