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IMPORTANT NOTE: The Commission will not take public testimony during this phase of the appeal hearing unless at least three commissioners request it. If the Commission finds that the appeal raises a substantial issue, it will schedule the de novo phase of the hearing for a future meeting, during which it will take public testimony. Written comments may be submitted to the Commission during either phase of the hearing.

Appeal filed:	9/9/2010
49th day:	10/28/2010
Staff report prepared:	9/22/2010
Staff report prepared by:	M. Cavalieri
Staff report approved by:	Dan Carl
Hearing date:	10/14/2010

APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal numberA-3-MRB-10-047, Dynegy Morro Bay Water Supply Well

ApplicantsDynegy Morro Bay LLC

Appellant.....Commissioners Mark Stone and Sara Wan

Local governmentCity of Morro Bay

Local decisionCoastal Development Permit (CDP) Application Number CP0-290 approved by the Morro Bay Planning Commission on May 3, 2010.

Project locationNear Morro Creek between the Dynegy Morro Bay power plant facility and Highway 1 at 1290 Embarcadero Road in the City of Morro Bay (APN 066-331-037).

Project description.....Abandon an existing water supply well; drill a new water supply well; relocate an existing pump house to the new well location; and extract and use water from the new water supply well.

File documents.....Final Local Action Notice for City of Morro Bay CDP Number CP0-290; City of Morro Bay certified Local Coastal Program (LCP); City of Morro Bay 2005 Urban Water Management Plan; CCC Substantial Issue Staff Report for A-3-MRB-08-031 (Main Street Well Abandonment); CCC Staff Report Regarding the Energy Commission’s Application for Certification (AFC-00-12) Duke Energy Morro Bay Power Plant Modernization Project; California Energy Commission’s Proposed Decision on Application for Certification (00-AFC-12) of Morro Bay Power Plant Project.

Staff recommendation ...**Substantial Issue Exists**

A. Staff Recommendation

1. Summary of Staff Recommendation

The City approved a CDP to abandon an existing private water supply well and to drill and use a new private water supply well. The certified City of Morro Bay LCP does not allow for private water wells,



requires protection of water resources for Coastal Act and LCP priority uses, and requires protection of groundwater quantity and quality in order to protect riparian and creek habitat and ESHA. The appellants contend that the City's decision is inconsistent with the LCP with regard to the public works and habitat protection policies.

Staff believes that the appeal raises substantial LCP conformance issues. The City's CDP decision authorizes a private water supply well within the City limits, where private water wells are not allowed. In addition, the City did not evaluate the hydrological and biological impacts of the use of the water extracted from the new well, and did not include conditions of approval to ensure that the project would be consistent with the water supply protection or habitat protection policies of the LCP.

Staff recommends that the Commission find that the appeal raises a substantial LCP conformance issue related to core LCP coastal resource protection requirements, and that the Commission take jurisdiction over the CDP application for this project. Motions and resolutions to effect this recommendation are found directly below. Should the Commission find a substantial issue, a de novo CDP application hearing on the project would be scheduled for a future date.

2. Staff Recommendation on Substantial Issue

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

Motion. I move that the Commission determine that Appeal Number A-3-MRB-10-047 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation of Substantial Issue. Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution to Find Substantial Issue. The Commission hereby finds that Appeal Number A-3-MRB-10-047 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.



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B. Findings and Declarations

The Commission finds and declares as follows:

1. Project Setting

A. Regional Setting

The City of Morro Bay is located on the shores of Morro Bay near the middle of the larger Estero Bay area in San Luis Obispo County. Until the mid-1940’s, most of the small community of Morro Bay was built on the bluff tops above the tidal flats. Between 1942 and 1945, the north and south breakwaters at the entrance to the Morro Bay harbor, two “T”-piers, and the inner harbor bulkhead were constructed for a Navy amphibious base. A navigational channel was dredged and the spoils deposited behind the inner harbor bulkhead to create a fill area along the bay that became known as the Embarcadero. In the late 1940’s the Navy base, including all waterfront facilities, was sold to San Luis Obispo County. Buildings began to be constructed on the Embarcadero, and various docks and piers were occupied by a growing fleet of commercial fishing boats. In the early 1950s, the County sold a portion of the old Navy base property to PG&E, which was later used to construct the Morro Bay Power Plant, now a defining feature in Morro Bay. In 1964, the City of Morro Bay incorporated and assumed jurisdiction over the County’s waterfront land and facilities, including the Embarcadero. Trusteeship of state tidelands was also transferred to the City at that time.

The City and the Embarcadero are major tourist attractions and prime coastal visitor-serving destinations with an estimated 1.5 million visitors annually. The Embarcadero is now largely developed with a variety of visitor-serving (overnight units, restaurants, gift shops, etc.) and coastal-related land



uses (i.e., kayak rental, commercial and recreational fishing services, etc.). Parcels on the bayside of Embarcadero are leased to individual lessees by the City through the City's proxy relationship to the State Lands Commission.

Morro Bay and the surrounding area include a variety of biological habitats, including coastal wetlands, intertidal mud/salt flats, rocky subtidal and intertidal zones, riparian corridors and woodlands. All of these habitats provide highly productive, diverse and dynamic ecosystems. Central to this habitat framework is the Morro Bay Estuary itself. This mostly shallow lagoon is approximately 2,500 acres and is sheltered from the open ocean by the sandspit and constructed breakwater. It is considered the most significant wetland system on California's south central coast. The Bay serves as a critical link of the Pacific Flyway by providing important habitat for resident and migrating shorebirds and waterfowl. The Audubon Society has ranked Morro Bay as one of the top five areas out of nearly 1,000 sites nationwide for diversity of winter bird species.¹

The Bay is home to a diverse collection of fish and wildlife species, many of which are rare, threatened, endangered, and/or endemic to the bay. For example, the estuary serves as resident and nursery habitat for the federally endangered tidewater goby and the steelhead trout, and other fish and shellfish. Other examples of federally threatened or endangered species that depend on the estuary and its watershed for their survival and recovery include: snowy plover, brown pelican, California black rail, California red-legged frog, Least Bell's vireo, Morro shoulderband snail, Southern sea otter, California clapper rail, Southwestern Willow Flycatcher, and the Morro Bay kangaroo rat. In addition, the bay supports a diverse and wide range of marine organisms including fish, shellfish, invertebrates, and other taxa (e.g., phytoplankton, zooplankton, jellyfish). It also supports recreational and commercial fisheries, and also provides commercial shellfish harvests.

Morro Bay also includes the largest eelgrass beds in the southern part of the state, with dense stands located in the lower intertidal areas and shallow channels within the Bay. These beds are a complex and highly productive environment, serving as a spawning and nursery ground for many species of fish (e.g. halibut, English sole, topsmelt, shiner perch, speckled sanddab, plainfin midshipmen, arrow and bay goby), and larger invertebrates (e.g., bay shrimp, spiny cockle, nudibranchs, cancer crabs, yellowshore crab). The dense foliage serves a number of functions such as substrate for epiphytic flora, fauna, and microbial organisms that decontaminate the Bay's water, and as a moderator of current and wave action, allowing suspended sediments and organic particles to settle, thereby improving water quality. Moreover, the eelgrass habitat in Morro Bay is the only significant eelgrass habitat in central and southern California available to the black brant during its annual migration to and from Mexico.

Morro, Chorro and Los Osos Creeks and several smaller tributaries drain into the bay. The creeks and their associated riparian areas provide habitat for fish and other aquatic organisms as well as food and shelter for migratory birds and other animals. In addition, they provide important habitat for the federally endangered steelhead trout. Steelhead trout are anadromous fish, which are spawned in

¹ For example, the Audubon Society estimates indicate that 200 different bird species have been identified using the Bay during a single day in December, including approximately 25,000 black brants.



streams, spend a portion of their life cycle in the ocean, and then return to the stream where they were spawned to reproduce.

B. Project Location

The City-approved project is located within the Morro Bay Power Plant (MBPP) property, on Esplanade Road in the City of Morro Bay. The MBPP property is about 107 acres, and is primarily occupied by an existing 1,002-megawatt electrical generating facility (i.e., the MBPP) lying adjacent to Morro Creek and the Morro Bay harbor and estuary. The MBPP is owned and operated by the applicant, Dynergy Morro Bay LLC. The MBPP borders Embarcadero Road on the west and Highway 1 on the east. The plant is adjacent to the existing 24-acre Pacific Gas and Electric (PG&E) Morro Bay Switchyard.

The MBPP was originally built by the prior owner, PG&E, in several stages from 1951 to 1963. Other facility-related structures on site include five fuel oil storage tanks, one displacement oil tank, three 450-foot tall exhaust stacks, a large steam boiler, turbine generator building, and ancillary buildings and equipment.

In 2004, the California Energy Commission (CEC) authorized a complete modification of the power plant, which includes dismantling and removing the existing power plant, except for its intake and outfall lines, and constructing two new 600-megawatt power generation units.^{2,3} In addition, there have been a variety of redevelopment concepts identified for the site, including because its size and dominating location in the City and adjacent to the Bay give rise to the potential for accommodating other potential uses (e.g., a university focused on alternative energy production has been discussed).

