



## 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:  
81440-2010-F-0194

April 14, 2010

Pete Yribarren  
Community Programs Specialist  
U.S. Department of Agriculture  
3530 West Orchard Court  
Visalia, California 93277-7360

Subject: Biological Opinion for the Los Osos Wastewater Project, San Luis Obispo County, California (8-8-10-F-14)

Dear Mr. Yribarren:

This document transmits the U.S. Fish and Wildlife Service's (Service) biological opinion based on our review of the proposed Los Osos Wastewater Project (LOWWP), San Luis Obispo County. The U.S. Department of Agriculture (USDA) has determined that the proposed action is likely to adversely affect the federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) and its critical habitat. Your request, dated February 16, 2010, was received in the Ventura Fish and Wildlife Office (VFWO) on February 18, 2010; our response is made in accordance with section 7 of the Endangered Species Act of 1973, as amended (Act)(16 U.S.C. 1531 et seq.).

As part of this request, you determined that the proposed action is not likely to adversely affect the federally endangered Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*), the federally threatened California red-legged frog (*Rana aurora draytonii*) or designated critical habitat for each species. Built into the project description are measures that would fully avoid adverse effects to Morro Bay kangaroo rat and California red-legged frog. Based upon our review of these measures, we concur with your determination that the proposed project is not likely to adversely affect these two species.

Additionally, you determined that the proposed action would have no effect on the federally endangered southwestern willow flycatcher (*Empidonax traillii extimus*), least Bell's vireo (*Vireo bellii pusillus*), and Indian Knob mountainbalm (*Eriodictyon altissimum*) and the federally threatened Morro manzanita (*Arctostaphylos morroensis*) and Monterey spineflower (*Chorizanthe pungens* ssp. *pungens*), and would have no effect on designated critical habitat for the flycatcher, vireo, or spineflower. While willow flycatchers (*E. traillii*) extend into San Luis Obispo County, the entity under Federal protection (*E. traillii extimus*) does not. For this reason, the proposed action would have no effect on this taxon or its critical habitat. Migrant solitary



Pete Yribarren (8-8-10-F-14)

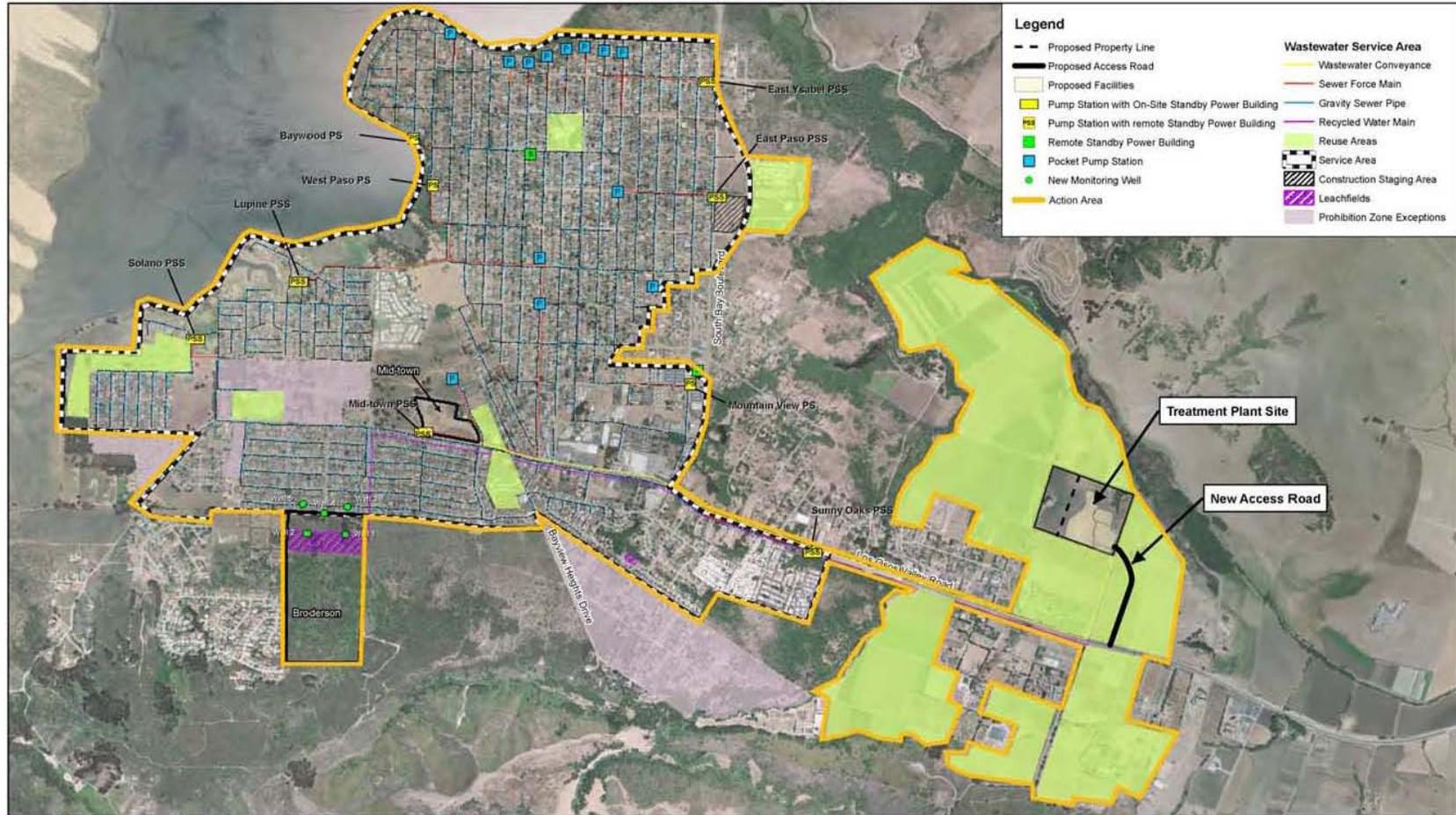
2

least Bell's vireos have been observed within the area of the proposed action; however, no breeding pairs have been observed anecdotally or documented. Coastal San Luis Obispo County is not within the historical breeding range for the taxon; however, in response to recovery efforts, least Bell's vireos have been expanding their range and recolonizing areas unoccupied for years (Service 1998a). While the subspecies is not expected to be breeding within the proposed action area (Figure 1), seasonal restrictions are included in the project description that would allow for avoidance of any adverse effects. No critical habitat has been designated for least Bell's vireo within the proposed action area. While both Morro manzanita and Indian Knob mountainbalm are known to occur in the proposed action area and, specifically, within the Broderson parcel (County of San Luis Obispo Public Works Department 2010a), neither is present in areas where project activities would result in impacts to either species (County of San Luis Obispo Department of Public Works 2009). As such, there would be no effect to either of these species.

At one time, an occurrence of Monterey spineflower was recorded for the Los Osos area (CNDDDB 2009). Subsequent taxonomic work conducted by James Reveal determined this occurrence to be *Chorizanthe angustifolia* (County of San Luis Obispo Department of Public Works 2010a) and, as such, the proposed action would have no effect on the listed entity. No critical habitat for Monterey spineflower was designated in San Luis Obispo County. We concur with your determination that the proposed action would have no effect on southwestern willow flycatcher, least Bell's vireo, Indian Knob mountainbalm, Morro manzanita, and Monterey spineflower, and no effect on designated critical habitat for these species. As such, they will not be addressed further in this opinion.

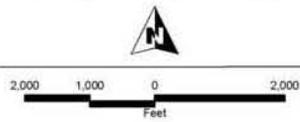
This biological opinion is based on information that accompanied your February 16, 2010, request for consultation, including the biological assessment (County of San Luis Obispo Department of Public Works 2010a). In addition, we reviewed information contained in the following: the amended Biological Assessment (County of San Luis Obispo Department of Public Works 2010b); Rare Plant Survey Report for the Los Osos Wastewater Project – Broderson Leach Field (County of San Luis Obispo Department of Public Works 2010c); General Biological Survey and Habitat Assessment for the Los Osos Wastewater Project – Giacomazzi and Andre Sites (County of San Luis Obispo Department of Public Works 2010d); Morro Bay Kangaroo Rat Habitat Assessment for Tonini Ranch (Villablanca 2009a); Protocol Visual Survey for Morro Bay Kangaroo Rat, Los Osos Wastewater Project, Tonini Ranch (Villablanca 2009b); Appendix G of the Draft Environmental Impact Report for the Los Osos Wastewater Project (Michael Brandman Associates 2008); Appendix Q.8 of the Final Environmental Impact Report for the Los Osos Wastewater Project (Michael Brandman Associates 2009), resumes for County personnel submitted on April 12, 2010; Biological Opinion 1-8-04-F-48; and our files at the VFWO. A complete administrative record of this consultation is available at the Ventura Fish and Wildlife Office.

Pete Yribarren (8-8-10-F-14)



**Figure 1**  
Overall Project Site Plan  
Los Osos Wastewater Project 2010

COUNTY OF SAN LUIS OBISPO • LOS OSOS WASTEWATER PROJECT



Pete Yribarren (8-8-10-F-14)

4

## CONSULTATION HISTORY

On March 30, 2000, the Service issued a biological opinion to U.S. Environmental Protection Agency (EPA) for geotechnical field exploration activities that included soil borings and sounding holes at the Broderson and Morro Shores sites (Service 2000). On August 15, 2001, the EPA initiated formal consultation on the currently proposed wastewater project; however, the EPA and the Service agreed to mutually withdraw from formal consultation for the wastewater

project on October 18, 2002, because we had not completed our biological opinion on the leach field testing activities on the Broderson site. On January 10, 2003, we issued our biological opinion for the leach field testing (Service 2003) concluding that both the geotechnical field operations and leach field testing activities were not likely to jeopardize the continued existence of the Morro shoulderband snail. The EPA reinitiated formal consultation for the wastewater project on February 25, 2004 and a biological opinion was issued on April 20, 2005 (Service 2005).

After work on the former wastewater project was halted and bankruptcy of the Los Osos Community Services District (LOCSD) in 2005, legislation developed by State Assemblyman Sam Blakeslee (Assembly Bill 2701) to authorize transfer of wastewater authority from the LOCSD to the County of San Luis Obispo (County) was approved. The County began work on a new wastewater project in 2006 using many of the elements of the previously approved LOCSD project, including the gravity sewer system, pump stations, and Broderson leach field. Pre-consultation electronic mail and telephone conversations between the VFWO and County staff were conducted to exchange information regarding the new elements of the project and for us to provide guidance on endangered species issues. We submitted a comment letter on the Draft Environmental Impact Report (DEIR) which provided guidance regarding compliance with the Act (USFWS 2009).

A number of measures and project conditions set forth in the 2001 Final Environmental Impact Report (FEIR) and 2004 Coastal Development Permit (CDP) that were made a part of the project description for Biological Opinion 1-8-04-F-48, respectively, have not yet been fulfilled although take of Morro shoulderband snail and impacts to its habitat did occur. The CDP expired on August 11, 2007, and the FEIR and BO were rendered moot because the former project was not completed and the Federal nexus (funding via EPA and the California State Water Quality Control Board's Revolving Fund) was lost when the LOCSD defaulted on their loan. The resolution to these issues is contained in the Project Description.

A portion of project costs are proposed to be funded through the USDA's Rural Utilities Program using federal stimulus funds provided by the American Reinvestment and Recovery Act (ARRA). The Project's eligibility to apply was made possible by a Congressional waiver. The County is also anticipating participation in the State Water Resource Control Board's State Revolving Fund Program and may receive additional Federal funds through the Water Resources Development Act.

Pete Yribarren (8-8-10-F-14)

5

A pre-consultation meeting with staff from the VFWO, USDA, EPA, U.S. Army Corps of Engineers, State Water Resources Control Board, and County was held on December 10, 2009, at the VFWO office. Attendees heard a description of the current LOWWP project and how it compares to the former LOCSD project. Also discussed were agency roles and responsibilities and the County's proposed approach to resolve outstanding issues from the previously approved project. Subsequent to this meeting, we received a request to expedite the consultation from the County Board of Supervisors on February 22, 2010, to allow the County to apply for USDA Rural Development ARRA funds.

