

**CALIFORNIA COASTAL COMMISSION**

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

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

**SECTION I. Appellant(s)**

Name: The Surfrider Foundation San Luis Bay Chapter (Jeff Pienak, Chair)

Mailing Address: P.O. Box 13222 San Luis Obispo, CA 93406

City: San Luis Obispo, CA

Zip Code: 93406

Phone: 805-709-1905

**SECTION II. Decision Being Appealed****RECEIVED**

OCT 19 2009

 CALIFORNIA  
 COASTAL COMMISSION  
 CENTRAL COAST AREA

1. Name of local/port government:

County of San Luis Obispo

2. Brief description of development being appealed:

Los Osos Wastewater Project DRC2008-00103:

A wastewater project for the town of Los Osos, CA consisting of conveyance, treatment and disposal facilities.

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

Los Osos, CA (See attachment for map)

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

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

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

**TO BE COMPLETED BY COMMISSION:**

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

DATE FILED: October 19, 2009

DISTRICT: Central Coast

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

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

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

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

**SECTION III. Identification of Other Interested Persons**

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

a. Name and mailing address of permit applicant:

San Luis Obispo County Department of Public Works (attn: Paavo Ogren, Director)  
County Government Center, Room 207  
San Luis Obispo, CA 93408

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

(1) Don Bearden 1411 7th Street Los Osos, CA 93402

(2) Steven Paige 1554 Ninth Street Los Osos, CA 93402

(3) Vivian and Barry Branin P.O. Box 540 Morro Bay, CA 93442

(4) Bruce Corelitz 1920 Tapidero Ave Los Osos, CA 93402

(5) S.E. Acquisition of Los Osos Mortuary and Memorial Park, Inc.  
DBA Los Osos Valley Memorial Park  
C/O Andre, Morris & Buttery  
1102 Laurel Lane  
San Luis Obispo, CA 93401

- (6) J.H. Edwards Company P.O. Box 6070 Los Osos, CA 93412
- (7) Piper Reilly 691 Woodland Drive Los Osos, CA 93402
- (8) Linde Owen 1935 10th B Los Osos, CA 93402
- (9) Keith Wimer, Los Osos Sustainability Group 1101 14th Street Los Osos, CA 93402
- (10) Martha Goldin P.O. Box 6007 Los Osos, CA 93412
- (11) Elaine Watson 1287 5th Street Los Osos, CA 93402
- (12) Al Barrow (Citizens for Affordable & Safe Environment and Coalition for Low-Income Housing)  
1250 4th Street B  
Los Osos, CA 93402
- (13) Sierra Club Santa Lucia Chapter (attn: Andrew Christie) P.O. Box 15755 San Luis Obispo, CA 93406
- (14) Chuck Cesena 591 Ramona Ave. Los Osos, CA 93402
- (15) Sarah Corbin 809 Browns Valley Rd. Watsonville, CA 95076

## **APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**

### **SECTION IV. Reasons Supporting This Appeal**

#### **PLEASE NOTE:**

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

The Surfrider Foundation, San Luis Bay Chapter ("Surfrider") submits this document as substantiation for its appeal of the San Luis Obispo County Board of Supervisor's September 29 decision regarding the Development Plan DRC2008-00103 for the Los Osos Wastewater Project ("LOWWP"). The Surfrider Foundation is a non-profit environmental organization dedicated to the protection and enjoyment of the world's oceans, waves and beaches, for all people, through conservation, activism, research and education.

In appeal, Surfrider asserts that the project as approved does not conform with several Coastal Act and LCP policies, and that the EIR analysis is deficient for inadequately identifying and mitigating environmental impacts to coastal resources protected by the Coastal Act. Because of project non-conformance with policies over which the California Coastal Commission has jurisdiction, and because the CEQA analysis does appropriately identify coastal resources (i.e. wetlands per the Commission's criteria) and, thus, does not adequately avoid or mitigate impacts to these resources, Surfrider requests that the Commission hear this issue based on the substantial issues raised in this appeal.