The site is located in the southwest portion of the Morro Hydrologic Sub-area (Morro Basin) of San Luis Obispo County. The Morro Basin encompasses an area of 810 acres, extending from the coastline to the convergence of the Morro and Little Morro Valleys. Morro Creek, a stream with headwaters in the Santa Lucia range, is the primary stream draining the Morro Basin. Basin recharge is by infiltration of precipitation and from tributary watersheds upstream on the Morro and Little Morro Creeks. Under natural conditions, groundwater flows to the west in the Morro Basin and discharges into Estero and Morro Bays. Water quality in the Morro Basin up gradient of the “narrows” area (i.e., the area generally east of Highway 1) is generally poor due to elevated nitrate levels apparently largely caused by agricultural activity. The water quality down gradient of the “narrows” is generally acceptable in times of high groundwater levels, but is susceptible to seawater intrusion during times of drought and/or

² Pursuant to the Warren-Alquist Act, the CEC has exclusive siting authority over thermal electric power plants of 50 megawatts or greater, and no CDP is required. That said, pursuant to that Act and Coastal Act Section 30413(d), the CEC is required to incorporate specific provisions identified by the Coastal Commission (for Coastal Act and/or LCP consistency) into any such CEC approval. The Commission provided the CEC with a series of such specific provisions in relation to the CEC’s 2004 action, including eliminating once-through cooling. However, the CEC determined that the once-through cooling alternative and its associated Habitat Enhancement Program was the environmentally preferable alternative. Therefore, the CEC authorized project includes retaining the existing intake and outfall lines. Recently, however, the State Water Resources Control Board adopted a policy to phase out once-through cooling systems at the state’s coastal power plants, with the Morro Bay plant scheduled to phase out its system by 2015.

³ The applicant has recently begun the “tank farm” (i.e., the upcoast MBPP yard area occupied by large storage tanks) demolition portion of the development that was authorized under that project in 2004.



groundwater pumping during drought.⁴

The Morro Basin is a small, shallow aquifer with limited storage capability. According to the City's 2005 Urban Water Management Plan, historical operations indicate that the Morro Basin aquifer can be drained in the event that the Morro well field is continuously operated during a 2 to 7 year drought cycle.⁵ Also, as indicated above, the Morro Basin has experienced periods of seawater intrusion during previous long-term droughts, but the Urban Water Management Plan states that the City's annual limit on its own pumping from the basin makes seawater intrusion less likely to occur in the future.⁶

According to applicant testimony, there are three water supply wells on the MBPP site that were drilled by PG&E in 1951. Well #1 is located north of Morro Creek. This well was given to the City and is currently operated by the City as a public water supply well. Wells #2 and #3 are located south of the creek, and are used to feed a 500,000 gallon private water tank, which is used for on-site fire suppression and other operations, including plant maintenance, cleanup, and landscaping. Wells #2 and #3 were originally designed to pump 125 gallons per minute, but because Well #3 apparently no longer backfills with water quickly enough to provide a reliable water supply, the applicant applied to replace it.⁷

2. Project Description

The City-approved project authorizes abandoning existing private water supply Well #3 near Highway 1, drilling a new private water supply well closer to Morro Creek, relocating the existing pump house to the new well location, and extracting water from the new well. The new well would be located approximately 120 feet from Morro Creek in an area that is largely devoid of power plant development (i.e., a natural area between the plant proper and Highway 1) and would be drilled to a depth of approximately 100 feet. To connect the well to the existing water piping and electrical system, the project includes digging a 400-foot long trench that would be 5 to 6 feet deep and 2 to 3 feet wide. See project information in the City's action notice attached as Exhibit B.

Construction of the approved project has been completed by the applicant. The City apparently issued a CDP to the applicant prior to submitting a Final Local Action Notice to the Commission, and before the Commission's appeal period began. As a result, the City's CDP was never effective. Thus, the well development that has taken place on the site was not authorized by a valid CDP.

3. City of Morro Bay CDP Approval

⁴ California Coastal Commission, Substantial Issue Determination Staff Report A-3-MRB-08-031 (Main Street Well Abandonment), Prepared June 26, 2008 for July 10, 2008 hearing, page 3.

⁵ Boyle Engineering Corporation for City of Morro Bay, 2005 Urban Water Management Plan, February 2006; page 57; accessed September 13, 2010: <http://www.morro-bay.ca.us/documents/Public%20Services/Water%20Division/2005%20Urban%20Water%20Management%20Plan.pdf>.

⁶ Ibid, page 33.

⁷ Applicant testimony provided at the City of Morro Bay's Planning Commission meeting of April 19, 2010.



On May 3, 2010, the City of Morro Bay Planning Commission approved CDP Application Number CP0-290. Notice of the Planning Commission action on the CDP was received in the Coastal Commission's Central Coast District Office on August 26, 2010. The Coastal Commission's ten-working day appeal period for this action began on August 27, 2010 and concluded at 5 p.m. on September 10, 2010. One valid appeal (see below) was received during the appeal period.

4. Appeal Procedures

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This project is appealable because it involves development that is located seaward of the first public road.⁸

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo CDP hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea, and thus this additional finding would need to be made if the Commission approves the project following a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo CDP determination stage of an appeal.

⁸ Depending on the cost of the facilities that would be constructed, it is possible that the project may also be appealable as a major energy facility project. However, given its location seaward of the first through public road, this question need not be answered in terms of appealability.



5. Summary of Appeal Contentions

The appellants contend that the City's CDP decision is inconsistent with certified LCP policies. First, the appellants contend that the LCP does not allow private water wells within the City, and therefore, a private water well cannot be approved consistent with the LCP. In addition, the appellants contend that the approved project is not consistent with LCP policies protecting groundwater quantity and quality and LCP policies protecting creek and riparian habitats and ESHA. Please see Exhibit C for the complete appeal document.

6. Substantial Issue Determination

A. Applicable LCP Policies

The appeal raises questions regarding allowing private water supply wells within the City, as well as protecting the quantity and quality of groundwater for Coastal Act and LCP priority uses and protecting creek and riparian habitats as well as ESHA.

The project site is zoned coastal-dependent industrial. The following LCP zoning regulations establish the allowed uses in the coastal-dependent industrial district and the special uses that may be allowed in the City. The coastal-dependent industrial district regulation does not list private water wells as an allowed use, and although public water wells may be allowed as a special use pursuant to 17.30.030(P), private wells are not allowed.

IP Policy 17.24.150 (Coastal-dependent industrial (M-2) district). Purpose. The purpose of the coastal dependent industrial district is to provide districts for industrial development wherein manufacturing and other industries which require a site on or close to the ocean or harbor can locate and operate while maintaining an environment minimizing offensive or objectionable noise dust, odor or other nuisances, all well designed and properly landscaped.

Unless otherwise designated, the following uses, or other uses which are found to be similar and consistent with the general plan and local coastal plan may be allowed with the appropriate permits and licenses: Thermal power plant and support facilities; pipelines; storage tanks; wastewater treatment facilities; other industrial uses which must be located on or adjacent to the sea in order to function (Excluding: OCS land-based support facilities including but not limited to support bases, pipe storage yards and pipeline coating yards); Aqua-culture and fish processing plants; Uses allowed in the M-1 zone if coastal related, such as but not limit to: boat construction, marine supply and repair, recreational vehicle service and other coastal related manufacturing uses...

IP Policy 17.30.030 (Special use permits). The special uses listed in this section may be allowed by the planning commission upon approval of a conditional use permit...P. Public Utility Facilities. Public utility facilities, including but not limited to public parking lots, roads, bridges, pedestrian trails, bikeways, communications equipment building, water wells, substations, switching stations, pipelines, transmission lines, and similar uses provided...(emphasis added)



The public works policies of the LCP protect groundwater resources. These policies prohibit extractions that exceed Basin Safe Yield and extractions that would adversely affect the biological productivity of coastal waters. In addition, these policies protect groundwater quantity and quality for Coastal Act priority uses, and require the City to monitor and conserve groundwater.

LUP Policy 3.01. *...extractions of water from groundwater basins shall not exceed Basin Safe Yield except under a conjunctive use program. Determinations of Basin Safe Yield shall ensure that groundwater extractions, stream diversions, etc. do not exceed a magnitude when the biological productivity of coastal waters is adversely affected...*

LUP Policy 3.02. *In any system the city of Morro Bay uses for water allocation, the City shall insure the following uses receive priority for available water and wastewater treatment facilities: Commercial Fishing/Agriculture; Coastal-Dependent Land Uses; Coastal-Related Land Uses; Essential Public Services and Basic Industries; Public Recreation; Commercial Recreation; Visitor-Serving Land Uses; Residential and other Commercial and Industrial Land Uses...*

LUP Policy 3.04. *Chapter 3 Coastal Act Policies shall be the bases for reviewing the adequacy of any Water Management Plan. A Water Management Plan shall ensure at a minimum, the following:*

- 1) *An adequate water supply for coastal-dependent activities such as commercial fishing, oyster farming, fish and shellfish processing, recreational boating and fishing and industrial energy development.*
- 2) *Continued protection of the Morro Bay wetland areas with assurances that the wetlands shall continue to be seasonally flushed of accumulated salts from sediments.*
- 3) *An adequate ground surface water supply to protect the biological productivity of coastal waters including riparian stream corridors upon which the anadromous fishery depends for viability*
- 4) *Sufficient water for agricultural operations in the Morro and Chorro Valleys.*

Once a Water Management Plan has been incorporated into the LUP, the approved elements of the plan shall be implemented with each project approval accompanied by findings that the resources listed above have been protected consistent with Chapter 3 policies contained in the Coastal Act...