## BIOLOGICAL OPINION

### DESCRIPTION OF THE PROPOSED ACTION

Water quality degradation in the community of Baywood Park/Los Osos has been an issue of concern to the California Regional Water Quality Control Board (CRWQCB) since the 1970s. Throughout the community, septic systems are the sole method of wastewater treatment and disposal. Because many of the lots are considered too small for conventional leach fields, deeper seepage pits are frequently used for wastewater disposal. In areas where the depth to groundwater is shallow, many of the seepage pits discharge directly into the upper aquifer with no separation. Contaminated groundwater sometimes reaches the surface, especially during the rainy season (CRWQCB 2001).

Elevated levels of fecal coliform are present in Morro Bay and indicate that other pollutants such as bacterial, viral, or cyst forming pathogens may be present (CRWQCB 2002). Human and animal illnesses can result from eating seafood that has been contaminated by these pathogens. Illness can also result from coming in contact with water or accidentally ingesting water in contaminated areas. Portions of the commercial oyster beds in Morro Bay have been closed for harvest by the California Department of Health Services per the United States Food and Drug Administration's National Shellfish Sanitation Program standards because of high fecal coliform levels. Based on the level of fecal coliform, seasonal restrictions have been imposed on commercial shellfish harvesting in other portions of Morro Bay; however, no restrictions are in place on non-commercial shellfish harvesting related to fecal coliform levels (CRWQCB 2002).

In 1983, the CRWQCB adopted resolution 83-13 which prohibited (effective November 1, 1988) discharges of waste from individual and community sewage systems within portions of the community (prohibition zone). The prohibition restricts the use of existing septic systems and additional discharges that would occur from new septic systems. Existing septic systems in the prohibition zone are discharging illegally and have been since 1988 (CRWQCB 2001).

To address and remedy these issues, the County proposes to develop a wastewater collection, treatment, and recycled water reuse system to serve the majority of the community of Los Osos. Figure 1 depicts the affected area and the overall site components. The key objectives of the LOWWP are to develop a community wastewater project that will comply with CRWQCB Waste Discharge Requirements and alleviate groundwater contamination (primarily nitrates) that

Pete Yribarren (8-8-10-F-14)

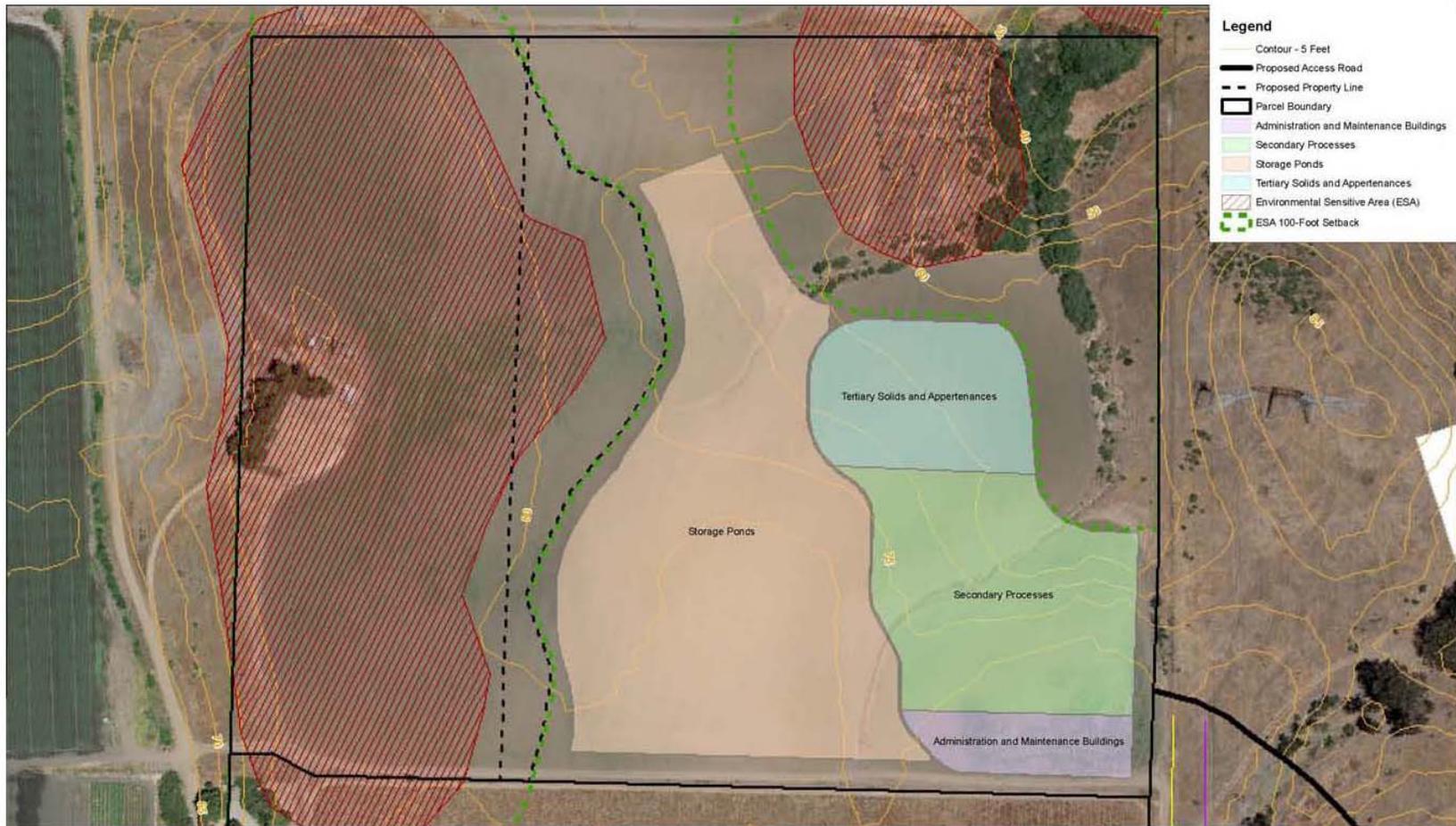
6

has occurred partially because of septic system use throughout the community. Other objectives include the incorporation of measures to minimize potential environmental impacts on the community and surrounding areas; meeting the water quality requirements while minimizing costs to mitigate affordability impacts on the community; compliance with all applicable local, state, and federal ordinances, laws, and permitting requirements (e.g., Environmentally Sensitive Habitat Areas (ESHA) standards, cultural resource concerns); address water resource issues by mitigating project impacts on saltwater intrusion; and maintain a diversity of options for beneficial reuse of recycled water. Proposed project components are discussed below and depicted on Figure 1.

### **Treatment Plant Facility**

The wastewater treatment plant facility would be sited on approximately 38 acres of a 100-acre parcel known locally as the Giacomazzi property (Figure 2). This parcel is located north of Los Osos Valley Road and west of Clark Valley, just east of the community of Los Osos. The Giacomazzi site contains both prime soils and soils of statewide importance with the western 62 acres consisting of prime agricultural soils with a long history of production agriculture (e.g., irrigated row crops). These 62 acres are currently contract-farmed to a mix of high value vegetable crops and would not be developed as part of the proposed action. Development would occur on the eastern 38 acres. A former farmhouse complex stands at the western side outside of the proposed development area. All of the original farm buildings have been removed and have been replaced by a modular residence. A 30-acre rectangular public lot would surround the treatment facility and the existing modular would remain as part of the larger parcel. This would allow the row crop operation to continue in private ownership with a buildable area located outside of prime soils. The 38-acre project site was historically cultivated; however, crop production ceased at some point in the past 20 years. Cultivation still occurs regularly for weed control purposes; however, no crop is produced. The wastewater treatment plant facility is expected to occupy approximately 22 acres of the 38-acre portion, with the undeveloped balance being found in environmentally sensitive habitat. The treatment facility would consist of an extended aeration wastewater treatment system with tertiary filtration. Extended aeration relies primarily on the acceleration of natural biodegradation of waste by aerobic bacteria to treat collected wastewater. Extended aeration would be accomplished either with an oxidation ditch or Biolac® secondary process; the abundance of oxygen and carbon also results in denitrification of the waste. This proven wastewater treatment technology is employed in hundreds of locations worldwide. These types of treatment plants have demonstrated the ability to remove nitrate from wastewater to the levels required by the Regional Water Quality Control Board for the community of Los Osos. Treatment components include:

Pete Yribarren (8-8-10-F-14)



- Legend**
- Contour - 5 Feet
  - Proposed Access Road
  - Proposed Property Line
  - Parcel Boundary
  - Administration and Maintenance Buildings
  - Secondary Processes
  - Storage Ponds
  - Tertiary Solids and Appertenances
  - Environmental Sensitive Area (ESA)
  - ESA 100-Foot Setback

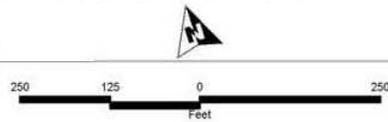


Figure 2  
Treatment Plant Site Plan  
LOS OSOS WASTEWATER PROJECT 2010

Pete Yribarren (8-8-10-F-14)

8

- Headworks - to screen out inorganics, de-grit, and measure the wastewater inflow. A small septage receiving station would be included to accept septage from that portion of the community that is not included in the wastewater collection area and would remain on septic systems
- Oxidation ditch/Biolac® - to treat the wastewater to secondary treatment levels.
- Secondary Clarification - to settle out the suspended solids in the treated wastewater.
- Tertiary Treatment - to provide Disinfected Tertiary Recycled Water as defined at Section 60301.230 of Title 22 of the California Code of Regulations for unrestricted reuse.
- Biosolids management - to process and dispose of biosolids removed from the treated wastewater on an ongoing basis.
- Odor control system - to control odors by using an inorganic media system to trap and scrub foul air from within the buildings enclosing the headworks and the biosolids dewatering equipment.
- The treatment plant facility would be designed with a capacity to treat a maximum average annual dry weather flow of approximately 1.1 million gallons per day (mgd) that takes into account the implementation of a water conservation program that is expected to conserve between 150,000 and 330,000 gallons per day for the build out population of 18,428 residents within the collection zone. At current indoor water use rates 14,428 persons would generate wastewater flows of 1.25 mgd; the project has a goal of reducing indoor water use to below 50 gallons per day per person which would equate to 0.92 mgd wastewater flows at build out. If this goal is met or exceeded, the project would operate at a higher level of redundancy.

### Collection System

The collection system consists of the installation of about 235,000 feet of pipe (195,000 feet of gravity pipe, 26,000 feet of force mains, and 14,000 feet of conveyance line to Giacomazzi from the Mid-town site). Within the collection area all of the septic tanks would be abandoned or repurposed for rainwater storage, and all wastewater would be collected through a series of gravity and pressurized (pumped) pipe lines that would convey wastewater to the treatment plant. The collection system would serve a build-out population of 18,428 within the service area. The collection system components include main lines; piping connections to property lines; laterals to connect the building to the system, pumps, force mains; and back-up power generators. Nine pump stations and 13 pocket pump stations would be constructed to provide continuous pressure in the force mains that would enable the transfer of wastewater to the treatment plant from areas that cannot be served by gravity. Pump stations would be located on vacant lots purchased by the project or within public rights-of-way. These stations would generally be required in low-lying areas and where pipeline depths approach 11 feet in depth. The stations would use electrically driven submersible pumps set in precast concrete vaults with two to four pumps per station. Also mounted close to the pump station would be a weather proof and vandal resistant electrical control panel to control the operation of the pumps. A dedicated stand-by power facility would be located at the Lupine, East Ysabel, East Paso, Sunny Oaks, and Mid-town

Pete Yribarren (8-8-10-F-14)

9

pump station sites. The stand-by power facility for the Mountain View pump station would be located at the nearby LOCSD well site at the intersection of South Bay Boulevard and Nipomo Avenue. A single standby power facility located at the LOCSD's Eighth and El Moro Avenue Water Operations Maintenance Yard would serve both the West Paso and pump stations.

