



GRAND JURY CITIZEN COMPLAINT FORM

(See back for preparation instructions)

TO: GRAND JURY
P.O. BOX 4910
SAN LUIS OBISPO, CA 93403

1/19/06

(Date)

THIS COMPLAINT IS AGAINST:

The Los Osos Community Services District Board members and staff from 1999-2005

NAME/TITLE

Los Osos Community Services District

ORGANIZATION

2122 9th Street, Los Osos, CA 93402

ADDRESS

Los Osos, CA

CITY

528-9370

PHONE

MY COMPLAINT AGAINST THE ABOVE IS:

SEE ATTACHED (8-page document)

(USE EXTRA SHEETS IF NECESSARY)

(FOR GRAND JURY USE ONLY)

COMPLAINANT

(PRINT CLEARLY)

Mr. ☐
Mrs. ☐
Ms. ☐
Miss ☐

SewerWatch

sewerwatch.blogspot.com, Ron Crawford, Editor

(Name)

(Street Address)

(City)

(State)

(Zip Code)

(Telephone Number)

(Signature)

ALL COMMUNICATIONS TO THE GRAND JURY ARE CONFIDENTIAL

SewerWatch is calling for a Grand Jury investigation into the the Los Osos Community Services District Board from 1999-2005.

SewerWatch alleges that the initial CSD Board of Directors, subsequent Directors up to 2005, and staff members, deliberately misled, from 2000-2005, the County of San Luis Obispo, the California Coastal Commission, and the Regional Water Quality Control Board, that a "strongly held community value" exists in Los Osos that any wastewater treatment facility must also double as a "centrally located" "recreational asset."

Evidence shows that the initial CSD Board manufactured that "strongly held community value" in an attempt to coerce regulators into approving the "centrally located" Tri-W site as the location of their second proposed wastewater treatment facility/public park, even though evidence shows there was no rationale to site the second facility at Tri-W.

Evidence also suggests that the initial CSD Board manufactured the "strongly held community value" for "centrally located community amenities" in their second sewer project in an attempt to avoid public embarrassment for their role in their original ill-fated and poorly designed sewer alternative that played a pivotal role in establishing the CSD and getting the initial board elected in November, 1998.

Other possible motives for manufacturing the "strongly held community value" may exist, however they will never be exposed without a Grand Jury investigation.

Background

Information on why there was a public park proposed for the Tri-W project to begin with is not forthcoming. When asked in an e-mail from *SewerWatch* what the rationale was for keeping the park in the treatment facility after the CSD's first project was abandoned in 2000, former CSD Vice-President, Gordon Hensley replied in a June 3, 2005 e-mail, "Frankly I do not have an answer - but I think you are correct, that IS the core issue." *SewerWatch* also sent the same e-mail to then CSD President, Stan Gustafson. Gustafson never replied.

Although information on the rationale for including a park in the CSD's second project is simply non-existent, strong and ample evidence exists that Los Osos taxpayers, during the design stage of the sewer project (and continuing to this day), did not want to be taxed for a new park anywhere in Los Osos, let alone at a wastewater treatment site.

For example, in 1997, Los Osos voters defeated two ballot measures that would have added public recreation programs and facilities in Los Osos. One of those failed measures, E-97, would have added \$10 a year to a single-family's yearly property tax for "recreational services." The other, D-97, would have added \$40 a year for a public swimming pool. News reports at the time say the measures failed because of voter fear over the high cost of the sewer project.

More evidence of the lack of community support for a park at the treatment facility comes from a LOCSD public opinion study commissioned in 2001 to gauge support for the project. The \$28,000 scientific study titled, *Los Osos Community Services District Wastewater Survey*, asked a sample of Los Osos property owners several questions about the project.

The first question in the study was:

What is the most important issue that you would like to see local governments in the Los Osos area do

something about?

From a list of answers, respondents answered:

Open space/park protections — 1%

Wastewater treatment/septic tanks — 64%

Another question from that same study asked:

No matter which way you might be leaning on the wastewater treatment vote, of the statements I just read which one stands out as the best reason why someone should vote FOR this measure?

From a list of answers, respondents answered:

Will create park — 7%

However, despite extremely weak community support for the park in the project, the initial CSD Board, inexplicably, identified a “strongly held community value” that their second wastewater treatment facility also double as a “recreational asset,” and made the decision that “centrally located community amenities” be a “project objective.”