LUP Policy 3.08(1). *The City will develop appropriate levels of water conservation needed based on water availability and quality.*

LUP Policy 3.08(3). *The City shall continue the use of groundwater within the limits of the City's water rights and promote the continued conservation of all water use through existing programs and promote additional methods of conservation to the benefit of the consumers.*



LUP Policy 3.08(9). *The City shall monitor groundwater levels and quality...*

The LCP includes broad protections for biological resources and sensitive habitats, including riparian habitats. In addition, Policy 11.17 specifically protects the quantity and quality of water in the Morro groundwater basin, where the approved project is located. This policy requires the City to ensure stream flows are adequate to maintain riparian and fisheries habitat.

LUP Policy 11.01. *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values...*

LUP Policy 11.02. *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall maintain the habitats' functional capacity.*

LUP Policy 11.14. *A minimum buffer strip along all streams shall be required as follows: (1) a minimum buffer strip of 100 feet in rural areas; (2) a minimum buffer strip of 50 feet in urban areas... The buffer area shall be measured landward from the landward edge of riparian vegetation...*

LUP Policy 11.17. *The biological productivity of the City's environmentally sensitive habitat areas shall be maintained and, where feasible, restored through maintenance and enhancement of the quantity and quality of Morro and Chorro groundwater basins and through prevention of interference with surface water flow. Stream flows adequate to maintain riparian and fisheries habitat shall be protected.*

B. Analysis

Private Utilities

The City of Morro Bay is an incorporated City, and most of the property in the City is located within the urban side of the urban/rural boundary. As with the Coastal Act, the LCP directs development to such urban areas, including because urban services, such as water, can be addressed within a common public services framework that ensures that such scarce resources are appropriately allotted. When an urban area lacks critical infrastructure (such as water in Morro Bay) to support additional urban development, it does not mean that urban uses should proceed incrementally, using what are essentially rural-level services (e.g., private water supply wells). The proliferation of such private services within an urban area causes practical problems (e.g., wells stop producing, such as is apparently the case in this project) as well as planning problems. In addition, these services often draw from the same source as public supplies, further exacerbating public service constraints and related problems. Furthermore, such private services can lead to unchecked environmental degradation (e.g., exceeding safe groundwater yield, reducing required in-stream flows, etc.). Ultimately, incremental private service development in urban areas that are served by public utilities can lead to serious cumulative environmental resource impacts such as groundwater overdraft, polluted groundwater, degraded riparian habitat, and so on.

Therefore, utilities that are public, not private, are the most appropriate way to serve development in the



City under the Coastal Act and the LCP. Accordingly, the LCP does not contemplate or provide a basis for approval of private water wells within the City. The LCP discusses water resources in the LCP Land Use Plan (LUP) public works chapter, which, along with the public works policies, discuss water resources only within the context of public water utilities and not private water utilities. In addition, the zoning regulations of the LCP's Implementation Plan (IP) do not allow private wells in any district, including the coastal-dependent industrial district in which the project is located. In contrast, however, *public* water wells are allowed (as a special use) within the City pursuant to IP Section 17.30.030.P.

The City's approval of the new private well does not acknowledge that private wells are not contemplated by the LCP, and it does not evaluate the project's consistency with LCP zoning regulations, including regulations that do not provide for private wells in this district, or any other district in the City. These LCP provisions are in place because the City is an urban area where services are public, including for the reasons discussed above. Therefore, the City's decision to allow a private water supply well raises a substantial issue of conformance with the LCP in this regard.

Groundwater/Water Supply

The public works policies of the LCP require the City to ensure that groundwater is conserved and reserved for priority uses, that groundwater quality is not degraded, and that groundwater levels are adequate to protect the biological productivity of coastal waters. The City determined that the project would not substantially impact water resources because it would not result in a net increase in the quantity of water extracted from the Morro Basin. This determination is apparently based on the applicant's assertion that it does not intend to increase the quantity of water extracted from the new well as compared to the quantity that has been extracted from the existing well in previous years.⁹ In addition, the City determined that the project is consistent with LCP policies protecting water resources for Coastal Act priority uses based on the applicant's intent to continue to use the water for uses ancillary to the coastal-dependent power plant on site. (See Exhibit B for the City's staff report, findings and conditions.)

With respect to the observation that the new well would only replace an existing well that pre-dates CDP requirements, and thus that there would be no net increase in water extraction, such observation is misleading. First, the articulated premise for the project is that the existing well is failing, and there is a need to supplement the amount of water that is currently being extracted from it, thus the new proposed well. As such, if the new well is used for the 500,000 gallons per year that the applicant asserts, and the existing well is no longer capable of providing this amount of water (i.e., per the applicant, because it no longer produces a reliable water supply), then there is an increase in water withdrawals compared to the current situation.

Second, the City did not limit the amount of water that could be extracted from the new well in any way. Thus, and despite the applicant's observation regarding the quantity of water that would be used from

⁹ In an oral presentation to the City of Morro Bay Planning Commission on April 19, 2010, the applicant stated that it has used approximately 500,000 gallons per year from the existing well in the past, and that the new well would be expected to generate a similar amount of water for applicant use under the approved project.



the new well, the approved well has the potential to extract a significant amount of water from the Morro Basin, which could result in adverse impacts on the quantity and quality of groundwater. The approved well would be drilled to a depth of 100 feet and would have a capacity similar to the capacity of the original Well #3, which was designed to pump 125 gallons per minute.¹⁰ At 125 gallons per minute, the well could produce a hypothetical maximum of 180,000 gallons per day, or over 5 million gallons in a month, or over 60 million gallons in a year.¹¹

In addition, the 2004 CEC authorization stated that the modified power plant would generally use 10,000 gallons per day of freshwater from on-site wells, but that it may use as much as 80,000 gallons per day from the wells during short-term maintenance activities.¹² Ultimately, the CEC authorization assumes an annual rate of at least 3.65 million gallons per year from the two on-site wells (i.e., 10,000 gallons per day for 365 days). Presuming the two wells were utilized to the same degree, this would translate into more than 1.8 million gallons per year per well, or more than three times the amount asserted by the applicant in terms of this current well project. And, it is possible that the upgraded power plant could use even more water than the amount assumed by CEC.

In short, the City-approved project represents an increase in water withdrawals in an area of limited water supply, without any condition limiting the amount of water that the applicant could withdraw.

With respect to the type of use that would be supported by the water, the City conditioned its approval to limit the use of the water extracted from the approved well to on-site uses only, but the City did not limit the purposes for which the water could be used. Thus, the water could be used for any purpose on the site. Currently, the City's condition ensures that the water would be used to support a coastal-dependent use, because that is the property's current use. But the City's CDP provides no other limitation on the use of the water produced by the well. As a result, should the use of the property change in the future, there is nothing in the City's approval that would require that the appropriate water use questions are reexamined at that time. Rather, the City's approval appears to facilitate a future assertion that the site already has water to serve development there—any development there—based on the approved well. While that is not to say that the power plant will not continue to operate, it is to recognize that there is the potential that redevelopment of the site includes something other than a coastal-dependent power plant use, and the City's approval does not account for nor address such future use questions for the well.

Given the potential for development and redevelopment that could be served by the approved well, including the development already authorized by the CEC in 2004 that appears to result in an increased use of water from the on-site wells, the impacts of using the approved well at its intended capacity, as

¹⁰ Applicant testimony at the City of Morro Bay's Planning Commission meeting of April 19, 2010.

¹¹ Although there is no indication that that maximum would be pursued or that it could be achieved based on groundwater availability and equipment tolerances, it helps provide a relative measuring stick for understanding what the well could be capable of drawing from the groundwater basin holding these variables constant.

¹² California Energy Commission, Morro Bay Power Plant Project, Application for Certification 00-AFC-12, 3rd Revised Presiding Member's Proposed Decision, June 2004; page 25; accessed September 16, 2010: http://www.energy.ca.gov/sitingcases/morrobay/documents/2004-06-11_3RD_REV_PMPD.PDF.



well as its full capacity, must be fully analyzed in order to determine consistency with the public works policies of the LCP, including those policies protecting groundwater resources.