### **Recycled Water and Reuse Sites**

The project would reuse recycled water in a number of ways. Recycled water would be returned directly to the upper aquifer at two leach field sites: the Broderson property and at the existing Bayridge leach field. The Broderson property consists of an approximately 81-acre rectangular shaped parcel located south of Highland Drive. Approximately 8 acres of the site would be used to construct a conventional leach field; the remainder of the site would be placed in permanent biological open space. The leach lines would be placed in trenches 5 to 6 feet deep and parallel to Highland Drive. Following construction, the leach field would be revegetated with local native coastal dune scrub plant species; however, the leach lines would need to be excavated and replaced periodically. Maintenance and replacement of the leach lines would occur on a rotational basis so that the entire leach field would not be excavated at one time. The existing Bayridge leach field currently serves the Bayridge neighborhood with common septic tanks and a leach field. The tanks would be abandoned or repurposed to collect rainwater and the leach field would be used for recycled water instead of septic tank leachate. In addition, the project includes a suite of reuse options aimed at optimizing options to compensate for sea water intrusion. These reuse options include agriculture and urban reuse, as well as environmental reservations to handle the remainder of the recycled water depending on the season. Due to its key role in reducing seawater intrusion, the Broderson site is the primary recycled water reuse element. Approximately one-third of the recycled water (up to 448 acre feet on an average annual basis) would be placed at the Broderson site, primarily during the wet winter months. During the summer, the majority of recycled water would be directed to urban and agricultural reuse (irrigation). Urban reuse is focused on existing turf areas at four schools, the community park, and the golf course. Agricultural reuse is focused on existing irrigated lands which draw from the Los Osos groundwater aquifer. The Bayridge leach field would provide subsurface flows to Willow Creek to support existing willow riparian stands. Although Willow Creek is outside of the wastewater service area, so existing septic tanks and leach fields would remain, the Bayridge leach field would offset any losses of underflow from nearby newly collected areas. A system of new monitoring wells would be installed down-gradient of the Broderson site. These, along with other existing wells in the community, would be used to track the movement and behavior of percolated water to maximize the efficiency of the site.

### **Water Conservation**

The project would implement a comprehensive water conservation program designed to reduce flows into the wastewater treatment plant as well as reduce the community's contribution to seawater intrusion currently occurring in the Los Osos Groundwater Basin. Because of the reduction and eventual halt of construction in the wastewater service area beginning in the 1980's, many of the homes and businesses in the community were built before current water

Pete Yribarren (8-8-10-F-14)

10

conservation requirements. Consequently, the per capita indoor water use rate is considered moderately high for the area. The latest calculations from the two water companies serving the wastewater service area indicate indoor water use rates near 66 gallons per day. Experience in other California central coast communities indicates that indoor use rates below 50 gallons per day per capita are achievable with the use of modern technology, including low flush toilets, low flow showerheads, and under sink hot-water circulators. Retrofit to low flow plumbing fixtures prior to hook-up to the project would be required.

### **Measures to Minimize Adverse Effects**

The USDA has proposed to include measures in the proposed action to avoid and minimize the effects on the Morro shoulderband snail; they are listed below. The USDA has also proposed measures to avoid adverse effects to those federally listed species not addressed in this biological opinion. The measures constitute a portion of the total commitments being made to by the County to reduce impacts to biological resources during the construction and operation phases of the LOWWP. We are listing some of them here for species not covered by this biological opinion to show how they have reduced the effects of the project to less than adverse. The full complement of minimization measures are presented in Appendix C of the Biological Assessment (County of San Luis Obispo Public Works Department 2010 b) and all are incorporated by reference into the project description for the proposed action.

#### Morro Shoulderband Snail

- A Service-authorized biologist will conduct training sessions for all project-related personnel immediately prior to the start of vegetation removal, grading, and ground-disturbing construction-related activities.
- Construction areas will be clearly marked with high visibility flagging or barrier fencing. Construction equipment and personnel will be restricted to the marked areas.
- A Service-authorized biologist will be retained to monitor all vegetation removal, grading, and ground-disturbing construction-related activities that will take place within habitat suitable for the Morro shoulderband snail. Monitoring activities will be required daily until completion of initial disturbance at each location and for ensuring appropriate minimization measures are implemented during construction. The monitor will be granted full authority to stop work at his or her discretion and will stop work if project-related activities occur outside the demarcated boundaries of the construction footprint. The monitoring biologist will stop work if any Morro shoulderband snails are detected within the proposed construction footprint and will implement measures to relocate them to suitable habitat out of harm's way prior to construction activities resuming. If no suitable habitat opportunities are available in the immediate vicinity of the construction footprint, salvaged and relocated specimens may also be transported to an off-site location approved by the Service.

Pete Yribarren (8-8-10-F-14)

11

- Prior to the initiation of project-related activities that would result in vegetation removal, soil disruption, or construction, the approximately 73 acres of the Broderson property that will not be used for the proposed leach fields will be secured and granted, in perpetuity, to an appropriate agency or conservation organization who will assume the responsibility for its management. A long-term management and monitoring program will be prepared and approved by the Service and the Department. The County will be responsible for the allocation of appropriate funding necessary to implement the management and monitoring of the conserved lands.
- The existing degraded coastal dune scrub at the Broderson property will be restored and maintained to promote its function as habitat for Morro shoulderband snail and sensitive plants and wildlife species that are local or endemic to the area. Restoration activities will be conducted by qualified personnel with expertise in restoration ecology and knowledge of sensitive plant and wildlife species in the area. Restoration activities will be conducted in accordance with a Restoration Plan specifically prepared for the effort and approved by the Service, and the Department. Similarly, habitat restoration and maintenance will be implemented according to a Habitat Mitigation and Monitoring Plan that will evaluate the progress of the restoration effort.
- Habitat restoration activities will include measures for the removal and eradication of competitive, invasive, non-native plant species known to occur in the local area, including veldt grass (*Ehrharta calycina*) and pampas grass (*Cortaderia* spp.). Activities that involve the removal of invasive species will not result in unnecessary trampling or removal of native species, and techniques employed for the removal of non-native plant species will be those that will result in the least damage to native species. Any disturbed portions of the acquired 73 acres of the Broderson parcel should be evaluated for their potential to be restored as coastal dune scrub habitat that would have the potential to support the functions and values necessary for the Morro shoulderband snail, the Morro Bay kangaroo rat, and other coastal dune scrub species.
- The restoration effort will include the implementation of a seed collection program to gather seeds to be used during restoration from native sources. The seed collection program will be prepared for approval by the County, Service, and Department prior to the commencement of vegetation removal, soil disruption, grading or other construction-related activities and focus on those native plant species that will be affected by project implementation. Collection will be conducted by personnel with demonstrated expertise in seed collection and storage and occur during the appropriate time of year for seed production and harvesting.
- The County will provide annual reports to the USDA and Service documenting the results of all restoration and monitoring activities. Annual reports will be provided for a minimum of five years or until it is determined that the requisite performance criteria have been met. The County will provide a written report to the USDA and Service within 90 days following the completion of the proposed project. The report must

Pete Yribarren (8-8-10-F-14)

12

document the number of Morro shoulderband snails removed and relocated from project areas, the locations of all Morro shoulderband snail relocations, and the number of Morro shoulderband snails known to be killed or injured. The report will contain a brief discussion of any problems encountered in implementing minimization measures, results of biological surveys, observations, and any other pertinent information such as the acreages affected and restored, or undergoing restoration, of each habitat type.

#### Morro Bay Kangaroo Rat

- Prior to the initiation of any vegetation clearing, revegetation/habitat restoration, soil disruption, grading, and/or ground-disturbing construction-related activities within the leach field area on the Broderson parcel or any other location within the action area that has potential for occurrence of the species (as determined in coordination with the Service and Department), the County will work with the Service and Department to develop and implement a “no take” strategy for the Morro Bay kangaroo rat. This strategy will include specific take avoidance measures and provide a survey, monitoring, and contingency plan should required periodic maintenance of the leach field area create suitable habitat for the species. Prior to its implementation, the strategy will be reviewed and approved by the Service and the Department and made part of a formal agreement to be signed by all parties.

#### California Red-Legged Frog

- All staging areas, as well as those areas where fueling and maintenance of vehicles and other equipment would occur, will be located at least 20 meters from riparian habitat or water bodies. The contractor or County will ensure that contamination of habitat does not occur during such operations.
- Prior to the onset of work near any riparian habitat, the USDA will ensure that the contractor or County has prepared a plan to allow a prompt and effective response to any accidental spills.
- To avoid potential timing conflicts between construction and the breeding season for the California red-legged frog, work activities adjacent to Los Osos Creek will only commence after March 31 and be completed by October 31, annually.
- Night-time illumination at the treatment plant site will meet the following requirements of the County’s Estero Area Plan in order to be shielded from riparian areas and creeks: “all lighting fixtures will be shielded so that neither the lamp nor the related reflector interior surface is visible from adjacent properties. Light hoods will be dark-colored.” No night lighting will be used unless necessary for active maintenance activities at the plant, or under emergency conditions.
- Tributaries to Warden Creek on the Giacomazzi property will be restored to provide improved habitat for the California red-legged frog. Drainages currently devoid of

Pete Yribarren (8-8-10-F-14)

13

riparian vegetation will be revegetated with native riparian canopy and emergent species to provide additional shade, cover, and breeding habitat. The current practice of removing all vegetation within and adjacent to Los Osos Creek and tributaries to Warden Creek will cease.

#### Least Bell's Vireo

- Construction in and around riparian habitat associated with Los Osos Creek will occur only between September 15 and October 31. If surveys are conducted by a Service-authorized biologist from March 15 through June 15 and least Bell's vireo breeding activity is not detected, this construction window may be expanded to include the months of July and August.

#### **Outstanding Issues from the Previous LOCSD LOWWP**

The following paragraphs discuss issues from the FEIR, CDP, and biological opinion 1-8-04-F-48.

#### LOCSD 2001 Final Environmental Impact Report

Mitigation measure BIO-4 required the purchase of the "single largest remaining privately held undeveloped parcel within the Los Osos greenbelt (Broderson), which totals 80 acres" and its donation to "a resource agency or organization for long term stewardship and protection." In addition to the land acquired, the LOCSD was to allocate \$10,000 per year (indexed to an inflation multiplier), in perpetuity, for the management of the property, even though it would eventually be owned by a different party. While the Broderson parcel was acquired by the LOCSD, it was never transferred to a conservation or management entity as required, and no funding has been provided for the management of the property.

Mitigation measure BIO-16 required the LOCSD (in conjunction with the Department, the Service, the County, and the California Coastal Commission Commission to prepare and execute an implementing agreement for a habitat conservation plan (HCP) or Natural Community Conservation Plan (NCCP) for the long-term preservation of habitat remaining within the community of Los Osos. A preliminary draft HCP was prepared and submitted to the Service in 2005. While the Service reviewed the draft HCP and submitted comments to the LOCSD in November 2005, there has been no action on the part of the LOCSD to address these comments or make progress towards completion of the HCP process.

Pete Yribarren (8-8-10-F-14)

14

### Coastal Development Permit

For the former wastewater project, mitigation measures provided in the FEIR were incorporated as conditions in the CDP. Similar to FEIR mitigation BIO-4, Condition 68(c)(i) of the CDP required that, prior to construction, approximately 40 acres be acquired as mitigation for impacts to coastal scrub and its constituent species and that, pursuant to Condition 68(c)(v), this land be granted to an appropriate agency or conservation organization in perpetuity with deeded guarantees of non-development or transfer. While the Broderson parcel was purchased by the LOCSD to fulfill Condition 68(c)(i), the acreage was never granted as required in Condition 68(c)(v). In addition, Condition 68(e) required that the LOCSD contribute \$10,000 per year towards the maintenance and restoration of the Broderson mitigation site. As noted above, no funds have been allocated or set aside by the LOCSD for this purpose. Condition 76 incorporated the intent of FEIR mitigation BIO-16.

### Biological Opinion 1-8-04-F-48

Take of Morro shoulderband snail and impacts to its habitat occurred as part of the former, uncompleted wastewater project. By the incorporation of both mitigation measures from the 2001 FEIR and conditions of the 2004 CDP into the project description and minimization measures, the Service exempted this take and concurred with the EPA's determination that take associated with the former project would not result in jeopardy for Morro shoulderband snail or destroy or adversely modify its critical habitat.

### Resolution of Issues

Because the current LOWWP proposes many of the same facilities within the same area, it is physically comparable to the previous project impacts to Morro shoulderband snail and its habitat. Take of the species at the Mid-town (formerly Tri-W) site would be substantially less (0.35 acre vs. 11 acres) than occurred as part of site preparation for the former project. The current County FEIR and CDP contain the same measures as the former project relative to Morro shoulderband snail and these have again been included as minimization measures in the project description. As stated above, the County would ensure that 73 acres of the Broderson site not needed for the leach fields is conveyed to an agency or conservation entity along with monies to ensure that the long-term management and enhancement of habitat prior to the initiation of project-related activities that would result in vegetation removal, soil disruption, or construction. This does not, however, assume that the balance of the now unused portion of the Mid-town site is exempted from take of Morro shoulderband snail related to future projects at the site. As with the former project, the current LOWWP is required to complete a HCP before there can be use and reliance on the sewer system by a new development.