#### **Protection of Significant Coastal Resources**

##### **"Balancing" Provision in Coastal Act Section 30007.5**

The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

This policy allows for balancing to occur between two different conflicting policies within the Coastal Act. In approving this project ("CDP Findings" B(3) and H(3)), presumably the San Luis Obispo County Board of Supervisors is justifying the development of ESHA and other policy non-conformance because the Board feels that, on balance, the project as approved will protect more coastal resources than it destroys. Regardless of whether or not this finding is accurate, the policy in Section 30007.5 does not preempt mitigation of avoidable adverse impacts to the maximum extent as required by resource protection policies (such as Section 30240). If there are feasible mitigation measures or project alternatives that would serve to bring the project in closer conformance with such Coastal Act policies,

these measures or alternatives must first be incorporated as part of the project prior to applying this "balancing" provision for policy conflicts.

Surfrider finds that significant environmental impacts to coastal resources have not been mitigated to the maximum extent feasible and points to the following areas of deficiency:

#### Impermissible Development of Wetlands:

The Coastal Act expressly prohibits siting coastal-dependent development in wetlands except in limited circumstances that do not apply to the proposed project (Coastal Act Sections 30233 and 30255). LCP Coastal Plan Policy Chapter 6, Section 7 recognizes coastal wetlands as environmentally sensitive habitat area (ESHA), and states that the "natural ecological functioning [...] of wetlands [...] shall be protected, preserved and where feasible restored" (emphasis added). LCP Coastal Plan Policy Chapter 6, Policy 13 requires that diking, dredging and filling activities for wetlands shall conform to provisions set forth in the Coastal Act. Section 30233 of the Coastal Act only allows diking, filling or dredging of wetlands where there is no feasible less environmentally damaging alternative, and only in specific instances, such as incidental public services (Section 30233(a)(4)). This policy further limits disturbance of wetlands to specific instances, including incidental public service purposes, and in the case of Morro Bay wetlands (which, according to the Wetlands Policy in the LCP Coastal Plan Policies, includes Los Osos Estuary), only "very minor" incidental public facilities (per Coastal Act Section 30233(c)).

Additionally, development adjacent to wetlands must not significantly disrupt the resource, per LCP Coastal Plan Policy Chapter 6, Policy 1. CZLUO 23.07.172 (4)(A) provides that the buffer distance to avoid significant disruption to the resource is 100 feet, and can only be less than 100 feet (but no less than 25 feet) in limited circumstances described in CZLUO 23.07.172 (4)(B).

Based on the Coastal Zone Land Use Ordinance, Coastal Act and Coastal Plan policies regarding wetlands, as enumerated above, it is clear that permissible development on wetlands is very limited, and that the LOWWP does not meet the limited criteria for such development. Therefore, to appropriately mitigate impacts to wetlands, development on wetlands must be avoided and the 100 foot buffer mandated by the CZLUO must be observed.

The Environmental Setting in the EIR needed to consider wetlands as interpreted under the Coastal Act, as opposed to limiting the definition of wetlands as defined by Section 404 of the Clean Water Act. The California Coastal Commission's regulations establish a one parameter definition for delineating wetlands, where only one of the three criteria for soils, vegetation, and hydrology needs to be met to determine wetland conditions:

Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. (14 CCR Section 13577)

Conversely, Clean Water Act Section 404 requires that all three criteria need to be met to consider an area a wetland. As such, the EIR undoubtedly underestimates the number and extent of wetlands in the project vicinity very significantly and, therefore, the BOS approved project does not adequately avoid development of wetlands, which is inconsistent with the LCP and Coastal Act policies that protect wetlands. To appropriately identify wetlands under the Coastal Commission standards, a qualified biologist needs to be retained to identify qualifying soils, plant species and hydrologic conditions so that wetlands can be appropriately delineated. In absence of such a delineation, significant impacts to wetlands can not be and have not been adequately analyzed or mitigated.