In its determination regarding the impacts of the project on groundwater, the City relied on a previous hydrological study that was prepared approximately 10 years ago for the California Energy Commission in its investigation of MTBE contamination in the overall aquifer.¹³ According to the City's Public Services Director, the study included a description of the impacts of the ongoing use of existing Well #3, and showed that the use of the existing well at that time was not impacting the use of nearby City wells. The study did not analyze the impacts of any increase in the quantity of water extracted from this well, and it did not analyze the relocation of the well approved by the City in the subject CDP approval.¹⁴ Rather, the study was focused on questions that were relevant a decade ago in relation to MTBE contamination. There is nothing in the City's notice to indicate that the ten-year old study was updated to reflect current groundwater data, and/or that it was updated to address questions relevant to the way in which the new well would operate, and/or that it was updated to reflect a new extraction point. In short, the City did not have adequate scientific evidence to determine that the approved project would have no impacts on the quantity or quality of groundwater, especially because the City did not analyze the impacts of using increased quantities of water from the new well or the impacts of extracting water from the new well at its new location.¹⁵

Therefore, because the City did not have scientific evidence to analyze the impacts of the intended or potential use of the well, and because the City did not condition its approval to limit the amount of water used (or even to require conservation of water resources, such as installation of low-flow fixtures), the City-approved project raises a substantial issue of conformance with the public works policies of the LCP, including Policy 3.01 prohibiting groundwater extractions from exceeding Basin Safe Yield; Policy 3.02 requiring the City to allocate adequate resources to Coastal Act priority uses; Policy 3.04 requiring the City to ensure adequate water supply for Coastal Act priority uses, for agriculture, and to ensure protection of biological resources including wetlands and riparian stream corridors; as well as Policy 3.08 requiring the City to conserve water. Absent supporting evidence, it is not clear that the approved project would adequately protect groundwater and scarce water supply for priority uses, as is required by the LCP.

Biological Resources

¹³ Telephone communication between Madeline Cavalieri, Coastal Commission Coastal Planner, and Rob Livick, City of Morro Bay Public Services Director, September 9, 2010.

¹⁴ Ibid.

¹⁵ The CEC conditioned its authorization of the power plant modification to require the applicant to conduct an aquifer test to determine the effects of increased pumping of the project's wells on water levels and water quality in the nearby City wells. The condition requires the aquifer test and analysis to be submitted to the City at least 60 days prior to site construction phase mobilization, which includes tank farm demolition activities, if groundwater will be used for demolition activities. (See SOIL & WATER 10 on page 414 of the 3rd Revised Presiding Member's Proposed Decision, dated June 2004 accessed at: http://www.energy.ca.gov/sitingcases/morrobay/documents/2004-06-11_3RD_REV_PMPD.PDF.) It is not clear at the current time if such test has been performed (or if it is even yet required because groundwater would be used for demolition activities), but it is clear that no such test or test data was identified in the City's CDP notice.



The riparian, habitat and ESHA policies of the LCP require the City to protect these resources from development impacts, including impacts from extracting groundwater. Water extractions from groundwater basins and stream underflow areas can impact the habitat by reducing the quantity of freshwater available for stream flows, which can impair fish habitat, reduce the amount of water available for riparian vegetation, and lead to increased salinity in bay waters, among other deleterious effects. The Morro Basin, in which this project is located, may be especially susceptible to such impacts because, as discussed in section B.1.B of this report, it is a shallow basin that has previously been subject to saltwater intrusion.

As discussed above in the groundwater/water supply finding, the City's approval did not include adequate hydrological information with which to evaluate the groundwater impacts of the project, including those caused by using the new well at its new location, as well as impacts caused by extracting increased quantities of water. Similarly, the City's approval did not include any biological studies or analyses to identify the biological impacts from extracting water from the new well, including impacts on creek and riparian habitats. As such, there is no evidence that the proposed well will not adversely impact biological resources. Given its location closer to Morro Creek than the last well (within approximately 120 feet of the creek bank and directly adjacent to the edge of existing riparian vegetation) and thus the increased potential for direct impacts as well as underflow draw, it is not assured that Morro Creek related habitats are protected as required by the LCP. Exacerbating this issue, and as previously discussed, the City's approval also did not limit the quantity of water that could be extracted from the new well. Finally, there appears to be no setback between the approved well and the riparian vegetation, inconsistent with LCP policy 11.14, which requires a 50 to 100 foot setback from the edge of riparian vegetation. In short, the City's determination that the project would not cause significant adverse biological impacts cannot be assured.

For these reasons, the City's approval raises a substantial issue of conformance with the riparian, habitat, and ESHA protection policies of the LCP, including those policies discussed above.

C. Substantial Issue Determination Conclusion

The City-approved project allows for a private water supply well when such wells are not contemplated or allowed by the LCP. In addition, the well was approved absent information and/or terms and conditions to ensure coastal resource protection, including groundwater, creek, habitat, and ESHA resource protection, as required to be consistent with the LCP. Water supply and biological habitats are core coastal resources that require protection under the LCP. It is clear that the City's CDP decision did not address the private use of groundwater resources or evaluate the impacts of the project on coastal resources, as required by the LCP. Thus, the City-approved project is inconsistent with the LCP, and the Commission finds that a substantial issue is raised with respect to the grounds on which the appeal has been filed and takes jurisdiction over the CDP application for the proposed project.

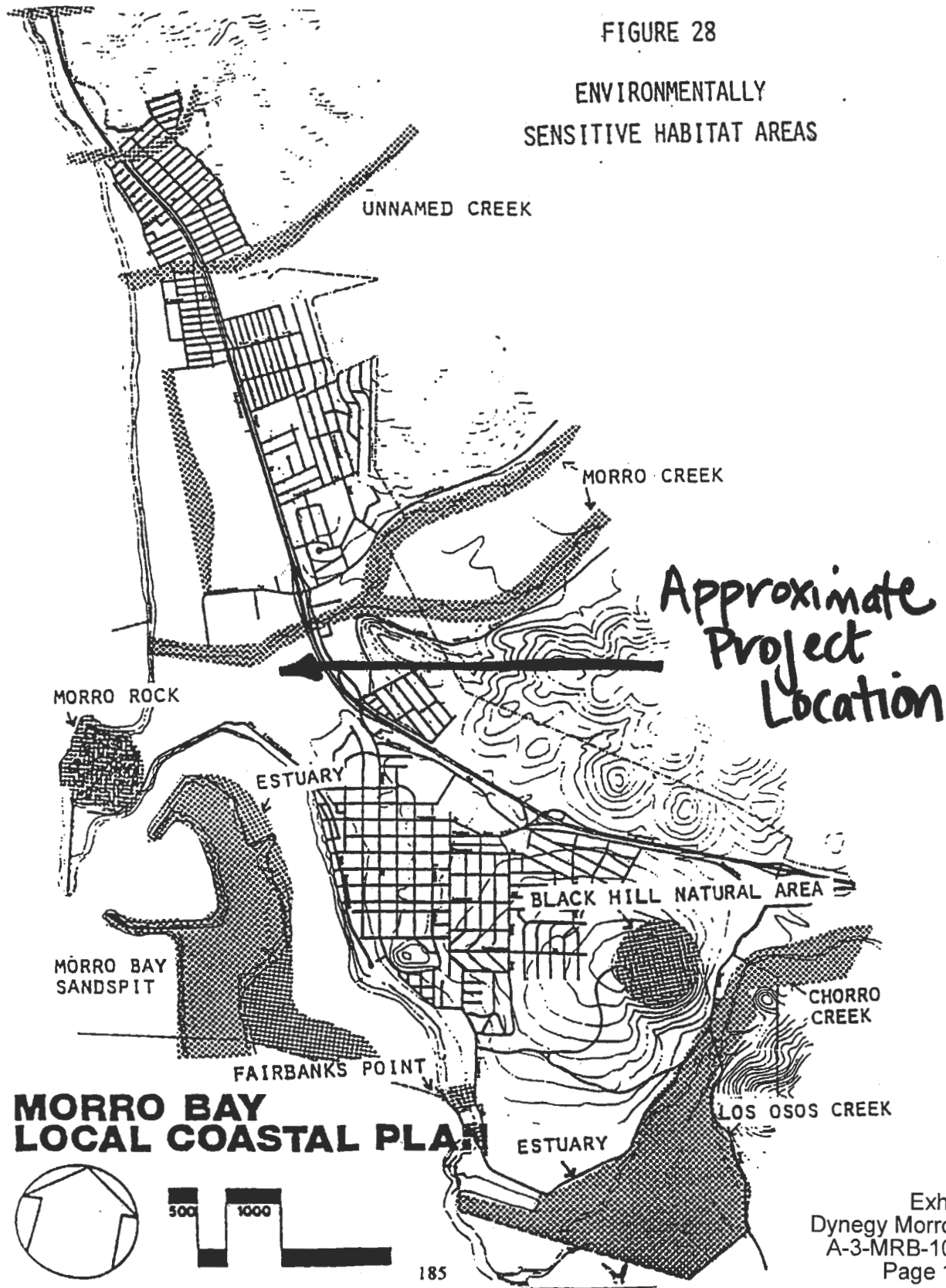
Prior to bringing this matter back for Coastal Commission review in a de novo CDP hearing context, the applicant will need to provide up to date biological and groundwater analyses which demonstrate the impact of the proposed well and related development on groundwater and Morro Creek resources, including in terms of basin safe yield data and Morro Creek in-stream flow habitat requirements. In