Pete Yribarren (8-8-10-F-14)

15

**Project Schedule**

Construction of the proposed project is expected to take between 16 to 24 months. Both the County's contractor and individual property owners would share responsibilities for implementing the LOWWP, as described below.

Construction Activities by Contractor

Construction of the collection system and the raw wastewater and recycled water conveyance systems involve installing collection pipes within easements and public rights-of-way using trenching techniques. Because of the predominance of sandy soils in the Los Osos area, sheeting and shoring system would be utilized to comply with California Occupational Safety and Health Administration (CALOSHA) regulations. Trenching also requires dewatering in shallow groundwater areas as well as stabilizing measures. Baker tanks would be moved from one temporary location to another as needed during construction to contain the water pumped during dewatering operations. In general, construction activities would have multiple pipe-runs excavated at a time for project efficiency. The collection system construction also involves installation of submersible pump stations, which in turn involve excavation and construction of underground vaults. These vaults could be pre-cast or cast in-place concrete.

Once the collection system is installed in each area, the roadway would be repaved. A staging area would be located within the Los Osos community to support collection system construction by providing a lay down yard for pipeline, a storage yard for materials and equipment, and trailers for construction administration. The prior LOCSD wastewater project featured a construction yard at the northwest corner of Pismo Avenue and South Bay Boulevard. The site was cleared of vegetation at that time and has been tentatively identified as the LOWWP collection system construction yard; however, a final location would be selected during the project final design.

Construction of the treatment plant, biosolids processing facilities, and storage ponds would involve grading, excavation for facility construction, and construction of the buildings and facilities.

The Broderson leach field site would be excavated, backfilled with gravel for drainage, and then covered first by a geotextile fabric and backfilled with native soil. Percolation piping would then be installed about 1 foot below the geotextile fabric.

Construction Activities by Property Owners

Some activities that could affect listed species are the responsibility of property owners, and are part of the LOWWP. As a part of the LOWWP, property owners have the responsibility to install a lateral that connects from their building to the sewer lateral stub out that ends at their property line. Responsibility for retrofitting plumbing fixtures so all fixtures are low-flow, in accordance with the water conservation measures, also belongs to the property owner. If the

Pete Yribarren (8-8-10-F-14)

16

existing septic tank does not need to be removed, then the property owner would have the responsibility to decommission their existing septic tank. Decommissioning the existing septic tank involves pumping out the tank, removing the top of the tank and backfilling the tank with sand. Other methods to abandon the existing septic tanks are available that would increase their usefulness for returning recycled water to the upper aquifer; however these options are at the property owner's discretion and expense.

For properties that currently have a septic tank in the backyard (about 25 percent of the Los Osos community), the property owner has the responsibility to install a new lateral line from the structure's backyard or front yard to the property line. LOWWP project engineers anticipate that property owners with low elevation backyard septic tanks, (about 5 percent of the Los Osos community), would also need to install and maintain a low pressure grinder pump to move the sewage from their backyard to the front yard (Carollo Engineers 2007).

## **Monitoring and Reporting Plan**

### Annual Reports

Annual reports would be submitted by the County to the USDA and VFWO by January 31 of each year to document project progress, compensation activities, and results of pre-construction surveys required. Each report would address project sites scheduled for the following construction season and state whether effects at the sites would be within the limits set forth in this biological opinion. These reports would include photographs of all phases of the Project (preconstruction, during, and post construction), monitoring logs and training session reports, as well as a summary of all minimization and avoidance measures and how they were implemented. Any issues encountered during the project, and recommendations made to address them, would be provided.

The annual reports would document the presence of any sensitive or listed species encountered during project activities and the avoidance measures taken. Any take incidental to project activities would be documented. The Service shall be notified immediately by facsimile or telephone and in writing within one (1) working day of any unanticipated take of Morro shoulderband snails and the take or suspected take of listed wildlife species not authorized in the Service's Biological Opinion. If such take occurs, the report and agency notification would include the date, time, and location of the incident or of the finding of a dead or injured animal, and any other pertinent information. The Service contact would be the Ventura Fish and Wildlife Office, Attention Diane K. Noda, 2493 Portola Road, Suite B, Ventura, California 93003; phone (805) 644-1766; and fax (805) 644-3958.

Pete Yribarren (8-8-10-F-14)

17

### Biological Monitoring Reports

Annual Biological Monitoring Reports would be submitted by the County to USDA and the VFWO Office by January 31 of each year. Reports would be submitted for the duration of project construction. These reports would discuss the status and progress of compensation measures implemented. Photographs of mitigation/compensation sites would be included to document progress. If monitoring results indicate that additional measures are necessary to meet the goals set in the biological opinion, additional recommendations would be made and next steps would be agreed upon with appropriate agencies.

### Final Report

A final report would be submitted by the County to the USDA and VFWO within 60 days of the end of project activities. This report would summarize the Annual Reports and include a discussion regarding Project activities, compensation activities, and minimization and avoidance measures implemented.

## ANALYTICAL FRAMEWORK FOR THE JEOPARDY AND ADVERSE MODIFICATION DETERMINATIONS

### Jeopardy Determination

The jeopardy analysis in this biological opinion relies on four components: (1) the *Status of the Species*, which describes the range-wide condition of the Morro shoulderband snail, the factors responsible for that condition, and its survival and recovery needs; (2) the *Environmental Baseline*, which analyzes the condition of the Morro shoulderband snail in the action area, the factors responsible for that condition, and the relationship of the action area to the survival and recovery of the Morro shoulderband snail; (3) the *Effects of the Action*, which determines the direct and indirect impacts of the proposed Federal action and the effects of any interrelated or interdependent activities on the Morro shoulderband snail; and (4) the *Cumulative Effects*, which evaluates the effects of future, non-Federal activities in the action area on the Morro shoulderband snail.

In accordance with policy and regulation, the jeopardy determination is made by evaluating the effects of the proposed federal action in the context of the current status of the Morro shoulderband snail, taking into account any cumulative effects, to determine if implementation of the proposed action is likely to cause an appreciable reduction in the likelihood of both the survival and recovery of the Morro shoulderband snail in the wild.

The jeopardy analysis in this biological opinion places an emphasis on consideration of the range-wide survival and recovery needs of the Morro shoulderband snail and the role of the action area in the survival and recovery of the species as the context for evaluation of the significance of the effects of the proposed federal action, taken together with cumulative effects, for purposes of making the jeopardy determination.

Pete Yribarren (8-8-10-F-14)

18

### Adverse Modification Determination

This biological opinion does not rely on the regulatory definition of “destruction or adverse modification” of critical habitat at 50 CFR 402.02. Instead, we have relied on the statutory provisions of the ESA to complete the following analysis with respect to critical habitat.

In accordance with policy and regulation, the adverse modification analysis in this biological opinion relies on four components: (1) the *Status of Critical Habitat*, which describes the range-wide condition of designated critical habitat for the Morro shoulderband snail in terms of primary constituent elements, the factors responsible for that condition, and the intended recovery function of the critical habitat overall; (2) the *Environmental Baseline*, which analyzes the condition of the critical habitat in the action area, the factors responsible for that condition, and the recovery role of the critical habitat in the action area; (3) the *Effects of the Action*, which determines the direct and indirect impacts of the proposed Federal action and the effects of any interrelated and interdependent activities on the primary constituent elements and how that will influence the recovery role of the affected critical habitat units; and (4) *Cumulative Effects*, which evaluates the effects of future non-Federal activities in the action area on the primary constituent elements and how that will influence the recovery role of affected critical habitat units.

For purposes of the adverse modification determination, the effects of the proposed Federal action on the critical habitat of the Morro shoulderband snail are evaluated in the context of the range-wide condition of the critical habitat, taking into account any cumulative effects, to determine if the critical habitat range-wide would remain functional (or would retain the current ability for the primary constituent elements to be functionally established in areas of currently unsuitable but capable habitat) to serve its intended recovery role for the Morro shoulderband snail.

The analysis in this biological opinion places an emphasis on using the intended range-wide recovery function of critical habitat for the Morro shoulderband snail and the role of the action area relative to that intended function as the context for evaluating the significance of the effects of the proposed Federal action, taken together with cumulative effects, for purposes of making the adverse modification determination.

### STATUS OF THE SPECIES

On December 15, 1994, the Service listed the Morro shoulderband snail as endangered (50 *Federal Register* 64613). A recovery plan for the Morro shoulderband snail and four plants from western San Luis Obispo County was published in September 1998 (Service 1998b). Critical habitat for the Morro shoulderband snail was designated on February 7, 2001 (66 *Federal Register* 9233). A 5-year

Pete Yribarren (8-8-10-F-14)

19

status review for the Morro shoulderband snail and Chorro shoulderband snail was completed in 2006 (Service 2006).

The Morro shoulderband snail is a member of the land snail family Helminthoglyptidae. The genus *Helminthoglypta*, the shoulderband snails of California, is a complex of many species, each with a relatively small range and, therefore, relatively vulnerable to extinction (Burke et al. 1999). Three other species in the genus *Helminthoglypta* have distributions similar to that of the Morro shoulderband snail. The Chorro shoulderband snail (*Helminthoglypta morroensis*) (Roth and Tupen 2004) may occur in close proximity or overlap with the range of the Morro shoulderband snail. The surf shoulderband snail (*H. fieldi*) is found in coastal dune habitats south of the San Luis Range to Point Arguello in Santa Barbara County, and does not occur sympatrically with the Morro shoulderband snail. The Big Sur shoulderband snail (*H. umbilicata*) occurs from Monterey Bay in Monterey County, south to northern Santa Barbara County, including the Los Osos area.

The recovery plan for the Morro shoulderband snail describes its current distribution as areas south of Morro Bay, west of Los Osos Creek, and north of Hazard Canyon (Service 1998b). The species occurs throughout the community of Los Osos and in the dunes north of Morro Bay. Although the geographic range of the Morro shoulderband snail is not fully known, we do not expect it to extend much beyond the region it is now known to inhabit (Walgren 2003).

The Morro shoulderband snail is found in the accumulated leaf litter and on the undersides of lower shrub branches in coastal dune scrub vegetation, particularly mock heather (*Ericameria ericoides*), seaside golden yarrow (*Eriophyllum staechadifolium*), deerweed (*Lotus scoparius*), and dune almond (*Prunus fasciculata* var. *punctata*). Morro shoulderband snails have been found in introduced iceplant (*Mesembryanthemum* spp. and *Conicosia puginoniformis*), fig-marigold (*Carpobrotus edulis*), and veldt grass. Morro shoulderband snails appear to prefer shrubs in coastal dunes scrub that exhibit dense, low growth with ample contact to the ground. Based on this observation, favorable microclimate for the species may depend on shrubs providing partial shading and structure to serve as windbreaks to moderate temperatures and moisture loss within accumulated plant litter. It has been estimated that approximately 345 acres of coastal dune scrub habitat is found in and around the Los Osos area (CMCA 2002).

Most active or non-aestivating Morro shoulderband snails are observed during moist environmental conditions when moisture availability likely facilitates the species' ability to find food and mates, as well as disperse and migrate. Roth (1985) also proposed that because the congeneric species, *Helminthoglypta arrosa*, copulates, lays eggs, and grows in size during the wet season that Morro shoulderband snails would be expected to exhibit similar general life history characteristics. In the dry season, Morro shoulderband snails typically aestivate in the accumulated litter or attach to low-lying branches of shrubs. Based on our present understanding of the Morro shoulderband snail, we assume the following: 1) Morro shoulderband snails typically deposit their eggs under shrubs within the accumulated leaf litter or other areas that contain the appropriate microclimates; 2) Morro shoulderband snail eggs likely hatch the same wet season they are laid; and 3) Morro shoulderband snail eggs become nonviable if desiccation

Pete Yribarren (8-8-10-F-14)

20

occurs.

The microclimate under shrubs provides the necessary moist and temperate environment for Morro shoulderband snails to survive the drier months of the year. Although no studies have been conducted to determine how Morro shoulderband snails are affected when disturbed during aestivation, aestivating Morro shoulderband snails may suffer physiological stress or even death upon disturbance of shrubs and accumulated leaf litter if subsequently exposed to drier, hotter, or otherwise more desiccating conditions. Snails in this genus aestivate by producing an epiphragm (a seal of dried mucus in the aperture of the shell) to reduce water loss during seasonal periods of inactivity (i.e., dry season).