#### Impermissible development of ESHA:

In regard to ESHA, the Planning Commission--and the Board of Supervisors through approval--applies a low threshold for development on ESHA, citing that the proposed project will have no significant impact to ESHA and, therefore, the threshold for protecting ESHA has been met. However, Section 30240(a) of the Coastal Act takes a two-pronged approach that requires no significant disruption of habitat values AND approves only uses dependent on the ESHA resources. Given that the wastewater project does not depend on use of ESHA, any disturbance of ESHA would be significant and require avoidance or full mitigation of unavoidable adverse impacts. As approved, the project has multiple components that would be sited on ESHA. For example, as part of the gravity collection systems in Alternatives 2 through 4, pump station developments are proposed within terrestrial ESHA lands. As described in the EIR, these impacts would be significant and permanent (p 5.5-36; Impact 5.5 E):

CZLUO Section 23.07.176: Terrestrial Habitat Protection. As part of the collection systems for Proposed Projects 2 through 4, pump station developments are proposed within potential ESHA lands containing terrestrial habitat associated with the Mid-town property and other parcels located within developed portions of the community of Los Osos. Impacts resulting from pump station developments would be permanent. Terrestrial habitats within these areas contain suitable habitats for the Morro manzanita, Morro Bay blue butterfly, and Morro shoulderband snail.

Surfrider finds that the project impermissibly impacts ESHA because there appears to be a feasible alternative that avoids these impacts. Although a STEP collection system (as outlined in Project Alternative 1 in the EIR) does not entirely avoid impacts to ESHA, it does avoid permanent impacts to ESHA where the gravity collection system does not, therefore avoiding significant impacts to the maximum extent feasible.

#### Protection of Groundwater and Surface Waters

Coastal Plan Chapter 6, Policy 7, requires that the natural ecological functioning and productivity of wetlands and estuaries shall be protected, preserved and where feasible, restored. ESHA Policy 20 requires riparian vegetation and the natural hydrological system and ecological function of coastal streams be protected and preserved. Additionally, Coastal Act Section 30231 protects water quality through, amongst other means, minimizing adverse effects of wastewater discharges and preventing depletion of groundwater supplies. Section 30232 further requires that protection against hazardous substance spills be provided and effective containment procedures to be implemented. Arguably, the most effective means of protection against spills and leaks is to start by implementing a system that is

designed to minimize infiltration and inflow ("I/I") as well as exfiltration.

Peaks in I/I can lead to sanitary system overflows ("SSOs"), while significant exfiltration can pollute ground water and surface waters (through subsurface percolation and seeps). SSOs and exfiltration are leading causes of ground and surface water pollution in the United States (California Regional Water Quality Control Board, Central Coast Region Staff Report for Special Meeting of November 19, 2004.).

Gravity sewers utilize bell and spigot joint construction. Properly installed bell-and-spigot sewers will be watertight at first, and then may slowly lose their integrity as the surrounding soils shift, compressing the pipes, and compromising their seals at the joints (SLO County LOWWP Development. Technical Memorandum: Flows and Loads. Final Draft, February 2008, p. 6). Only a sealed-pipe solution would act to minimize I/I and exfiltration. Thus, to adequately protect against spills, Surfrider contends that the project must make use of a feasible 100% fusion-welded pressurized effluent collection alternative.

#### Sludge Production and Biosolids Hauling:

The volume of biosolids created by a gravity collection system estimated solids volume is estimated at 4,000 lbs/day dry weight or 730 tons/yr dry weight, compared to an estimate of 1,000 lbs/day dry weight or 182.5 tons/yr dry weight that would be produced by a STEP collection system (SLO County LOWWP Viable Project Alternatives Fine Screening Analysis August 2007, p. 5-4, Table 5.1). Biosolids that would result from use of a gravity collection system, therefore, are 75% greater in mass than those resulting from the STEP collection alternative; this additional mass of course has associated impacts for hauling, greenhouse gas emissions, and coastal resource protection.