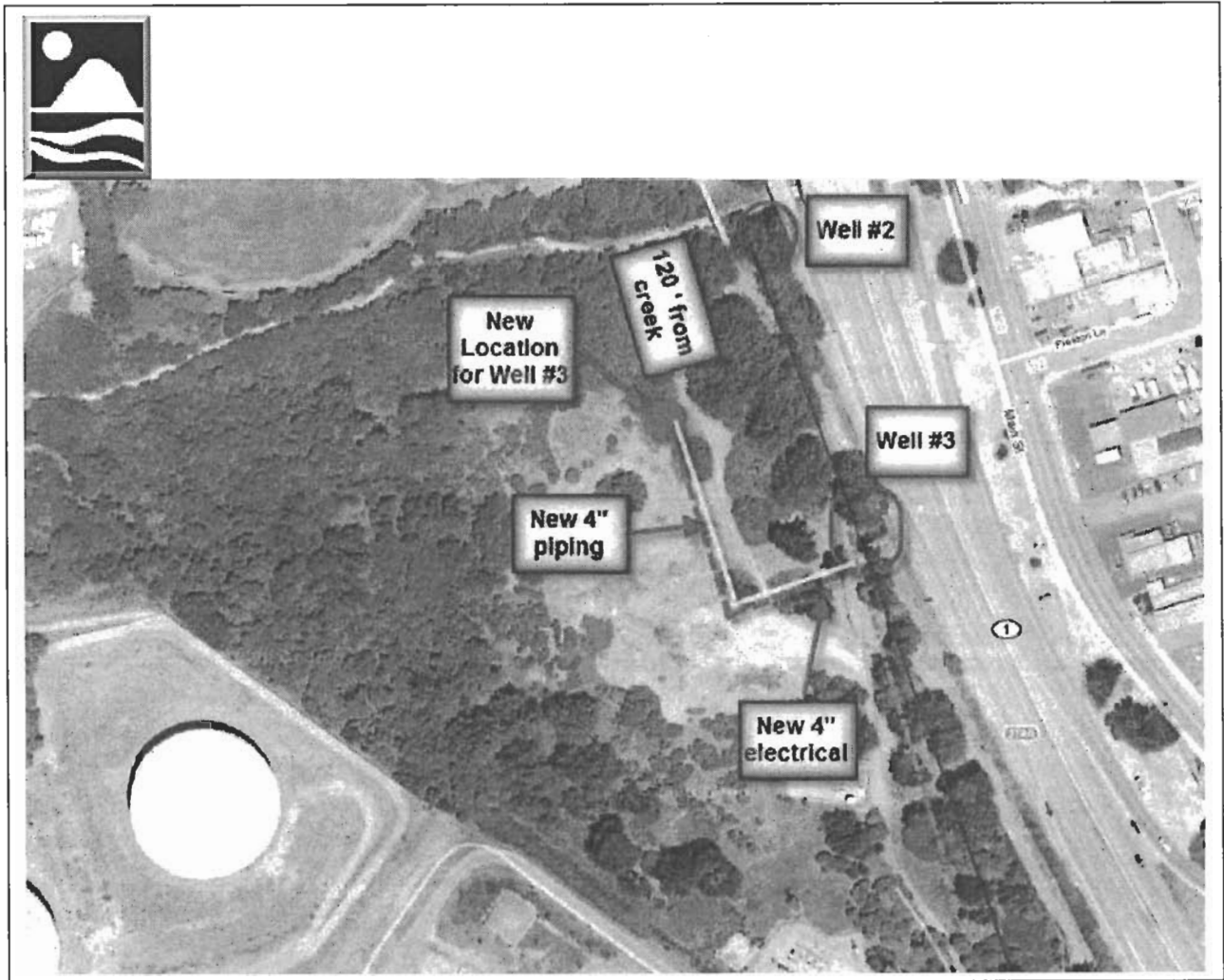
addition, the applicant must clearly identify the parameters of the proposed use of the water to be extracted, including in terms of specific amounts for specific uses on the site, and the way in which the applicant would ensure such use provisions were monitored and enforced over time. The applicant must also provide information and evidence regarding the installation and use of the existing well at this location. Finally, the applicant must clearly articulate and demonstrate the reasons why the well could or should be considered a public water supply well under the LCP. Following submittal and Commission staff review of such required documentation, this matter will be scheduled for a Coastal Commission review on the merits of the CDP application. In the meantime, to the extent the subject well and related development has been installed and is already operational, the applicant has no CDP authorization for same, and use of such well, including extracting water from it, may constitute a knowing and intentional violation of the Coastal Act and its permitting requirements.



FIGURE 28
ENVIRONMENTALLY
SENSITIVE HABITAT AREAS



**MORRO BAY
LOCAL COASTAL PLAN**



Planning Commission
Dynegy Morro Bay, LLC



SITE PLAN

Exhibit A
Dynegy Morro Bay
A-3-MRB-10-047

**FINAL LOCAL
ACTION NOTICE**

REFERENCE # 3-HAB-10-192
APPEAL PERIOD 8/27-9/10/2010

RECEIVED

AUG 26 2010

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

May 4, 2010

Dynegy Morro Bay, LLC
ATTN: Steve Goschke
1290 Embarcadero Road
Morro Bay, CA 93442

SUBJECT: Case No.: CP0-290

SITE: 066-331-037
1290 Embarcadero

Dear Mr. Goschke,

At its regular meeting on May 3, 2010, the Planning Commission approved your request for a Coastal Development Permit for abandonment of an existing well and the drilling of a new well with the attached conditions. This action does not constitute a building permit. Any further processing of this project must be initiated by the applicant, subject to the applicable rules and regulations of the Morro Bay Municipal Code. *Please be advised that you must return the enclosed Acceptance of Conditions form, signed, to this department prior to any building permit being issued.*

The Morro Bay Municipal Code provides for an appeal of the action by the Planning Commission within ten (10) days of adoption and anyone wishing to appeal may do so in writing by delivering such letter to the office of the City Clerk. There is a fee for processing appeals that are not coastal permits.

Your permit requires that the state required fee be paid to the County Clerk's Office for the filing of a Notice of Determination. Please submit payment made payable to "County of San Luis Obispo" to the Public Services Department in the amount of \$25. Section 15094 of the California Environmental Quality Act (CEQA) provides for the start of a 30-day statute of limitations period on legal challenges to the environmental decision that would otherwise be 180 days. City staff will have the Notice of Determination filed.

Sincerely,

Robert Livick
Interim Director Public Services Department

By: _____

Enclosed: Permit, Findings, Conditions of Approval, and Acceptance of Conditions Form

Exhibit B
Dynegy Morro Bay
A-3-MRB-10-047
Page 1 of 13

COASTAL DEVELOPMENT PERMIT

CASE NO: CP0-290

THIS PERMIT IS HEREBY APPROVED AND ISSUED FOR:

SITE ADDRESS: 1290 Embarcadero Road

APPLICANT: Dynergy Morro Bay, LLC

APN/LEGAL: APN: 066-331-037 LEGAL: Lots 12, Block 331, Tract: Atascadero Beach

DATE APPROVED: May 3, 2010 APPROVED BY: Planning Commission

CEQA DETERMINATION: The project qualifies for a CEQA Mitigated Negative Declaration was posted on March 5, 2010. The applicant has agreed to implement the mitigation measures proposed in the Negative Declaration. Thus there are no significant impacts with the implementation of those mitigation measures.

DESCRIPTION OF APPROVAL: The project consists of the abandonment of well #3 and the drilling of a new well also designated #3. The existing pump house will be relocated to the new well location.

THIS APPROVAL IS BASED UPON THE ATTACHED FINDINGS AND IS VALID ONLY IF CONDITIONS (ATTACHED) ARE MET AND ONLY AFTER THE APPLICABLE APPEAL PERIOD. Failure to comply with the conditions of this permit shall, at the discretion of the Public Services Director pursuant to Municipal Code Section 17.60.150, render this entitlement null and void.

YOUR PROPERTY IS LOCATED IN THE CITY OF MORRO BAY JURISDICTION, THERE IS AN APPEAL PERIOD OF TEN (10) *Calendar days*, WITHIN WHICH TIME YOUR PERMIT IS APPEALABLE TO THE CITY COUNCIL/PLANNING COMMISSION

YOUR PROPERTY IS LOCATED IN THE COASTAL COMMISSION APPEALS JURISDICTION: THE FOLLOWING COASTAL COMMISSION APPEAL PERIOD APPLIES TO YOUR PROJECT: This City decision is appealable to the California Coastal Commission pursuant to the California Public Resource Code, Section 30603. The applicant or any aggrieved person may appeal this decision to the Coastal Commission within TEN (10) *Working days* following Commission receipt of this notice. Appeals must be in writing and should be addressed to: California Coastal Commission, 725 Front Street, Ste. 300, Santa Cruz, CA 95060, Phone: 415-427-4863. If you have any questions, please call the City of Morro Bay Public Services Department, 772-6261.

IF NOT APPEALED, YOUR PERMIT WILL BE EFFECTIVE: May 14, 2010

ATTEST: _____ DATE: _____

THIS IS A DISCRETIONARY APPROVAL AND DOES NOT CONSTITUTE A BUILDING PERMIT

PUBLIC SERVICES DEPARTMENT

NOTICE OF FINAL ACTION ON COASTAL DEVELOPMENT PERMIT

NOTICE OF FINAL CITY ACTION on Coastal Development Permit No. CP0-290

THE FOLLOWING PROJECT IS LOCATED IN THE MORRO BAY COASTAL ZONE AND THE CITY HAS ACTED A COASTAL PERMIT APPLICATION ON MAY 3, 2010.