The greatest threat to the Morro shoulderband snail is loss of habitat through partial or complete removal of native vegetation. Habitat loss, fragmentation, and degradation can result from urban development and by invasion of non-native plant species, particularly veldt grass. Although the Morro shoulderband snail has been found in iceplant and veldt grass, non-native plant species can dominate to the exclusion of native plant species and render habitat unsuitable for Morro shoulderband snails. As dehydration is a major threat to terrestrial mollusks, shrub species are needed as partial shading and to provide windbreaks that reduce the drying effect of wind at ground level. Woody debris also provides shelter for Morro shoulderband snails and may act as a source of nutrients for fungi, a potential food source for Morro shoulderband snails.

Other threats to the species include direct trampling, soil disturbance, and soil compaction caused by horses, human activities, and off-road vehicles. Morro shoulderband snails may also be threatened by the application or spilling of chemicals, including pesticides, herbicides, fertilizers, and fire retardants. The senescence of dune vegetation may also threaten their survival as older shrubs that no longer make contact with the ground may not provide the necessary microclimate in terms of temperature and moisture. Morro shoulderband snails may be limited by competition with non-native species, such as the brown garden snail (*Helix aspersa*).

### **Critical Habitat for the Morro Shoulderband Snail**

Critical habitat for the Morro shoulderband snail was designated on February 7, 2001 (66 *Federal Register* 9233; Service 2001). The primary constituent elements of critical habitat for the Morro shoulderband snail include the following: sand or sandy soils needed for reproduction; a slope not greater than 10 percent to facilitate movement of individuals; and the presence of native coastal dune scrub vegetation. A total of 2,566 acres of critical habitat was designated in three units. All three units are occupied by the Morro shoulderband snail and all face threats from non-native invasive plant species, development, and structural changes to the habitat as native vegetation matures and non-native plant species increase in dominance. Each unit represents a core population of Morro shoulderband snails that is considered to be essential to maintain the species' geographic distribution and genetic variability (Service 2001).

Pete Yribarren (8-8-10-F-14)

21

Because we consider each critical habitat unit to be essential to the species' conservation as a whole, we will base our critical habitat analysis on the individual units that would be affected by the proposed project. Critical habitat within Units 2 and 3 would be adversely affected by the proposed project, while there would be no effects to Unit 1. As such, we focus our critical habitat analysis on Units 2 and 3, independently, to make our determination regarding the effects of the proposed action to critical habitat for the Morro shoulderband snail.

## ENVIRONMENTAL BASELINE

The implementing regulations for section 7(a)(2) of the Act define the "action area" as all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 *Code of Federal Regulations* 402.02). For the purposes of this biological opinion, we consider the action area to include the treatment plant site, the primary wastewater pumping station, and recycled water reuse sites. The action area is depicted on Figure 1 as that area circumscribed by an orange line.

Morro shoulderband snails are known to occur on residential properties that would be connected to the wastewater main lines via lateral lines and are expected to occur wherever suitable cover, food sources, and moisture regimes exist throughout the action area. The following discussion provides information regarding known or expected presence at locations that are considered to be major project components.

Treatment Plant Site: No live Morro shoulderband snails or shell were identified at the location for the treatment plant at the Giacomazzi site (County of San Luis Obispo Public Works Department 2010d). The species is typically restricted to areas west of Los Osos Creek; however, it was detected east of Los Osos Creek at Warden Creek on the Lee property, approximately one mile northwest of the northern boundary of the Giacomazzi property (Tenera 2006). Both Morro shoulderband and Chorro shoulderband snails were found on this property with the Morro shoulderband snails being associated with coastal scrub habitat and Baywood fine sands.

Mid-Town Site and Locations for Pump Stations: Live individuals and empty shells of Morro shoulderband snail were found on the Mid-Town site as part of site preparation activities for the former wastewater project. Live individuals were captured and relocated to the North Coast Audubon's Sweet Springs Preserve. Morro shoulderband snails occur on the contiguous Morro Shores property located to the north of the Mid-Town site. While the Mid-Town site is currently in a fairly disturbed condition, much of it is recovering to coastal dune scrub and other habitats that are being re-occupied by the species (Tenera 2010). The 0.25 acre pump station site is situated on parts of the parcel where plant regeneration has been lowest (between 10-15 percent cover of native coastal dune scrub species including: deerweed (*Lotus scoparius*), beach bush lupine (*Lupinus chamissonis*), and California croton (*Croton californicus*)). Approximately 70 percent is bare soil and the remainder is iceplant and veldt grass. The 0.10 acre stand-by power site is on a part of the parcel that has had more robust regeneration, with about 50 percent cover by deerweed, veldt grass and beach bush lupine, with lesser amounts of other native and non-

Pete Yribarren (8-8-10-F-14)

22

native plants. For this reason, is expected that the species is likely to occur at the proposed pump station or generator building sites. Given the location of the other 8 pump stations and 13 pocket stations (see Figure 1), the potential also exists for Morro shoulderband snail to be present in these areas particularly where coastal scrub is present (e.g., East Santa Ysabel Avenue and South Bay Boulevard, East Paso Robles Avenue and 18<sup>th</sup> Street, and Lupine Street and Donna Avenue).

Leach Fields and Re-use Sites: The lower portions of the Broderson site that would be used as leach fields for recycled water have supported high densities of Morro shoulderband snails in the past. The species has also been documented on the upper slopes of the Broderson site in open areas containing coastal dune scrub (County of San Luis Obispo Public Works Department 2010a). A number of the re-use areas identified on Figure 1 are known to provide habitat for, or be occupied by, the Morro shoulderband snail; notably those in the western region of the action area, immediately east of South Bay Boulevard and immediately east of the Los Osos Oaks Preserve south of Los Osos Valley Road (Service files, County of San Luis Obispo Public Works Department 2010a).

Staging Areas: The Paso Robles site is within the boundaries of critical habitat Unit 3 for the Morro shoulderband snail and empty shells for the species have been identified onsite in the past (County of San Luis Obispo Public Works Department 2010a). As such, Morro shoulderband snails are expected to occur at this site, particularly in those areas where the primary constituent elements of critical habitat are present.

### **Critical Habitat for the Morro Shoulderband Snail**

As previously stated, a total of 2,566 acres of critical habitat in three units was designated for Morro shoulderband snail on February 7, 2001 (66 *Federal Register* 9233). Unit 1 contains 1,830 acres (or 72 percent) of the total area designated, and encompasses areas managed by the California Department of Parks and Recreation (Montaña de Oro State Park) and the City of Morro Bay. This unit includes the length of the spit and the foredune areas extending south toward Hazard Canyon. No portion of Unit 1 is within the identified action area.

Unit 2 consists of 320 acres (12 percent of the total) that occur on the north-facing slopes of the Irish Hills. The 204-acre Morro Ecological Reserve (formerly known as the Bayview site) and the 80-acre Broderson site are the largest tracts of land in this unit. The ecological reserve is owned by the Department and the Broderson site is owned by the LOCSD. Primary constituent elements of critical habitat for the Morro shoulderband snail exist on the lower slopes of the Broderson site. While much of the coastal dune scrub present on lower portions of the site have been heavily disturbed by the invasion of non-native plant species (e.g., veldt grass and *Eucalyptus*), hikers, and equestrian use, Unit 2 contains a sustainable population of Morro shoulderband snails that could be expanded with appropriate management.

Pete Yribarren (8-8-10-F-14)

23

Critical habitat Unit 3 is 420 acres (16 percent of the total) of high-quality coastal dune scrub habitat that includes the undeveloped areas between Los Osos Creek and the community of Baywood Park in northeast Los Osos. This unit supports the northernmost, intact habitat for, and sustainable populations of, Morro shoulderband snail in Los Osos. The proposed Paso Robles staging area occurs within the boundary of critical habitat Unit 3; however, this parcel is separated from the other preserved areas in the unit by South Bay Boulevard and the community of Baywood Park. Only limited areas containing the primary constituent elements are present. The protection of Unit 3 is essential to maintain the species genetic variability and geographic distribution. This unit has favorable habitat conditions for the expansion and persistence of a sustainable population of Morro shoulderband snail. With the reduction of threats through appropriate management, we expect Unit 3 to continue to support a large population that will contribute toward the recovery of the Morro shoulderband snail.

#### EFFECTS OF THE ACTION

The treatment site at Giacomazzi does not have appropriate habitat for the Morro shoulderband snail and the species was not observed during surveys conducted in December 2009. As such, it is not anticipated that Morro shoulderband snails would be affected by construction and operations at this site. Likewise, the neighboring Andre site, a portion of which would be used for the treatment plant access road, lacks appropriate habitat for the species.

The Mid-town site is made up of scattered coastal dune scrub interspersed with disturbed grassland. As previously stated, this site was graded in 2005; however, native plant regeneration is naturally occurring. Because of the young age of the recovering coastal dune scrub plant community, little duff is present under the plants to provide habitat for the Morro shoulderband snail; however, a few Morro shoulderband snails may be present and would be adversely affected by placement of the pump station and generator building at this site.

The majority of the collection system would be constructed within the street rights-of-way that are generally highly disturbed and comprises ruderal vegetation. Lateral connections to individual customers and abandonment of septic systems would also temporarily disturb land, some of which may support Morro shoulderband snails. A few of the pump stations are on private lands that cultivated or contain coastal dune /sage scrub or and grassland habitats suitable for Morro shoulderband snail. We anticipate approximately 0.5 acre of impacts to coastal dune scrub. This habitat would be completely removed for the construction of the collection system.

Raw water and treated wastewater conveyance systems would disturb a very limited amount of Morro shoulderband snail habitat. Most of the length of the pipelines would be along Los Osos Valley Road in areas or habitat considered to be unsuitable for the species.

The construction of the leach field would result in temporary loss of this habitat and the proposed activities may result in direct mortality of some Morro shoulderband snails.

The Paso Robles staging site was graded in 2005 and the small amount of habitat (0.1 acre) was

Pete Yribarren (8-8-10-F-14)

24

removed; however, it is possible that Morro shoulderband snails could be present in small numbers and could be affected by the project.

As part of the proposed action Morro shoulderband snails may be injured or killed by vehicles, heavy equipment, foot traffic, or other activities associated with construction and restoration activities associated with the proposed action. To minimize adverse effects to Morro shoulderband snails and their critical habitat during construction of the wastewater project, the County would employ Service-authorized biologists to clearly delineate access routes and construction footprints, using flagging or construction fencing. These biologists would also conduct pre-construction surveys and relocate Morro shoulderband snails out of harm's way into adjacent suitable habitat.

Morro shoulderband snails may also be accidentally injured or killed during habitat restoration and management activities. The primary methods typically used to remove non-native invasive plant species in the Los Osos area are: 1) hand and mechanical removal in which target plants are pulled by hand or with hand tools, mowing, or solarization (placing black or clear plastic over the soil surface to increase soil temperature and block sunlight); 2) herbicide application; or 3) a combination of these methods.

The hand pulling or mowing of weeds may cause damage to or loss of shelter sites which provide cover and appropriate microclimate for Morro shoulderband snails. Adverse effects would be reduced by limiting the number of access routes into the treatment area so that trampling native vegetation and disturbing accumulated plant litter underneath shrubs is kept to a minimum. Demarcating the treatment area would minimize disturbance to Morro shoulderband snail shelter sites outside of the designated treatment areas. Solarization has the potential to kill or injure Morro shoulderband snails if they are trapped beneath the plastic and subjected to the resultant high temperatures and lack of sunlight, however, surveying and relocating Morro shoulderband snails to adjacent suitable habitat prior to installation of plastic would minimize adverse effects from this method.

Morro shoulderband snails may be accidentally injured or killed during surveys or relocation activities. The County proposes to reduce the likelihood of injury or mortality by minimizing handling time and by ensuring that surveys and relocation efforts are conducted only by Service-authorized biologists. Mortality at relocation sites would be reduced by carefully placing the snails under dense vegetation that would provide a suitable microclimate. Death or injury could occur if Morro shoulderband snails are accidentally crushed during survey efforts. However, Service-authorized biologists would slowly and carefully inspect the ground for the presence of Morro shoulderband snails and avoid stepping on or under shrubs in order to minimize the likelihood that individuals would be killed during surveys.