Quotes from the project’s report regarding alternative treatment facility sites include:

“The size and location of the other sites did not provide an opportunity to create a community amenity. The sites on the outskirts of town, could not deliver a community use area that was readily accessible to the majority of residents...”

“(The Andre site) is 1.5 miles from the edge of the community and would not be able to provide the community with a readily accessible recreational area...”

One year after the publication of the CSD opinion survey that showed little support for the inclusion of a park in the plan, a July 24, 2002 California Coastal Commission staff report says, “The Los Osos CSD has evaluated numerous project alternatives and determined that construction of a treatment facility and public park on the Tri-W site would best meet the project’s and the community’s needs.”

Another California Coastal Commission staff report dated, July 29, 2004, says, “... other alternatives (to the Tri-W site) were rejected on the basis that they did not accomplish project objectives for centrally located community amenities.”

On June 21, 2005, *SewerWatch* sent former CSD General Manager, Bruce Buel, an e-mail containing the following two questions:

1) What would be the rationale for siting the facility at Tri-W if the “project objective” of “centrally located amenities” was not in the project?

2) Why are “centrally located amenities” a “project objective?”

Buel never replied.

Just days before the September, 2005 election that recalled three CSD Board members (incidentally, that election was another overwhelming piece of evidence that the “strongly held community value” to include a “centrally located” park in the sewer plant never existed in Los Osos), Buel, during an appear-

ance on the local talk radio program, *The Dave Congalton Show*, pointed to the 1995 *Vision Statement* as the source of the “strongly held community value.” However, the *Vision Statement* does not substantiate that statement.

The closest reference to that “community value” in the *Vision Statement* says, “Our waste water treatment facility(s) is based on a natural biological process rather than mechanical system approach to the highest extent possible. These facilities have become a visual and recreational asset to the community.”

Currently, on their web site, the Los Osos Community Advisory Committee includes a link to the *Vision Statement*. The quote referenced above is missing from the on-line version of the *Vision Statement*.

Furthermore, according to Senior County Planner, Mike Wulkan, the above quote did not make it to the next level of the planning process.

Regional Water Quality Control Board staff member, Sorrel Marks, told *SewerWatch*, in 2004, “They (the community of Los Osos) are the ones with the strongly held community value to include a park in their project.” When asked what the source was of that “community value,” Marks had no answer.

In an August 6, 2002 document, California Coastal Commission staff member, Steve Monowitz, said, “The LOCSD has diligently pursued a solution to the area’s wastewater treatment problem that incorporates, where feasible, project elements desired by the community that were not included in the County’s project. The LOCSD has recently identified its preferred project, which involves the construction of a wastewater treatment facility, along with other public amenities such as a new library, a dog park, athletic fields, walking trails, and gardens at the Tri-W site.”

In that same document, it reads, “The County (of San Luis Obispo) provided the following response: One of those sites, the “Andre” site, like others located outside of the LOCSD service area, did not meet the objectives of the project, including affordability, proximity to the community, and opportunities for community assets (park and offices).”

More Background and Possible Motive

The Solution Group was a 16-member community group formed in 1997 in Los Osos to develop an alternative sewer project to the County’s nearly approved project.

In 1997-98, through an aggressive marketing campaign developed by Pandora Nash-Karner, marketing director for the Solution Group and eventual number one vote-getter in the first CSD Board election, Los Osos voters were lured into believing that the “Community Plan” — the name of the Solution Group’s alternative sewer project proposed for Tri-W — was “better, cheaper, faster” than the county’s project. Due in large part to the extensive and less-than-accurate marketing campaign, 87-percent of Los Osos voters supported the Solution Group and, in November 1998, overwhelmingly voted to establish a Community Services District to take over the sewer project from the County and implement the Community Plan. Two previous attempts to establish a CSD in Los Osos failed.

However, little known at the time, outside of the Solution Group, was that the Community Plan relied on “risky” and virtually untested technology, and was simply not going to work in Los Osos. To complicate matters for the LOCSD and the Solution Group, several credible water quality professionals and studies confirmed that fact months before the 1998 election that established the CSD on a “better, cheaper, faster” platform. Members of the Solution Group, including Nash-Karner, worked closely with those water quality professionals throughout 1998 and were intimately familiar with the information.

