



Terry Tamminen
Secretary for
Environmental
Protection

State Water Resources Control Board

Office of Chief Counsel

1001 I Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 ♦ FAX (916) 341-5199 ♦ www.swrcb.ca.gov



Arnold Schwarzenegger
Governor

**Agenda Item Wilb
A-3-SLO-03-113**

**Lori T. Okun, Regional Board Staff Counsel
State Water Resources Control Board
In Favor**

August 10, 2004

Ralph Faust, Chief Counsel
California Coastal Commission
Via Fax 415-904-5400
Via Hand Delivery (August 11, 2004)
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Dear Mr. Faust:

LOS OSOS COMMUNITY SERVICES DISTRICT

As you know, the Regional Water Quality Control Board, Central Coast Region (Regional Board) supports the Los Osos Community Services District's proposed wastewater treatment plant, and urges the Commission to issue a coastal development permit on August 11. The Regional Board has been working for decades to address the severe impacts on coastal water quality from septic tanks, and supports approval of a financially viable project. On behalf of the Regional Board, I urge the Coastal Commission to address the concerns of the District and the County of San Luis Obispo regarding imposing conditions that require amendments to the Local Coastal Plan.

State policy for coastal water quality is that "[h]ighest priority shall be given to improving or eliminating discharges that adversely affect any of the following: (1) Wetlands, estuaries, and other biologically sensitive sites. (2) Areas important for water contact sports. (3) Areas that produce shellfish for human consumption. (4) Ocean areas subject to massive waste discharge." (Wat. Code §13142.5, subd. (a).) Eliminating ongoing septic system discharges in Los Osos fits squarely within this legislatively mandated priority.

The purpose of this letter is to express concern that some of the proposed permit conditions and staff analysis exceed the Coastal Commission's jurisdiction, as limited by Public Resources Code Sections 30412, 30603 and 30604. This letter does not address the merits of these conditions and again, the Regional Board supports issuance of a permit. However, if the Commission denies or delays approval of the permit on any of these grounds, the Regional Board

California Environmental Protection Agency

may assert in further proceedings that the Commission lacked jurisdiction to deny or delay approval.

Section 30412 Issues

As you pointed out at the April 15, 2004 substantial issue hearing, the County of San Luis Obispo may have review jurisdiction under local law that is more extensive than the Commission's jurisdiction under Section 30412. (Reporter's Transcript of Proceedings, 38:20-38:24.) In some cases, Commission staff's proposed changes to the County's conditions add a requirement to obtain Commission approval of matters that may be within the County's jurisdiction, but are not within the Commission's jurisdiction. In those cases, Section 30412 precludes the additional requirement of Commission (or Executive Director) approval.

The following permit conditions, among others, address issues that Section 30412 does not permit the Commission to review:

Condition 20 (Groundwater Level Monitoring and Management Plan) and Condition 36 (Use of Leachfields for Groundwater Recharge): Condition 20, and apparently Condition 36, address potential impacts of decommissioning septic tanks. (See pages 8-9 and 73 of the staff report.) These impacts do not implicate any of the factors within the Commission's review jurisdiction as defined by Section 30412, *i.e.*, siting, visual appearance, geographic service area, timing of capacity use, or development projections. In fact, Condition 20 specifically gives the Commission review and approval authority over water quality issues, in violation of Section 30412. Groundwater recharge projects may impact water quality and, if they involve a discharge of waste, require the discharger to obtain waste discharge requirements. These programs may also implicate the applicable NPDES permit for the municipal separate stormwater system and the stormwater management plan required by that permit, which are within the Regional Board's sole jurisdiction. The Legislature did not intend the Commission to review these issues with respect to treatment plants.

Condition 24 (NPDES Construction Permit) and Condition 35 (NPDES Permit for Harvest Water Discharge). Condition 24 requires the Commission's Executive Director to approve the Stormwater Pollution Prevention Plan (SWPPP) required by the NPDES General Permit for Stormwater Discharges Associated with Construction Activities. The SWPPP is intended solely to protect water quality. Section 30412 reserves sole authority over these issues to the state and regional boards. This condition therefore does not fall within the Commission's review authority. In addition, the regional boards and State Water Resources Control Board are the sole state agencies with authority to approve NPDES permits under the EPA-approved NPDES program. Similarly, Condition 35 requires the District to obtain an amended CDP if the District later determines it is necessary to discharge harvest water to Morro Bay. For the same reasons, Condition 35 exceeds Section 30412 jurisdiction.

Mr. Ralph Faust
August 10, 2004

- 3 -

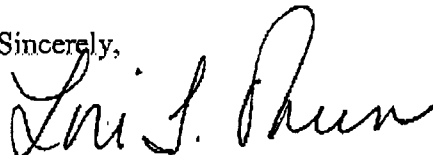
Condition 26 (Erosion Control Plan). This issue is not within Section 30412 review jurisdiction, so the Commission cannot require Executive Director approval of the Erosion Control Plan.

Section 30603-30604 Issues.

Condition 34 requires the County to amend the Estero Area Plan to incorporate water availability findings before the District provides sewer service to undeveloped parcels. Similarly, Condition 76 requires the County to incorporate the Habitat Conservation Plan into the Estero Area Plan. The District and the County have already voiced their concerns about making an LCP amendment a condition precedent to servicing undeveloped parcels. (See letters from Jon Seitz, dated August 9, 2004 and Timothy McNulty, dated June 11, 2004.) From a water quality perspective, the concern is that the approved project must be financially viable so that the District is able to provide service to existing development, and to new development whenever it occurs. From a legal perspective, requiring these conditions to be amended into the LCP exceeds the Commission's review jurisdiction. The grounds for an appeal of a coastal development permit are limited to "an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division." (Pub. Res. Code §30603, subd. (b)(1).) On review, the Commission *shall* issue the permit if it finds that the proposed project is in conformity with the local coastal program. (Pub. Res. Code §30604, subd. (b).) As long as the District and other interested agencies make the necessary findings about water availability (see discussion in Seitz August 9, 2004 letter) and adopt the appropriate habitat conservation plan, the proposed project is in conformity with the Estero Area Plan. No amendments to the Plan are necessary to make the project consistent. As long as the District satisfies appropriate conditions (*i.e.*, without the need for LCP amendments), the Commission must find that the proposed project is consistent.

In conclusion, the Regional Board urges the Commission to approve a viable coastal development permit on August 11 for this critical water quality protection project.

Sincerely,



Lori T. Okun
Staff Counsel

cc: Roger Briggs
Regional Board Members