The potential effects of herbicides on Morro shoulderband snails are not known, although a study on aquatic snails exposed to glyphosate concluded the herbicide caused abnormalities in snail development and reproduction (Tate et al. 1997). Morro shoulderband snails could be exposed to herbicides by ingestion and absorption while living in, or migrating through, a

Pete Yribarren (8-8-10-F-14)

25

recently treated area. Direct herbicide spray or drift from spray could contaminate soil; leaves, stems and branches of shrubs; leaves, mold, and fungi in plant litter; and potential shelter sites for Morro shoulderband snails, including downed wood, rocks, or debris piles. Surveying and relocating Morro shoulderband snails each day prior to beginning work activities would minimize direct contact with herbicide spray. Clearly demarcating all treatment areas would minimize herbicide spray from contacting Morro shoulderband snails outside of designated work areas. Shielding native plants with plastic sheeting, buckets, or tubs would minimize herbicide contamination of plant litter and soil, and would minimize contact with Morro shoulderband snails that are foraging or moving about.

Due to the large action area, variety of action agents, and the cryptic nature of the Morro shoulderband snail, we do not expect all individuals to be found, captured, and relocated. Furthermore, if the proposed construction occurs during the dry season, Morro shoulderband snails would likely be aestivating. Conducting surveys for snails when they are inactive substantially increases the difficulty in their location. Additionally, aestivating Morro shoulderband snails may also suffer physiological stress or even death upon disturbance of their shelter sites. These effects would be greatly reduced by minimizing handling time of individuals and by employing only persons experienced in handling the species and who are familiar with their habitat needs when relocation is required. Even with the incorporation of minimization measures, we anticipate that some Morro shoulderband snails would be killed as a result of the proposed action.

### **Critical habitat for the Morro Shoulderband Snail**

The primary constituent elements of critical habitat at the Broderson leach field would initially be removed; however the County proposes to revegetate this area with coastal dune scrub species salvaged from the site prior to construction. As the pores beneath the leach field become clogged over time, this area will require excavation to address leach field function. This activity could occur at 5, 10 or 20 years, depending on how long it takes for the pores to clog. Habitat restoration and revegetation would occur after each reconstruction of the leach field. Suitable Morro shoulderband snail habitat surrounds the leach field site so the area should be able to be readily recolonized by the species.

Within Unit 2, construction of the leach field and access road on the Broderson site would result in the direct removal of up to 8 acres of critical habitat for the Morro shoulderband snail. As previously stated, the area where the proposed leach field would be constructed has been subject to past disturbances including invasion by non-native plant species, hiking, and equestrian use. Although up to 8 acres of critical habitat within Unit 2 would be affected by construction of the proposed leach fields, the primary constituent elements would still exist throughout the majority of the 320-acre unit, both on the Broderson site and on the larger Morro Dunes Ecological Reserve. Because the LOCSD would leave areas of native vegetation in place instead of excavating the entire leach field at once and would restore disturbed areas with suitable native habitat for the Morro shoulderband snail, primary constituent elements for the Morro shoulderband snail will not be completely lost. The amount of critical habitat that would be

Pete Yribarren (8-8-10-F-14)

26

removed during construction is considered to be small relative to the amount that would still exist within Unit 2. The area to be disturbed constitutes only 2.5 percent of the 320 acres in Unit 2. Consequently, we do not expect construction of the leach field on the Broderson site to limit the ability of Unit 2 to support a sustainable population of Morro shoulderband snails. The conservation of approximately 73 acres on the Broderson site will benefit the Morro shoulderband snail and its critical habitat because it would result in on-going monitoring and habitat restoration that would not otherwise occur.

Within Unit 3, approximately 0.1 acre of coastal dune scrub at the Paso Robles staging area was affected by the actions associated with the former wastewater. The overall disposition of the site is disturbed in nature; however, some primary constituent elements may be recovering. Because the amount of critical habitat that would be adversely affected within this unit is small and fragmented from other areas within the unit, we do not believe its loss will limit the ability of the 420-acre unit to support a sustainable population of Morro shoulderband snails in any way. Conserved lands that make up the majority of Unit 3 would continue to support the species and maintain genetic variability and geographic distribution of Morro shoulderband snails in the area.

#### CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

Based upon the analysis in the previous biological opinion for the LOCSD wastewater project, we expect the CRWQCB to remove the building moratorium established by Resolution 83-13 when the proposed wastewater project is operational. This lifting of the moratorium would likely result in the build-out of those vacant lots that remain within the wastewater service area. Approximately 125 acres of degraded and fragmented Morro shoulderband snail habitat could be removed within this area as a result of the anticipated build-out. The wastewater service area consists primarily of parcels (approximately 500) that are less than 1 acre in size. These small parcels contain an estimated 25 acres of fragmented and degraded Morro shoulderband snail habitat. The remaining 40 or so lots within the wastewater service area that are greater than 1 acre in size contain approximately 100 acres of Morro shoulderband snail habitat that is, for the most part, also fragmented and degraded. None of the parcels in the wastewater service area are within designated critical habitat for the Morro shoulderband snail or identified in the recovery plan as important for the recovery of this species (Service 1998b).

The County is developing a Habitat Conservation Plan to address development both inside and outside the sewer service area. Other covered activities that could be addressed in the plan include maintenance activities, hazardous fuels reduction, and facility development. We anticipate the County will seek authorization for incidental take of the Morro shoulderband snail pursuant to section 10(a)(1)(B) of the Act.

Pete Yribarren (8-8-10-F-14)

27

## CONCLUSION

After reviewing the current status of the Morro shoulderband snail and its critical habitat, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, it is the Service's biological opinion that construction of the LOWWP, as proposed, is not likely to jeopardize the continued existence of the Morro shoulderband snail or destroy or adversely modify critical habitat for the Morro shoulderband snail. We have reached these conclusions for the following reasons:

1. The County will implement measures to minimize adverse effects of the proposed project the Morro shoulderband snail and its critical habitat;
2. Relatively few Morro shoulderband snails are likely be injured or killed because of the proposed relocation and other protective measures;
3. Many more Morro shoulderband snails are present in protected conservation areas than would be affected by the proposed action, and we expect the numbers and areas conserved to be sufficient for not interfering substantially with the species' survival and recovery; and
4. The amount of critical habitat that would be affected as a result of the proposed project in Units 2 and 3 is very small relative to the amount that would still be available for the Morro shoulderband snail within each unit. Each critical habitat unit would continue to function to support sustainable populations of the Morro shoulderband snail and maintain the species' geographic distribution and genetic variability.

## INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as an intentional or negligent act or omission which 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. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this incidental take statement.

Pete Yribarren (8-8-10-F-14)

28

The measures described below are non-discretionary and USDA must include them as binding conditions of any contracts associated with the proposed action, for the exemption in section 7(o)(2) to apply. The USDA has a continuing duty to regulate the activity covered by this incidental take statement. If the USDA fails to require its contractors to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to its authorization, or contracts, the protective coverage of section 7(o)(2) may lapse. To monitor the impact of incidental take, the USDA must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement [50 CFR §402.14(i)(3)].

All Morro shoulderband snails found within the project area may be subject to take in the form of capture during relocation efforts. A subset of captured Morro shoulderband snails may experience a significant disruption of normal behavioral patterns to the point that reaches the level of harassment. Any Morro shoulderband snails that remain in the project area may be subject to increased predation, crushed or entombed during construction activities, or be otherwise injured or killed.

We cannot determine the precise number of Morro shoulderband snails that may be killed, injured, harassed, or harmed as a result of the proposed action. Numbers and locations of Morro shoulderband snails within a population vary from year to year. Incidental take of Morro shoulderband snails would be difficult to detect because of their small body size and finding dead or injured specimens is unlikely. Take by predation as a result of exposure due to project activities would likely be impossible to detect. As the County has proposed to use those minimization measures described in the project description section of this document, we anticipate that few Morro shoulderband snails are likely to be killed or injured during this work.

This biological opinion does not exempt any activity from the prohibitions against take contained in section 9 of the Act that is not incidental to the action as described in this biological opinion. Take that occurs outside of the action area or from any activity not described in this biological opinion is not exempted from the prohibitions against take described in section 9 of the Act.

#### REASONABLE AND PRUDENT MEASURES

The Service believes the following reasonable and prudent measures are necessary and appropriate to minimize the take of Morro shoulderband snails:

1. Worker education programs and clearly-defined operational procedures must be implemented by the USDA and County.
2. Only Service-authorized biologists may survey for, monitor, handle, and/or relocate Morro shoulderband snails.
3. Service-authorized biologists must have the authority to stop work if project-related activities occur outside the demarcated boundaries of the construction footprint.

Pete Yribarren (8-8-10-F-14)

29

4. The USDA must ensure that the level of incidental take that occurs is commensurate with the analysis contained within this biological opinion.

The Service's evaluation of the effects of the proposed actions includes consideration of the measures proposed by the USDA to minimize the adverse effects of the waste water project on the Morro shoulderband snail and critical habitat. Any subsequent changes to these measures may constitute a modification of the proposed action and warrant reinitiation of formal consultation, as specified at 50 CFR 402.16. These reasonable and prudent measures are intended to clarify or supplement the protective measures included in the description of the proposed action.

#### TERMS AND CONDITIONS

To be exempt from the prohibitions of section 9 of the Act, the USDA must ensure that the County complies with the following terms and conditions, which implement the reasonable and prudent measures described above.

1. The following terms and conditions implement reasonable and prudent measure 1:
  - a. The worker education program must include descriptions and pictures of the Morro shoulderband snail, relevant provisions of the Endangered Species Act, specific measures being implemented to conserve the Morro shoulderband snail as they relate to the project and the project boundaries within which the work will occur.
  - b. The USDA and the County must minimize the removal of, or damage to, native vegetation during project activities to the maximum extent possible.

2. The following term and condition implements reasonable and prudent measure 2:

Only Service-authorized biologists may survey for, monitor, capture, handle, or relocate Morro shoulderband snails. Eric Wier, Kate Ballantyne, and John Farhar are hereby authorized to independently conduct these activities as described in this biological opinion. Katie Drexhage, Kelly Sypolt, and Trevis Warner are authorized to conduct such activities only under the direct supervision of Eric Wier, Kate Ballantyne, and/or John Farhar. The USDA, in conjunction with the County, must request the Service's authorization of any other biologists it wishes to employ to conduct these activities relative to the proposed project. This request must be in writing and received by the Service at least 30 days prior to the intended start date.

3. The following term and condition implements reasonable and prudent measure 3:

A Service-authorized biologist must monitor the proposed project area(s) daily during

Pete Yribarren (8-8-10-F-14)

30

work activities, for up to two weeks or until completion of initial site disturbance at each project site, and have the authority to stop project activities that occur outside the demarcated boundaries of the construction footprint and access road and to relocate Morro shoulderband snails to suitable habitat out of harm's way.

4. The following term and condition implements reasonable and prudent measure 4:

If more than 28 Morro shoulderband snails are found dead or injured during implementation of the project, the USDA or County must contact the VFWO immediately so we can review the project activities to determine if additional protective measures are needed.

## REPORTING REQUIREMENTS

The County must provide a written report to the Service within 90 days following completion of the proposed project. The report must document the number and size of any Morro shoulderband snails relocated from the action area, the date and time of relocation, and a description of relocation sites. The report must also state the number of Morro shoulderband snails killed or injured, describing the circumstances of the mortalities or injuries if known. The report must contain a brief discussion of any problems encountered in implementing minimization measures, results of biological surveys and sighting records, and any other pertinent information such as the acreage affected and restored or undergoing restoration of each habitat type.

In addition, the County must submit the results of any habitat restoration or enhancement activities conducted in relation to the proposed project. This timeframe may be modified with approval from the Service. We encourage you to submit recommendations regarding modification of or additional measures that would improve or maintain protection of the Morro shoulderband snail and simplify compliance with the Act.

## CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to use their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

The USDA should fund the development of a standardized survey methodology to track populations of Morro shoulderband snail on conserved lands (e.g., the Broderson parcel) over time in order to determine if they support self-sustaining populations of the species.

The Service requests notification of the implementation of any conservation recommendations so we may be kept informed of actions minimizing or avoiding adverse effects or benefitting listed

Pete Yribarren (8-8-10-F-14)

31

species or their habitats.

#### REINITIATION NOTICE

This concludes formal consultation on the action(s) outlined in the request for consultation. As provided in 50 CFR 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

If you have any questions, please contact Julie M. Vanderwier of my staff at (805) 644-1766, extension 222.