Applicant: Dynegy Morro Bay, LLC

Project Location: 1290 Embarcadero Road

Project Description: Abandonment of well #3 and the drilling of a new well also designated #3. The existing pump house will be relocated to the new well location.

APN/Legal: 066-331-037 Lot Area 107.4 acres

Zoning: Coastal Dependent Industrial (M-2) LUP/General Plan: Industrial Coastal Development

Filing Date: September 17, 2008 Action Date: May 3, 2010

Action By: Planning Commission Action Taken: Approved with Conditions

Attachments: Permit, Findings, if any, and Conditions of Approval

- THIS SITE IS OUTSIDE OF THE COASTAL COMMISSION APPEAL JURISDICTION
- This City decision is appealable to the California Coastal Commission pursuant to the California Public Resource Code, Section 30603. The applicant or any aggrieved person may appeal this decision to the Coastal Commission within TEN (10) working days following Commission receipt of this notice. Appeals must be in writing and should be addressed to: California Coastal Commission, 725 Front Street, #300, Santa Cruz, CA 95060, 415-427-4863.

APPLICANT'S ACCEPTANCE
OF
CONDITIONS OF APPROVAL

CASE NO. CP0-290

SITE LOCATION: 1290 EMBARCADERO ROAD

APPLICANT NAME: DYNEGY MORRO BAY, LLC, STEVE GOSCHKE (APPLICANT)

APPROVAL BODY:

- Public Services Director
- Zoning Administrator
- Planning Commission
- City Council

DATE OF ACTION: MAY 3, 2010

I, STEVE GOSCHKE the undersigned, have read and reviewed the conditions of approval imposed by the Approval Body in its action approving case number CP0-290.

I UNDERSTAND AND ACCEPT SAID CONDITIONS AND AGREE TO FULLY COMPLY WITH THEM.

APPLICANT'S SIGNATURE

DATE

CITY OF MORRO BAY NOTICE OF DETERMINATION

TO: San Luis Obispo Co. Clerk
County Government Center
San Luis Obispo CA 93401

FROM: City of Morro Bay

Public Services Department
955 Shasta Street
Morro Bay, CA 93442

Office of Planning & Research
1400 Tenth Street
Sacramento, CA 95814

Project Title: Relocation of Well #3

Project Location - Specific: 1290 Embarcadero Road

Project Location - City: Morro Bay

County: San Luis Obispo

Description of Project: The site location is currently being utilized for power generation and well pumping for water. The project includes abandoning an existing well and drilling a new well. The new well will be drilled to a depth of approximately 100' and an 8" casing will be installed, which equals .35 square feet at the surface. To connect the new well into the water piping the electrical system a 400' trench at a depth of five to six feet deep and two to three feet wide will need to be dug. The existing well #3 will be decommissioned and backfilled. The pump house associated with the existing well will be relocated to the new well site.

Name of Public Agency Approving the Project: City of Morro Bay

Name of Person or Agency Carrying Out Project: Dynegy Morro Bay, LLC

2010031010 Sierra Davis (805) 772-6297
State Clearinghouse Number (If Submitted) Lead Agency Contact Person Telephone No.

This is to advise that the City of Morro Bay has approved the above described project on May 3, 2010 and has made the following determinations regarding the above described project:

1. The project will will not have a significant effect on the environment.
2. An Environmental Impact Report was prepared for this project pursuant to CEQA.
3. A Negative Declaration was filed for this project pursuant to the provisions of CEQA.
4. Mitigation measures were were not made a condition of the approval of the project.
5. A statement of Overriding Considerations was was not adopted for this project.
6. Findings were were not made pursuant to the provisions of CEQA.

This is to certify that the record of project approval and final Negative Declaration with comments and responses is available to the General Public at: Public Services Department, 955 Shasta Street, Morro Bay CA 93442.

Signature (Public Agency)

Date

Title: Planning Intern

Exhibit B
Dynegy Morro Bay
A-3-MRB-10-047
Page 5 of 13

COASTAL DEVELOPMENT PERMIT
CASE NO. CP0-290
SITE LOCATION: 1290 EMBARCADERO ROAD

I. FINDINGS OF APPROVAL

The Director has reviewed this Coastal Development Permit application and finds the following:

1. That the project will not cause any health or safety concerns, and will not impact neighboring uses, environmentally sensitive habitat areas, or otherwise create significant impacts
2. The project qualifies for a CEQA Mitigated Negative Declaration was posted on March 5, 2010. The applicant has agreed to implement the mitigation measures proposed in the Negative Declaration. Thus there are no significant impacts with the implementation of those mitigation measures.

II. CONDITIONS OF APPROVAL

1. Permit: This permit is granted for the land described on Assessor Parcel Number 066-331-037, referenced above and on file with the Public Services Department. The locations of all buildings and other features shall be located and designed as shown on the approved plans.
2. Inaugurate Within Two Years: Unless the construction or operation of the structure, facility, or use is commenced not later than two years after the effective date of this approval and is diligently pursued thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Said extensions may be granted by the Director, upon finding that the project complies with all applicable provisions of the Morro Bay Municipal Code, General Plan and Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.
3. Compliance with the Law: All requirements of any law, ordinance or regulation of the State of California, City of Morro Bay, and any other governmental entity shall be complied with in the exercise of this approval.
4. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicants failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.
5. Compliance with Conditions: Compliance with and execution of all conditions listed hereon shall be necessary, unless otherwise specified. Deviation from this requirement shall be permitted only by written consent of the Director and/or as authorized by the Planning Commission. Failure to comply with these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the Morro Bay Municipal Code and is a misdemeanor.

6. Compliance with Morro Bay Standards: This project shall meet all applicable requirements under the Morro Bay Municipality Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use Plan and General Plan for the City of Morro Bay.

PLANNING CONDITIONS

1. Archaeology: In the event of the unforeseen encounter of subsurface materials suspected to be of an archaeological or paleontological nature, all grading or excavation shall immediately cease in the immediate area, and the find should be left untouched until a qualified professional archaeologist or paleontologist, whichever is appropriate, is contacted and called in to evaluate and make recommendations as to disposition, mitigation and/or salvage. The developer shall be liable for costs associated with the professional investigation.
2. Construction Hours: Pursuant to MBMC Section 9.28.030 (I), noise-generating construction related activities shall be limited to the hours of seven a.m. to seven p.m. week days and eight a.m. to seven p.m. on weekends, unless an exception is granted by the Director of Public Services pursuant to the terms of this regulation.
3. Dust Control: Prior to issuance of a grading permit, a method of control to prevent dust and wind blow earth problems shall be submitted for review and approval by the Building Official.
4. Conditions of Approval on Building Plans: Prior to the issuance of a Building Permit, the final Conditions of Approval shall be attached to the set of approved plans. The sheet containing Conditions of Approval shall be the same size as other plan sheets and shall be the last sheet in the set of Building Plans.

PLANNING COMMISSION CONDITIONS

1. Concrete Slab: The existing concrete slab associated with the existing pump house on the east side of the bicycle trail shall be demolished and removed.
2. Trench Cut: The trench cut across the Morro Bay bicycle trail shall utilize a "T" cut method and saw cut shall extend an additional 18 inches on either side of the required trench section.
3. Warranty: A 5-year warranty shall be required of the applicant to the City for the cut made in the bicycle trail in such case of ground fill failure and the bike trail becomes a public safety hazard.
4. Water Uses: The water from the well shall be limited to uses on site ~~including, but not~~ limited to uses such as landscaping, fire fighting, maintenance and operations.

ENVIRONMENTAL CONDITIONS

1. Air Quality: The project construction has the potential to exceed APCD thresholds for the emission of ROG, NOx, and Diesel Particulate Matter. The following are standard mitigation measures required by the APCD to reduce potential APCD thresholds to less than significant levels:
 - a) Maintain all construction equipment in proper tune according to manufacturer's specifications.
 - b) Fuel all off-road and portable diesel powered equipment with ARB certified motor vehicle diesel fuel (non-taxed version suitable for use off-road).