For example, in the summer of 1998, an independent study known as the the *Questa Study* compared the Community Plan with the County's project. The study noted, among other things:

"It would be very risky and inappropriate to utilize the proposed (Community Plan's technology) for the Los Osos project - especially given the limited resources of the community."

"The County Plan provides far more assurance of the ability to correct the existing groundwater nitrate problem than is offered under the Community Plan."

Another credible example that demonstrates unviability of the Community Plan, before the 1998 election, comes from California Coastal Commission staff member, Steve Monowitz. Monowitz, throughout 1998, crushes the Solution Group's project with prophetic accuracy in several reports including his department's own comparison of the Community Plan and the County's plan. Observations found in Monowitz's reports include:

"Pursuit of the Solution Group alternative also has the potential to result in significant delays to the implementation of a wastewater treatment project for the Los Osos area."

"(The *Questa Study*) also identified practical problems with the Solution Group treatment method that called into question the technical feasibility of this alternative."

"This analysis identified numerous project costs that had not been included in the Solution Group's original estimations."

"The Solution Group Alternative poses greater economic risks."

"As currently proposed, the Solution Group alternative is inferior to the County project..."

Yet, despite a mountain of credible evidence that showed, months before the election that formed the CSD, the Community Plan — a plan that relied on a "risky" series of shallow ponds as a treatment process — was not going to work in Los Osos, Nash-Karner, as marketing director for the Solution Group, in the run-up to the election, continued to aggressively publicize the deeply flawed plan as "better, cheaper, faster" with a "maximum monthly payment of \$38.75."

According to some estimates, the future monthly sewer payment is now estimated at over \$200.

The Solution Group's marketing strategy included newsletters, bumper stickers, public presentations, numerous press releases, advertisements, posters, slogans like "Do-Doing it Right", "YES!", and "Better, Cheaper, Faster", t-shirts, and more. The Solution Group would spend "hundreds of hours" and some \$30,000 of their own money developing the unworkable plan.

Nash-Karner's husband, Gary Karner, who was also a prominent member of the Solution Group and is a landscape architect, called the local talk radio program, *The Dave Congalton Show*, in 2005, and admitted, on air, that his wife placed a \$700,000 bid to the LOCSD for public relation services after her first and only term on the CSD Board. She did not get the contract, according to Karner.

At a 2005 LOCSD Board meeting, Nash-Karner said that her husband took a year off his job as a Cal Poly professor to work on the Solution Group's plan.

A credible source close to the story told *SewerWatch* that San Luis Obispo County staff, in mid-1998, prepared a long list of flaws in the Community Plan that were not being addressed by the Solution Group

— flaws that would have killed the project, according to the source. “This was stuff any developer would have to deal with,” the source said. “(Former County Supervisor) Bud Laurent hand delivered that list to the Karner’s, but they just sat on it.”

Laurent, a long-time acquaintance of the Karners, told *SewerWatch* he doesn’t recall the incident.

The CSD was established with 87-percent of the vote in November, 1998.

On March 4, 1999, the first CSD Board, comprised of three Solution Group members, Nash-Karner and recently recalled board members Gordon Hensley and Stan Gustafson, and two other like-minded Directors, Sylvia Smith and Rosemary Bowker (now deceased), unanimously voted to abandoned the County’s nearly approved project, and pursue the Community Plan, despite an overwhelming amount of evidence that clearly showed the plan was not viable in Los Osos.

Shortly after the CSD’s decision to pursue the Community Plan, Executive Director of the Regional Water Quality Control Board, Roger Briggs, said the figures used by the LOCSD to compare the cost of its sewer project with the county’s project were “incorrect and very misleading.”

He added, “the County’s project remains the most feasible and timely project.” The RWQCB had also been extremely critical of the Community Plan before the election.

After nearly two years of delays and costs associated with pursuing the ill-fated and deeply flawed Community Plan, the CSD was forced to abandoned the project in late 2000. Both the *Questa Study* and Monowitz would prove to be amazingly accurate in their analysis of the Community Plan in 1998.

Information on the demise of the “Community Plan” was not forthcoming from the previous CSD Board.