Assuming that biosolids will be hauled away, failure to minimize the creation of biosolids is inconsistent with Coastal Act Section 30253(4) which requires new development to minimize energy consumption and and vehicle distances traveled. However, Surfrider believes it is not safe to assume that landfills will continue to accept sludge over the entire economic life of the project, nor is it safe to assume that there will not be other forces (i.e. economic) that result in land-based application locally. In the event that sludge would be applied to land locally, it would be desirable for sludge creation to be minimized; given that sludge produced by the treatment process proposed would still contain hazardous chemical compounds, applying the sludge to land could have significant adverse impacts on coastal resources.

#### Flows needed for proper system function:

The absence of analysis which considers the minimum flows needed to maintain collection system functionality renders the project description incomplete. This lack of information prevents adequate comparison of collection alternatives' relative functionality in a range of flows, and also prevents avoidance or mitigation of significant impacts that may occur due to system malfunction in cases where adequate flows are not maintained. In the absence of this information to facilitate comparison and impacts analysis, the project cannot claim to be consistent with Coastal Act policies that protect coastal resources from adverse impacts (including but not limited to Section 30231 (riparian and groundwater protection), Section 30231 (water quality), and Section 30240 (ESHA)).

These concerns are further elevated by the additional increases in water conservation approved by the Board of Supervisors. Condition of Approval, Item 1(k) sets a maximum water usage target of 50

gpc/d—roughly equivalent to a 25% reduction from current usage. Additionally, in August 2009, the state of California adopted new standards for the construction, installation and alteration of graywater systems for indoor and outdoor uses. These new standards will make it easier for homeowners to get permits to install these technologies for their own homes and may result in increased water conservation for outdoor water usage, in addition to the savings that the Planning Commission's condition would achieve. Our concerns are substantiated by published findings from Ronald Crites and George Tchobanoglous which state: "The minimum flows required for gravity-flow sewers to operate make them problematic where...water conservation reduces the wastewater flows significantly. In many cases, the water used to flush conventional gravity-flow collection systems for the removal of accumulated solids far exceeds the water saved through water conservation measures" (Ronald Crites and George Tchobanoglous, *Small and Decentralized Management Systems*. New York: McGraw-Hill, 1998, p. 8). Although Surfrider supports the Board of Supervisor's decision to pursue aggressive water conservation, as we feel it is necessary in the effort to balance the groundwater basin, the impacts of this level of increased water conservation have not been considered.



Source: APhoto USA, San Luis Obispo County GIS Data, and MDA GIS Data.

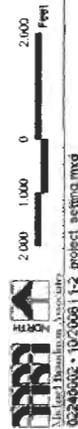


Exhibit 1-2  
Project Setting

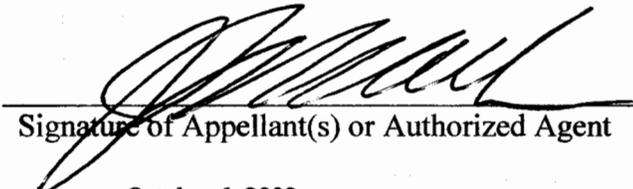
COUNTY OF SAN LUIS OBISPO • LOS OSOS WASTEWATER PROJECT  
ENVIRONMENTAL IMPACT REPORT

Source: Draft Environmental Impact Report, County of San Luis Obispo, Los Osos Wastewater Project. Michael Brandman & Associates (2008).

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

**SECTION V. Certification**

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

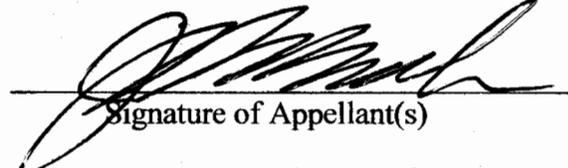
  
\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date: October 6, 2009

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

**Section VI. Agent Authorization**

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

  
\_\_\_\_\_  
Signature of Appellant(s)

Date: October 6, 2009