- c) Use diesel construction equipment meeting ARB's Tier 2 certified engines or cleaner off-road heavy-duty diesel engines, and comply with the State Off-road Regulations.
 - d) Use on-road heavy-duty trucks that meet the ARB's 2007 or cleaner certification standard for on-road heavy-duty diesel engines, and comply with the State On-Road Regulation.
 - e) Construction or trucking companies with fleets that do not have engines in their fleets that meet the engine standards identified in the above two measures (e.g. captive or NOx exempt area fleets) may be eligible by proving alternative compliance.
 - f) All on and off-road diesel equipment shall not idle for more than 5 minutes. Signs shall be posted in the designated queuing areas and or job sites to remind drivers and operators of the 5-minute idling limit.
 - g) Diesel idling within 1,000 feet of sensitive receptors is not permitted.
 - h) Staging and queuing areas shall not be located within 1,000 feet of sensitive receptors.
 - i) Electrify equipment when feasible.
 - j) Substitute gasoline-powered in place of diesel-powered equipment, where feasible.
 - k) Use alternatively fueled construction equipment on-site where feasible.
2. **Air Quality:** The project construction has the potential to exceed APCD thresholds for fugitive dust. The following standard mitigation measures are required by the APCD to reduce potential APCD thresholds to less than significant levels:
- a) Reduce the amount of the disturbed area.
 - b) Use of water trucks or sprinkler systems in sufficient quantities to prevent airborne dust from leaving the site. Increased watering frequency would be required whenever wind speeds exceed 15 mph. Reclaimed (non-potable) water shall be used whenever possible.
 - c) All dirt stockpile areas shall be sprayed daily or as needed to contain dust.
 - d) Permanent dust control measures identified in the approved project revegetation and landscape plans shall be implemented as soon as possible following completion of any soil disturbing activities.
 - e) Exposed ground areas that are planned to be reworked at dates greater than one month after initial grading shall be sown with a fast germinating, non-invasive grass seed and watered until vegetation is established.
 - f) All disturbed soil areas not subject to revegetation shall be stabilized using approved chemical soil binders, jute netting, or other methods approved in advance by the APCD.
 - g) All roadways, driveways, sidewalks, etc. to be paved shall be completed as soon as possible. In addition, building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - h) Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site.
 - i) All trucks hauling dirt, sand, soil, or other loose materials are to be covered or shall maintain at least two feet of freeboard (minimum vertical distance between the top of load and trailer) in accordance with CVC Section 23114.
 - j) Install wheel washers where vehicles enter and exit unpaved roads onto streets, or wash off trucks and equipment leaving the site.
 - k) Sweep streets at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water shall be used where feasible.
 - l) All of these fugitive dust mitigation measures shall be shown on grading and building plans.
 - m) The contractor or builder shall designate a person or persons to monitor the fugitive dust emissions and enhance the implementation of the measures as necessary to minimize dust complaints, reduce visible emissions below 20% opacity, and to prevent transport of dust offsite. Their duties shall include holidays and weekend periods when work may not be in

progress. The name and telephone number of such persons shall be provided to the APCD Compliance Division prior to the start of any grading, earthwork, or demolition.

3. **Cultural Resources:** Archaeological monitoring of all grubbing, demolition, and excavation activities in the development area by a qualified archaeologist and Native American monitor. Collection of historic and prehistoric cultural remains deemed significant and if necessary, analysis of any features encountered including but not limited to historic refuse dumps and diagnostic prehistoric habitation deposits.
4. **Cultural Resources:** Selection and processing of prehistoric marine shell for radiocarbon dating.
5. **Cultural Resources:** The applicant/property owner shall provide an archaeological monitoring evaluation plan prepared by a qualified archaeologist for all construction excavations associated with grading activity. The plan shall identify all the ground disturbance activity monitored including dates the archaeologist and culturally affiliated, indigenous individual recognized by the Native American Heritage Commission were present. The evaluation report shall describe all the densities or features of artifacts associated with a particular activity encountered. Any isolated human remains encountered during construction shall be protected and their disposition be undertaken consistent with Public Resources Code 5097.98.
6. **Hazards/Hazardous Materials:** The applicant will monitor the grasses, shrubs, woodland and tree canopy on site and abate all vegetation from wells and structures on a ongoing basis.
7. **Transportation and Circulation:** The applicant will clearly post the construction site while working on the bike path and divert bicycle traffic around construction site.

WATER DIVISION CONDITIONS

1. **County Well Permit:** Applicant shall supply the Public Services Department with a copy of the permit secured from San Luis Obispo County Environmental Health for the drilling of the well.

PUBLIC WORKS CONDITIONS

1. **Base Flood Elevation:** All buildings, well heads, electrical and mechanical equipment shall be one foot above the Base Flood Elevation of 21 ft NGVD 1929 or flood proofed.

FIRE CONDITIONS

1. **Vegetation:** Abate all vegetation and tree canopy from existing pump house proposed well site, and proposed electrical conduit, in accordance with Morro Bay Municipal Code (Section 8.12.030), California Fire Code (Section 304) and California Public Resources Code (Section 4291).



AGENDA ITEM: X-A
ACTION: _____

CITY OF MORRO BAY PLANNING COMMISSION

April 19, 2010

PROJECT SUMMARY

Well abandonment, drilling of a new well and relocation of existing pump house to new well.

FILE NUMBERS

CP0-290, Coastal Development Permit

SITE ADDRESS

1290 Embarcadero

LEGAL DESCRIPTION(S)

Lots 12, Block 331, Tract: Atascadero Beach

APN(S)

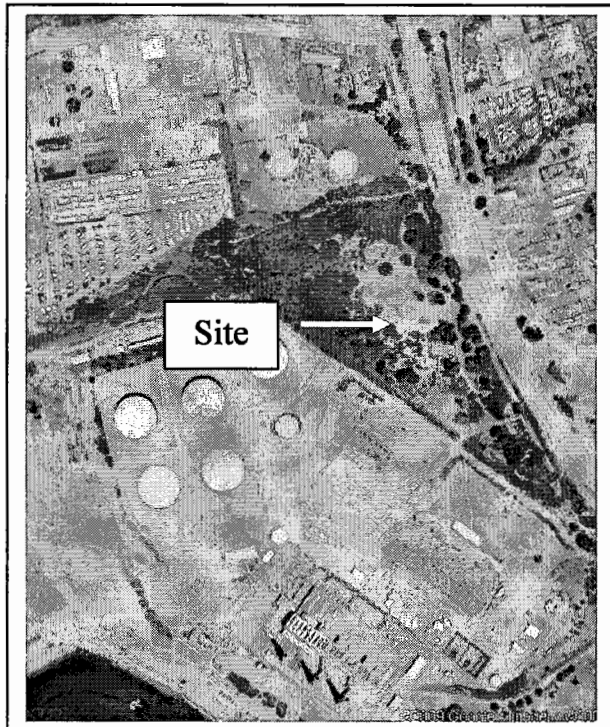
066-331-039

APPLICANT:

Dynegy Morro Bay LLC

AGENT:

Steve Goschke



Vicinity Map

ATTACHMENTS

1. Findings, Exhibit A
2. Conditions, Exhibit B
3. Graphics/Plan reductions, Exhibit C
4. Site Pictures, Exhibit D
5. Mitigated Negative Declaration, Exhibit E

ISSUE SUMMARY

The applicant proposes the abandonment of well #3 and the drilling of a new well also designated #3. The existing pump house will be relocated to the new well location.

STAFF RECOMMENDATION

CONDITIONALLY APPROVE THE PROJECT by adopting a motion including the following action(s):

- A. Adopt the Draft Mitigated Negative Declaration (MND) in accordance with the applicable provisions of the California Environmental Quality Act (Public Resources

Exhibit B
Dynegy Morro Bay
A-3-MRB-10-047
Page 10 of 13

Code 21000 et. Seq.), and adopt the Findings included as Exhibit "A", including findings required by the California Environmental Quality Act (CEQA); and

- B. Approve Coastal Development Permit #CP0-290, subject to the Conditions included as Exhibit "B" and the site development plans dated September 17, 2008.

ENVIRONMENTAL DETERMINATION:

The project qualifies for a CEQA Mitigated Negative Declaration was posted on March 5, 2010. The applicant has agreed to implement the mitigation measures proposed in the Negative Declaration. Thus there are no significant impacts with the implementation of those mitigation measures.

BACKGROUND

The 107.4-acre site is located on the northern end of the Embarcadero, has been used for the production of power since 1953 when PG&E built the Morro Bay power plant. Currently the Dynergy Electricity Company owns the land and power plant. The site is zoned for coastal-dependent industries and the existing and proposed uses on site are consistent with the zoning designation. The General Plan states that uses that are acceptable in this designation are thermal power plants, seawater intake structures, discharge structures, tanker support facilities, and other similar uses which must be located on or adjacent to the sea in order to function.

The wells and the water that is pumped are ancillary to the power plant located on site. The wells are on the northern most corner, adjacent to the bike path and Highway 1 to the east and Lila Keiser Park to the north. The existing well is located on the east side of the existing bike trail. It is shielded by a pump house and further surrounded by trees and vegetation and is therefore not visible from Highway 1. The location of the new well is further away from the highway on the west side of the bike trail and within a dense area of vegetation.

PROJECT DESCRIPTION

The project applicant, Dynergy and its subsidiary Morro Bay Mutual Water Company, are proposing to decommission existing water well (#3) and the associated pump mechanisms and pump house. The water well on site is for the production of water resources for use by the power plant. The proposed project also includes the drilling and construction of a new well (also designated #3). The well will be drilled to a depth of approximately 100 feet and the walls will be reinforced with an 8-inch casing. The total area at the surface of the well will equal .35 square feet. The pump mechanism enclosed in the 64 square foot pump house associated with the existing well will be relocated to the new well site.

In order to connect the proposed well into the existing pump discharge piping, water piping and electrical system, a 400 feet trench at a depth of 5 to 6 feet and width of 2 to 3 feet will need to be dug. The trench will need to be excavated across the existing asphalt bike trail, between Main Street and Morro Bay High School, which will temporarily disrupt bicycle traffic on the bike trail for approximately one day of construction. The applicant will coordinate with the Public Services Department to provide for appropriate barricades in order to delineate construction area and protect the public interest. The applicant will be required to restore the bicycle trail to its original condition.

original pre-construction state after construction is complete on the bicycle trail portion of the trench.