In 2005, the LOCSD web site read:

“The following year (after the election in 1998 that formed the CSD), the LOCSD assumed responsibility for designing a wastewater treatment facility and the county plan was abandoned. After exhaustive technical study, consultation with engineers, health experts, regulators, residents and numerous public hearings the LOCSD chose a wastewater treatment facility believed to be the best option for the community.”

That was not accurate.

According to reports submitted by the LOCSD in 1999, the deeply flawed and ill-fated Community Plan was originally selected as the sewer project of choice on March 4, 1999, just two months after the formation of the CSD.

Quietly, in late 2000, the CSD Board finally turned to a viable, yet more costly, sewage treatment technology, similar to what the County had proposed four years earlier.

However, when deciding where to build their second treatment facility -- a facility that required much less land than the Community Plan, and could have been moved out of town with substantial cost savings, according to officials -- the CSD Board inexplicably identified a “**strongly held community value**” that the site of the second sewer plant also double as a “centrally located” “recreational asset.”

According to the LOCSD’s project report, “The size and location of the other sites did not provide an

opportunity to create a community amenity. The (other potential sewer plant) sites on the outskirts of town, could not deliver a community use area that was readily accessible to the majority of residents."

All other potential sites on the outskirts of town were "rejected" on the basis that they did not accomplish the "project objective" of "centrally located community amenities."

The park element of the plan locked in the centrally located Tri-W location, and, due to its central location, multi-millions of dollars had to be added to the project for extra environmental, odor, and visual mitigation, on top of the cost of the multi-million dollar park amenities and their operation and maintenance.

Proponents of the \$151-million Tri-W project said that the "primary benefit" of locating the facility at the centrally located Tri-W site was that the central location would reduce energy costs associated with collecting the sewage. However, according to a CSD memo, the extra energy cost required to pump the sewage out of town would add only about \$400,000 to the cost over the next twenty years. The estimated cost to maintain the park over the next 20 years is \$3 million, on top of the park amenities themselves, now estimated at \$2.3 million. Furthermore, land costs for sites out of town were dramatically cheaper than Tri-W, and the cost difference would have paid for several decades of extra pumping costs, according to the CSD.

The five original CSD Board members were Rosemary Bowker, Stan Gustafson, Gordon Hensley, Pandora Nash-Karner and Sylvia Smith. Nash-Karner, Gustafson and Hensley, as well as former CSD Board members Frank Freiler and Bob Semonsen were members of the Solution Group, according to a Solution Group newsletter.

Gustafson and Hensley were recalled last September, along with former CSD Director Richard LeGros.

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The "pre-recall" LOCSD Board's Sewer Timeline

1997-98: The Solution Group, a 16-member community group established in 1997 to develop an alternative sewer project for Los Osos — launches an aggressive, and scrupulously questionable marketing campaign for their alternative sewer plan. The Solution Group plan, known as the "Community Plan," is based on "risky" technology that the Solution Group insists is "better, cheaper, faster," will "save \$30 million," and be "drop dead gorgeous," when compared to the County's proposed (and nearly approved), project, despite ample information from several credible sources that corroborate the fact that the Community Plan is simply not going to work in Los Osos. Members of the Solution Group are intimately familiar with the information, yet their marketing director, Pandora Nash-Karner, continues to aggressively sell the deeply flawed plan to Los Osos as "better, cheaper, faster."

November, 1998: The Los Osos Community Services District, on a platform of "better, cheaper, faster" is established with 87-percent of the vote. The initial board consists of three Solution Group members, including number one vote-getter, and Solution Group marketing director, Pandora Nash-Karner. (Two prior attempts to form a CSD in Los Osos failed.)

1999-2000: The initial CSD Board, on March 4, 1999, unanimously votes to abandoned the County's viable sewer project and pursue the deeply flawed Community Plan, despite a large contingent of credible water quality professionals corroborating the fact that the plan is not going to work in Los Osos.

- After nearly two years of delays and associated costs pursuing the Community Plan, the CSD realizes

that the plan is not going to work in Los Osos and is forced to shelve the ill-conceived project for many of the same reasons that were mentioned years earlier by credible water quality professionals.