Sincerely,

/s/: Diane K. Noda

Diane K. Noda  
Field Supervisor

## REFERENCES CITED

- Burke, T.E., J.S. Applegarth, and T.E. Weasma. 1999. Management recommendations for survey and manage - Terrestrial Mollusks. USDA Forest Service R-5/6, DOI Bureau of Land Management OR/WA/CA.
- California Natural Diversity Data Base (CNDDDB). 2009. Rarefind 3.1.0 results for San Luis Obispo County, February 4, 2009.
- California Regional Water Quality Control Board (CRWQCB). 2001. Status report on the Los Osos Community Services District wastewater project, San Luis Obispo County. San Luis Obispo, California.
- California Regional Water Quality Control Board (CRWQCB). 2002. Support document for Morro Bay total maximum daily load for pathogens (including Chorro and Los Osos Creeks). San Luis Obispo, California.
- Carollo Engineers, in association with Crawford, Multari & Clark Associates and Cleath and Associates. 2007. San Luis Obispo County, Los Osos Wastewater Project Development, Potential Viable Project Alternatives: Rough Screening Analysis Report. March.
- County of San Luis Obispo, Public Works Department. 2010a. Los Osos Wastewater Project Biological Assessment. January.
- County of San Luis Obispo, Public Works Department. 2010b. Los Osos Wastewater Project Biological Assessment, Amended. March.
- County of San Luis Obispo, Public Works Department. 2010c. Rare Plant Survey Report for the Los Osos Wastewater Project – Broderson Leach Field.
- County of San Luis Obispo, Public Works Department. 2010d. General Biological Survey and Habitat Assessment for the Los Osos Wastewater Project – Giacomazzi and Andre Sites.
- Michael Brandman Associates. 2008. Draft Environmental Impact Report; County of San Luis Obispo; Los Osos Wastewater Project, Appendix G and Appendix Q.8. Prepared for County of San Luis Obispo Public Works Department
- Roth, B. 1985. Status survey of the banded dune snail, *Helminthoglypta walkeriana*. Final report. U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, California.
- Roth, B. and J. Tupen. 2004. Revision of the systematic status of *Helminthoglypta walkeriana morroensis* (Hemphill 1911) (Gastropoda: Pulmonata). *Zootaxa*. 616:1-23.

- Tate, T.M., J.O. Spurlock, and F.A. Christian. 1997. Effect of Glyphosate on the development of *Pseudosuccinea columella* snails. *Archive of Environmental Contamination and Toxicology* 33:286-289.
- Tenera Environmental. 2006. Letter report from Mr. Dan Dugan to Mr. Steve Kirkland, USFWS regarding Morro shoulderband snail occurrence. April 3.
- Tenera Environmental. 2010. Letter report from Mr. Dan Dugan to Mr. Dan Gilmore, General Manager, Los Osos Community Services District, regarding survey results for Morro shoulderband snail associated with removal of the perimeter fence at the Mid-Town site. January 19.
- U.S. Fish and Wildlife Service (Service). 1998a. Draft recovery plan for the least Bell's vireo. U.S. Fish and Wildlife Service, Portland, OR. 139 pp.
- U.S. Fish and Wildlife Service (Service). 1998b. Recovery plan for the Morro shoulderband snail and four plants from western San Luis Obispo County, California. U.S. Fish and Wildlife Service, Portland, Oregon. 75 pp.
- U.S. Fish and Wildlife Service (Service). 2000. Biological opinion for geotechnical field exploration activities for the Los Osos Community Services District wastewater treatment facility, Los Osos, San Luis Obispo County, California (1-8-00-F-8). Ventura Fish and Wildlife Office, Ventura, California.
- U.S. Fish and Wildlife Service (Service). 2001. Final Determination of Critical Habitat for the Morro Shoulderband Snail (*Helminthoglypta walkeriana*). 50 CFR Part 17. Prepared by the U.S. Fish and Wildlife Service, Ventura California for the U.S. Fish and Wildlife Service, Portland, Oregon.
- U.S. Fish and Wildlife Service (Service). 2003. Biological opinion for field testing activities for the Los Osos Community Services District wastewater treatment facility, Los Osos, San Luis Obispo County, California (1-8-02-F-66). Ventura Fish and Wildlife Office, Ventura, California.
- U.S. Fish and Wildlife Service (Service). 2005. Biological Opinion for the Los Osos Wastewater Project Project, San Luis Obispo County, California (1-8-04-F-48). Ventura Fish and Wildlife Office, Ventura, California.
- U.S. Fish and Wildlife Service (Service). 2006. Banded Dune Snail (*Helminthoglypta walkeriana*) [=Morro shoulderband snail (*Helminthoglypta walkeriana*) and Chorro shoulderband snail (*Helminthoglypta morroensis*)]; 5-Year Review: Summary and Evaluation. U.S. Fish and Wildlife Service. Ventura, California.

U.S. Fish and Wildlife Service (Service). 2009. Comments on the Draft Environmental Impact Report, County of San Luis Obispo, Los Osos Wastewater Project, SCH No. 2007121034. Ventura Fish and Wildlife Office.

Villablanca, F. 2009a. Morro Bay Kangaroo Rat (*Dipodomys heermanni morroensis*) habitat assessment relative to Los Osos Sewer Project proposed for Tonini Ranch. Prepared for County of San Luis Obispo Public Works Department. February 20.

Villablanca, F. 2009b. Protocol Visual Survey for Morro Bay kangaroo rat, Los Osos Wastewater Project, Tonini Ranch. July 30.

Walgren, M. 2003. The current status of the Morro shoulderband snail (*Helminthoglypta walkeriana*). Masters Thesis, California Polytechnic State University. San Luis Obispo, California.

STATE OF CALIFORNIA—NATURAL RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5200  
FAX (415) 904-5400  
TDD (415) 597-5885



January 25, 2010

RECEIVED

JAN 28 2010

COUNTY OF SAN LUIS OBISPO  
DEPARTMENT OF PUBLIC WORKS

**JURISDICTION LETTER**

**Mark Hutchinson**  
**Environmental Programs Manager**  
**San Luis Obispo Dept. of Public Works**  
**County Government Center, Room 207**  
**San Luis Obispo, CA 93408**

Applicant: **San Luis Obispo County**

Project: **Los Osos Wastewater Project: Construction and operation of a sewer system to serve Los Osos, including a sewer treatment plant facility, collection system, effluent disposal and reuse, a water conservation program, and all associated appurtenant infrastructure.**

Location: **2198 Los Osos Valley Rd., Los Osos, San Luis Obispo County**

Coastal Commission Federal Consistency No. **NE-078-09**

Coastal Commission Permit/Appeal **A-3-SLO-09-055 & A-3-SLO-09-069**

Local Coastal Development Permit No: **County CDP Number DRC2008-00103**

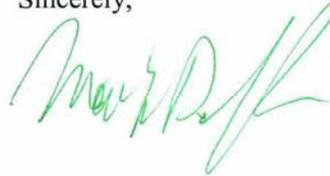
If a nationwide permit, NWP number: \_\_\_\_\_

The Coastal Commission staff has received your request to identify Commission jurisdiction for the purposes of processing an application for federal funding from the US Dept. of Agriculture. Pursuant to the federal Coastal Zone Management Act (CZMA) and the associated implementing regulations, NOAA cannot grant the subject funds to San Luis Obispo County until the County has complied with the requirements of Section 307(d) of the CZMA (16 USC § 1456[d]) and the associated regulations (15 CFR Part 930, Subpart F). The applicant can meet these requirements by receiving a Commission concurrence with either (1) a consistency certification prepared by the applicant or (2) a showing that the activity does not affect the coastal zone.

The Coastal Commission staff has reviewed the information submitted for the above-referenced project, and has made the following determination:

**The Coastal Commission declines to assert federal consistency over USDA's proposed federal funding for this project at this time. This determination is based on several factors. While the project initially received a locally-issued coastal development permit (CDP) from San Luis Obispo County, this local CDP was appealed to the Coastal Commission. On January 16, 2010, the Commission determined that a substantial issue was raised by the appeal. Consequently, the final determination of the project's consistency with the California Coastal Management Program will not occur until the Commission takes further action on the CDP. Nevertheless, for purposes of related federal consistency review of the federal agency (USDA) continuing to fund the project, we have determined that the funding decision may appropriately be separated from and may precede the final CDP action, and that the ultimate CDP action will fully address any issues raised over the project's protection of coastal resources and consistency with the CCMP.**

Sincerely,



MARK DELAPLAINE  
Manager, Energy, Ocean Resources  
and Federal Consistency Division

cc: Santa Cruz District Office  
US Dept. of Agriculture – Rural Development  
Pete Yribarren  
Community Programs Specialist  
USDA Rural Development  
3530 W. Orchard Ct.  
Visalia, CA 93277

Form RD 2006-38  
(Rev. 07-07)

Rural Development  
Environmental Justice (EJ) and Civil Rights Impact Analysis (CRIA)  
Certification

1. Applicant's name and proposed project description: The County of San Luis Obispo proposes to Construct a wastewater facility for the community of Los Osos, CA

2. Rural Development's loan/grant program/guarantee or other Agency action: The applicant has requested a loan/grant under Rural Development's Water and Waste Disposal Program.

3.  Attach a map of the proposal's area of effect identifying location or EJ populations, location of the proposal, area of impact or

Attach results of EJ analysis from the Environmental Protection Agency's (EPAs) EnviroMapper with proposed project location and impact footprint delineated.

4. Does the applicant's proposal or Agency action directly, indirectly or cumulatively affect the quality and/or level of services provided to the community?

Yes  No  N/A

5. Is the applicant's proposal or Agency action likely to result in a change in the current land use patterns (types of land use, development densities, etc)?

Yes  No  N/A

6. Does a demographic analysis indicate the applicant's proposal or Agency's action may disproportionately affect a significant minority and/or low-income populations?

Yes  No  N/A

If answer is no, skip to item 12. If answer is yes, continue with items 7 through 12.

7. Identify, describe, and provide location of EJ population \_\_\_\_\_

8. If a disproportionate adverse affect is expected to impact an EJ population, identify type/level of public outreach implemented. \_\_\_\_\_

9. Identify disproportionately high and adverse impacts on EJ populations. \_\_\_\_\_

10. Are adverse impacts appreciably more severe or greater in magnitude than the adverse impacts expected on non-minority/low-income populations?

Yes  No  N/A

11. Are alternatives and/or mitigation required to avoid impacts to EJ populations?

Yes  No  N/A

If yes, describe \_\_\_\_\_

12. I certify that I have reviewed the appropriate documentation and have determined that:

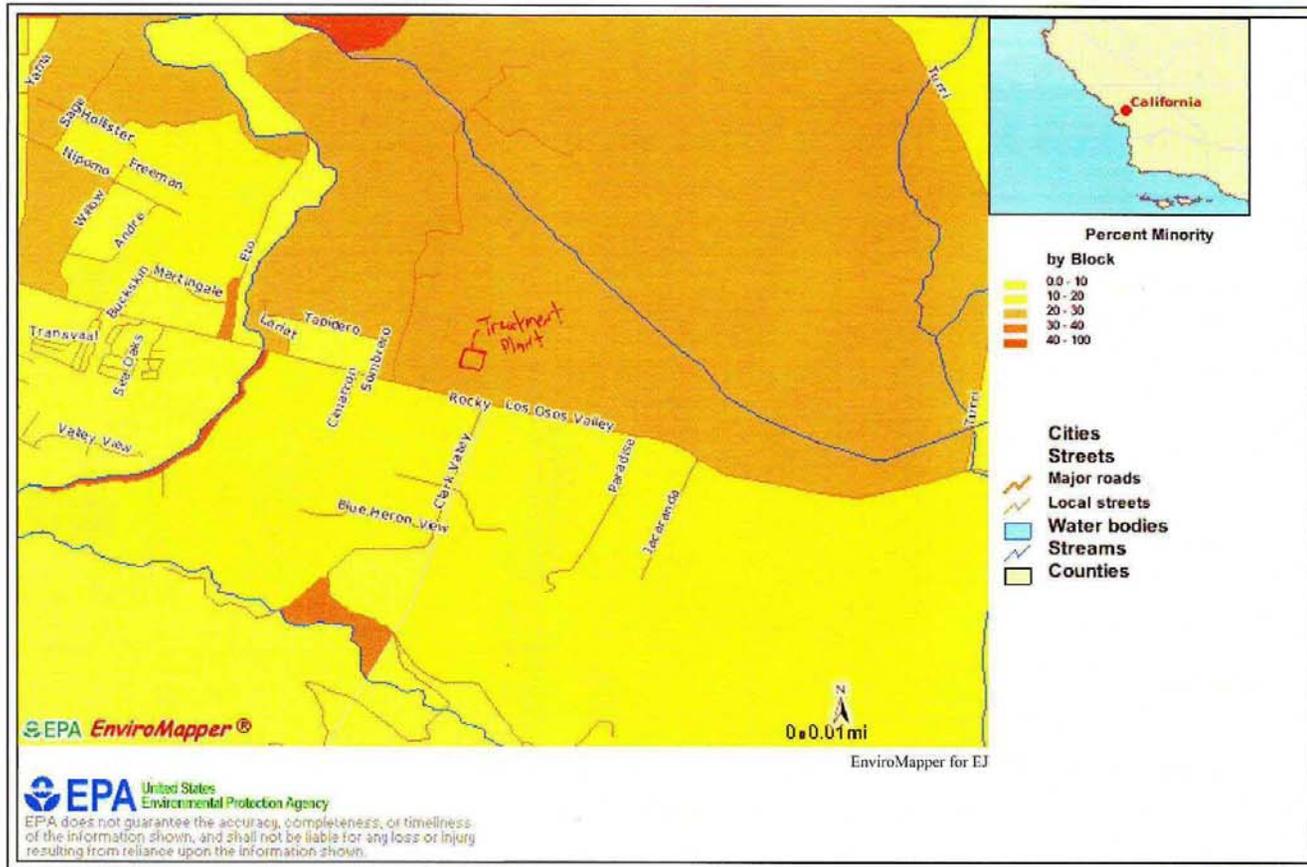
No major EJ or civil rights impact is likely to result if the proposal is implemented.  
 A major EJ or civil rights impact is likely to result if the proposal is implemented.