2000-01: The CSD finally (and quietly) turns to a technically viable project, similar to what the county was proposing four years earlier, but, inexplicably, the board also decides to include a multi-million dollar park in the project, despite almost non-existent community support to include a costly park in a very costly sewer project. The board, for no apparent reason, identifies a "strongly held community value" that the site of the sewer plant also double as a "recreational asset" and contain "centrally located community amenities." The decision locks in the centrally located Tri-W site. All other potential sites on the outskirts of town are "rejected" on the basis that they do not accomplish the "project objective" of "centrally located community amenities."

2002-2004: The LOCSD pulls the park out of the plan almost entirely as a "cost saving measure."

2004: The California Coastal Commission tells the LOCSD that they can not move forward with the project without the amenities in the plan because the park facilities "factored into the previous decision to allow the treatment facility to be located on (the Tri-W) site, since other alternatives were rejected on the basis that they did not accomplish project objectives for centrally located community amenities."

- The Los CSD conducts a cost comparison study to see if there is "economic incentive" to relocate the sewer plant out of town. The analysis concludes: "There does not appear to be any economic incentive to relocate the WWTF from the Tri-W site to the Andre site." However, the comparison does not account for the now \$2.3 million park included in the sewer project, or the estimated \$3 million in operation and maintenance of the park for the next 20 years. If it had, it would have shown that multi-millions of dollars could have been saved by moving the facility out of town.

- Strikingly, the cost comparison study was part of the same document that showed that the LOCSD had already voted to "reincorporate" the multi-million dollar public park in the sewer project.

2004: Coastal Commissioner Dave Potter calls the Los Osos CSD's tactics "a little bait-and-switchy."

- The CSD votes to "reincorporate" the estimated \$2.3 million park, despite the fact that Los Osos voters have already voted that they do not want to be taxed \$10 a year for public recreation in Los Osos.

- Two "move the sewer" candidates, Lisa Shicker and Julie Tacker, are elected to the CSD Board by a wide margin.

Today: Due to the central location of the Tri-W site to accommodate the park, multi-millions of dollars had to be added to the project for extra environmental, visual and odor mitigation. That cost was on top of the estimated \$5.3 million needed for the park and its maintenance.

- The nearly two year delay resulting from the futile pursuit of the deeply flawed and ill-fated Community Plan adds millions of dollars to the cost of the project, and, very importantly, due to mounting time constraints, consumes Los Osos' only chance of proposing an alternative to the \$151-million Tri-W project.

At the time of the 1998 election that formed the Los Osos Community Services District, the monthly sewer bill for the county's project was estimated at about \$60 - \$75. Future monthly sewer bills in Los Osos are now estimated at over \$200.

Why was there a "project objective" for "centrally located community amenities?"

What would have been the rationale to site the facility at Tri-W if the park was not in the project?

and, most importantly,

“What is the source of the “strongly held community value” in Los Osos to include an expensive public park in a very expensive sewer plant?

These questions demand answers.

Until contradictory evidence is found, and it is not forthcoming, the initial CSD Board and subsequent members up to 2005, and staff members, deliberately misled, from 2000-2005, the County of San Luis Obispo, the California Coastal Commission, and the Regional Water Quality Control Board, that a “strongly held community value” existed in Los Osos that any wastewater treatment facility must also double as a “centrally located” “recreational asset.”

The CSD used that manufactured “community value” to coerce regulators into approving the Tri-W site for their second project after the disastrous Community Plan, the plan that got the CSD formed and the initial CSD Board elected in 1998, was abandoned in 2000, even though there was no longer any rationale to site the second facility at Tri-W.

On the San Luis Obispo County Grand Jury web site, it says one function of the Grand Jury is to, “investigate local government agencies and officials to form a view as to whether they are acting properly. If a grand jury determines they are not, it has various options open to it. The most frequently used option is the presentation of a report outlining the grand jury's findings and recommendations in the matter. Such reports are public and frequently attract media attention. They must be responded to in specific ways by the agencies or elected officials reported upon. Except where an investigation is mandated, the grand jury in its sole discretion decides whether and what to investigate when performing its civil function.

Depending on the nature and severity of any wrongdoing a grand jury finds in its investigations, it can, in addition to releasing a report, request the District Attorney to pursue the matter criminally.”

This case warrants that action.

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