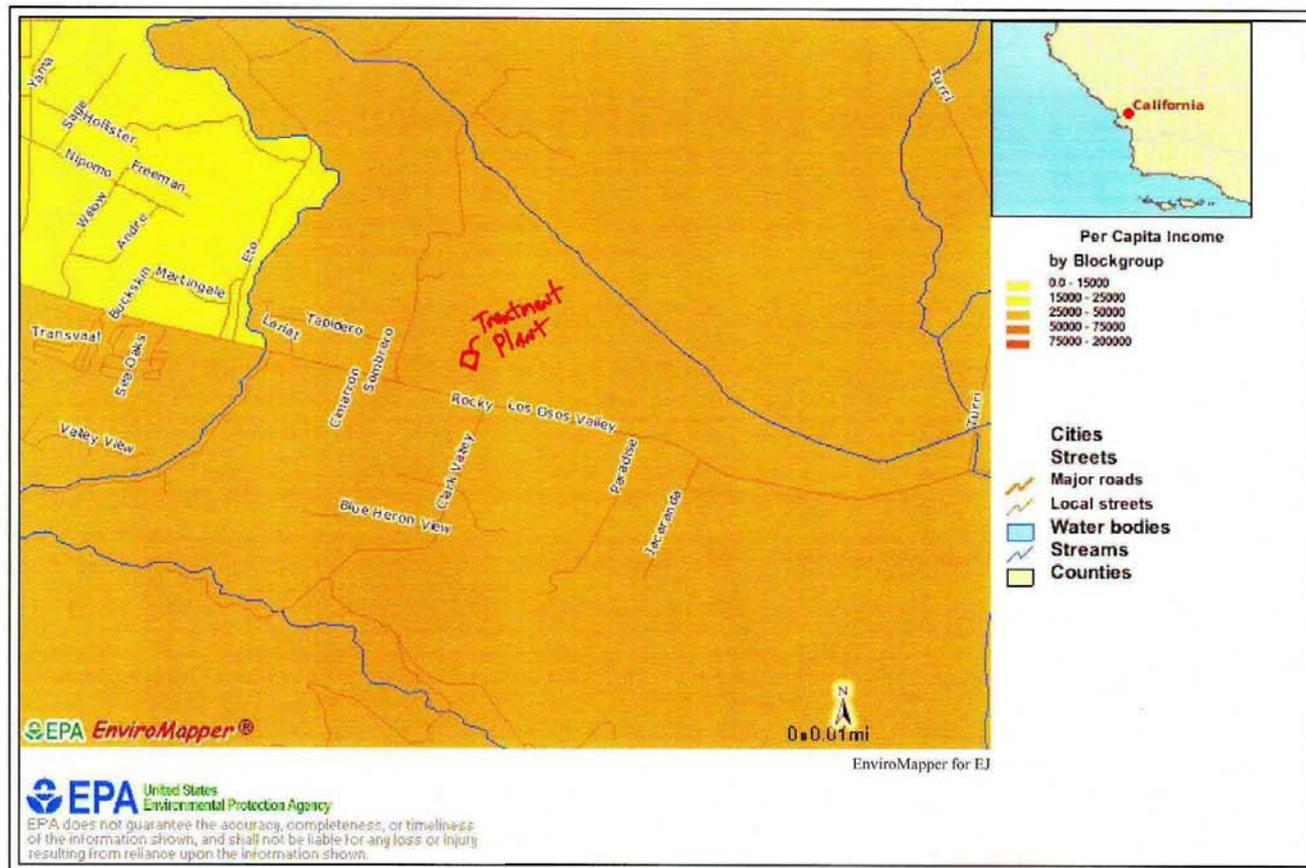
Pete Yribarren, CP Specialist  
Name and Title of Certifying Official

2/26/10  
Date

Printable Map Title

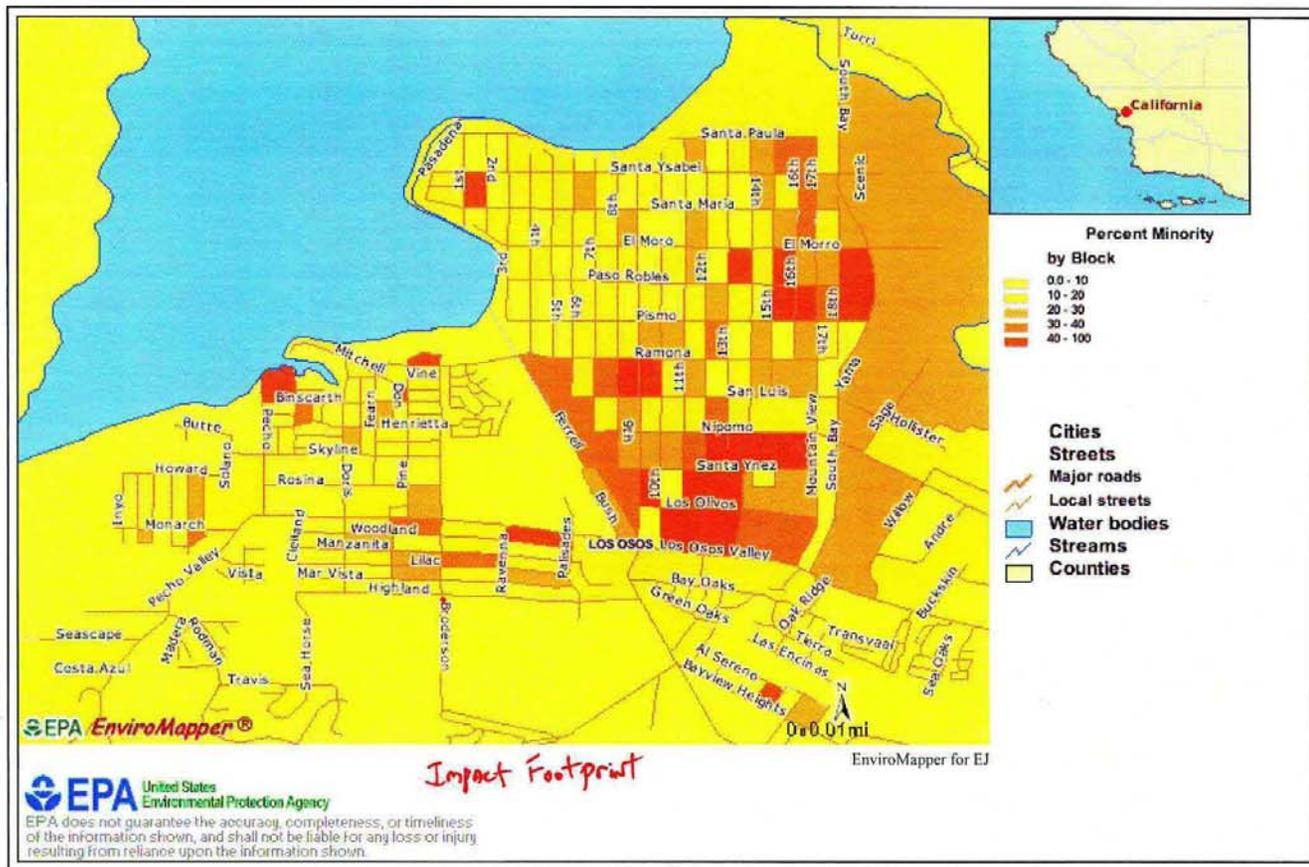
Page 1 of 1





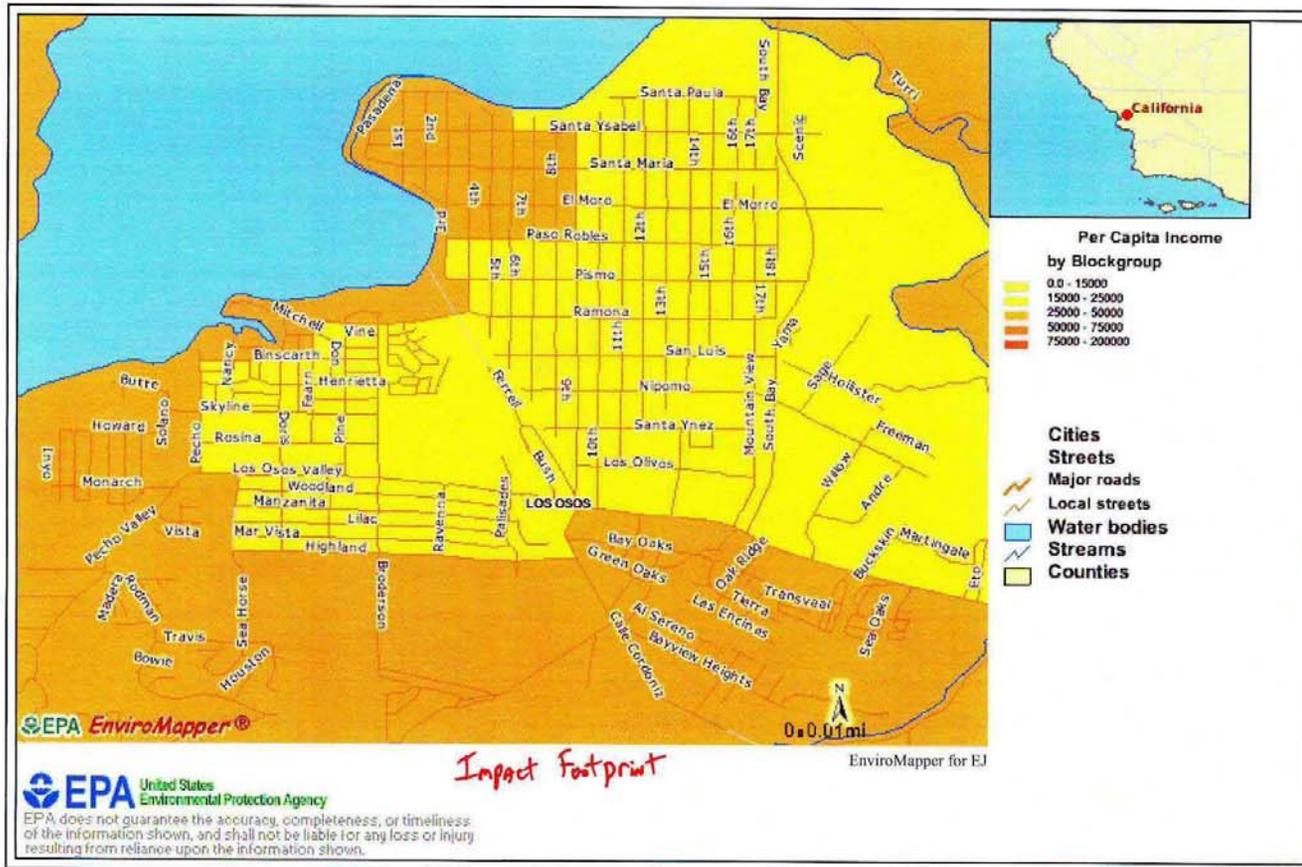
Printable Map Title

Page 1 of 1



Printable Map Title

Page 1 of 1



Printable Map Title

Page 1 of 1