Filipponi and Thompson, the drilling company hired to construct the new well and have outlined in the proposed project work scope that the existing well #3 will be backfilled.

Adjacent Zoning/Land Use			
North:	M-2/PD/I, portion of site leased to City for Lila Keiser Park	South	M-1/I / Light Industrial
East:	Highway 1	West:	OA-2/CF/PD / Open Area & Commercial / Recreational Fishing

Site Characteristics	
Site Area	107.4 acres (4,678,344 square feet)
Existing Use	Morro Bay Power Plant
Terrain:	Gently Sloping
Vegetation/Wildlife	Grasses and shrubs
Archaeological Resources	Previously identified cultural resources on site.
Access	Embarcadero

General Plan, Zoning Ordinance & Local Coastal Plan Designations	
General Plan/Coastal Plan Land Use Designation	Coastal Dependent Industrial
Base Zone District	M-2 / Coastal Dependent Industrial
Zoning Overlay District	I / Interim Use
Special Treatment Area	PD – Planned Development
Combining District	N/A
Specific Plan Area	No
Coastal Zone	Coastal Appeals Jurisdiction

GENERAL PLAN AND LOCAL COASTAL PLAN CONSISTENCY

The zoning ordinance provides findings that the Planning Commission must make in order to adequately review the project for consistency with local adopted plans. The Planning Commission must review the project for consistency and for any project located between the shore and the nearest public road consistency with public access and recreation policies of Chapter 3 of the California Coastal Act.

The proposed project is not located within the area between the shoreline and nearest public road and does not have to provide any public access to the shoreline. The property is not subject to providing recreational facilities to the public; however Lila Keiser Park is located on the site provided through a lease from Dynergy to the City.

The General Plan and Local Coastal Plan address the issues of water resources within the City boundaries. Water resources within the City are limited and the City has participated in the State Water Project since 1997 and is the primary water source for the City's residential and commercial uses. Secondary sources within the City include groundwater sources, desalinated water, and state water traded water from other agencies. The proposed well abandonment and drilling a new well is consistent because the net water taken from the ground water sources remains consistent and will not substantially deplete water resources within the City.

Within the Local Coastal Plan the City give priority of water resources to coastal dependent industrial uses, agriculture, recreation and visitor serving facilities. Although the well project is not directly related to the power plant processes involving ocean water intake, the wells provide a source of water for ancillary uses located on site. Therefore the water would be serving coastal dependent industrial uses.

PUBLIC NOTICE

Notice of this item was published in the San Luis Obispo Tribune newspaper on April 9, 2010, and all property owners of record within 300 feet of the subject site and occupants within 100 feet of the subject site were notified of this evening's public hearing and invited to voice any concerns on this application.

CONCLUSION

The proposed project would be consistent with most applicable development standards of the zoning ordinance and all applicable provisions of the General Plan and Local Coastal Plan with incorporation of recommended conditions. The project is located with the California Coastal Commission Appeals Jurisdiction.

Report prepared by: Sierra Davis, Intern Planner

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
 725 FRONT STREET, SUITE 300
 SANTA CRUZ, CA 95060-4808
 VOICE (831) 427-4868 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: Commissioner Sara Wan and Commissioner Mark Stone, California Coastal Commission

Mailing Address: 45 Fremont Street, Suite 2000

City: San Francisco, CA

Zip Code: 94105

Phone: 415 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:

Dyney Morro Bay, LLC

2. Brief description of development being appealed:

Abandonment of well #3 and the drilling of a new well also designated as #3. Existing pump house will be relocated to the new well location.

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

1290 Embarcadero Road, Morro Bay (San Luis Obispo County)

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

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

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SEP 09 2010

CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST AREA

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.

<u>TO BE COMPLETED BY COMMISSION:</u>	
APPEAL NO:	A-3-MRB-10-047
DATE FILED:	September 9, 2010
DISTRICT:	Central Coast

Exhibit C
 Dyney Morro Bay
 A-3-MRB-10-047
 Page 1 of 6

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

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: 5/3/2010

7. Local government's file number (if any): CPO-290

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:

Steve Goschke
Dyney Morro Bay, LLC
1290 Embarcadero Road
Morro Bay, CA 93442

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)

(2)

(3)

(4)

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.)

See Attached.

Note: The above description 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.

SECTION V. Certification

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

Signed: 
Appellant or Agent

Date: 9/9/2010

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

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.)

See Attached.

Note: The above description 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.

SECTION V. Certification

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

Signed: Mark Ste
Appellant or Agent

Dated: 9/9/2010

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Dated: _____

Reasons for Appeal: Morro Bay Coastal Development Permit Number CP0-290 (Dynegy Morro Bay, LLC)

On May 3, 2010, the City of Morro Bay approved a coastal development permit (CDP) to authorize Dynegy Morro Bay LLC to abandon an existing water supply well, drill a new water supply well and relocate an existing pump house to the new well location at 1290 Embarcadero, in the City of Morro Bay. The new well would be located approximately 120 feet from Morro Creek and would be drilled to a depth of approximately 100 feet. The City conditioned the project to limit the use of water from the new well to on-site uses only, including, but not limited to, uses such as landscaping, fire fighting, maintenance and operations. The City did not include conditions requiring the applicant to monitor the use of the well, or to limit the amount of water that can be withdrawn. The applicant has stated that the net water usage will remain the same as it has been in previous years (approximately 500,000 gallons per year), and that the water would be used for ongoing power plant operations, on-site potable water, and landscaping. The City-approved project raises Local Coastal Program (LCP) conformance issues related to public works, groundwater resources, and riparian and environmentally sensitive habitat area (ESHA) resources.

First, the LCP does not provide for private water wells within the City. The public works chapter of the LCP's Land Use Plan (LUP) and the LCP's other public works policies only discuss water resources within the context of *public* water utilities. In addition, the IP does not list private wells as an allowed use or a special use in any district; however, *public* water wells are allowed as a special use within the City's coastal zone pursuant to LCP section 17.30.030.P.

In addition, the public works policies of the LCP require the City to ensure that groundwater is conserved and reserved for priority uses, that groundwater quality is not degraded, and that groundwater levels are adequate to protect biological resources. It is not clear that the City approved project is consistent with these LCP policies, including LCP Policy 3.01 that prohibits groundwater extractions from exceeding Basin Safe Yield; LCP Policy 3.02 that requires the City to allocate water to prioritize coastal-dependent and visitor-serving uses; LCP Policy 3.04 that requires the City's Water Management Plan to ensure an adequate water supply for coastal-dependent activities, to ensure protection of biological resources including wetlands and riparian stream corridors, and to ensure sufficient water for agricultural operations in the Morro and Chorro Valleys; and LCP Policy 3.08, which consists of the City's Water Management Plan, that requires the City to conserve water and monitor groundwater levels and quality.

Finally, the riparian, habitat and ESHA policies of the LCP require the City to protect these resources, and it is not clear that the City-approved project is consistent with these requirements, including LCP policy 11.01 that requires the City to protect ESHA from any significant disruption of habitat values; LCP policy 11.02 that requires development adjacent to ESHA to be sited and designed to prevent impacts that would significantly degrade such areas and requires development to maintain the functional capacity of ESHA; LCP policy 11.14 that protects the biological productivity and water quality of streams; and LCP policy 11.17 that specifically protects the quantity and quality of groundwater in the Morro and Chorro basins in order to maintain and restore riparian and fisheries habitat, and ESHA.

With respect to groundwater and creek/habitat issues, the City's approval did not analyze the impacts of the project on groundwater quantity or quality, or its impacts on the creek, riparian habitat or other ESHA, as required by the LCP, including the policies discussed above. The City did not require hydrological or biological studies to assess the impacts of the new well on the aquifer or the adjacent creek. Without studies analyzing the use of the new well, the City was

unable to determine if extractions of water from the new well would exceed Basin Safe Yield or whether extractions from the new well would adversely impact ESHA or the biological productivity of the creek or coastal waters, as required by LCP policies, including but not limited to policies 3.01 and 11.17. In addition, without these studies, the City was unable to evaluate the project's impact on the availability of groundwater, which must be maintained for priority uses, such as commercial fishing, coastal-dependent industry and agriculture, pursuant to the LCP, including policy 3.02. Finally, the City's approval lacks monitoring and water conservation parameters to ensure resource protection over time. Therefore, the City lacked the information necessary to determine whether the approved project is consistent with the LCP policies protecting water availability and habitat resources, and the City's approval lacks adequate safeguards to ensure coastal resource protection consistent with LCP policies over the life of the project, including the policies discussed above.

Finally, because the City's approval did not limit the use of nor the amount of water that could be drawn from the new well, there is no way to determine the amount of water that will be used, or the purpose of its use, only that it is intended to be used on the subject site. Although the current use of the site is considered coastal-dependent industrial, and the current applicant indicates that it intends to continue to limit the use of the water to this coastal-dependent industrial use, because the City's permit did not include conditions limiting the use of the well in terms of the amount of water used or the purpose of its use, it is unclear what this water could be used for in the future. Given the potential for substantial redevelopment at this site, the approved project has the potential to prejudice future approvals with respect to water supply questions associated with such redevelopment, including the impact of such withdrawals on creek and habitat resources, and the appropriateness of such withdrawals in relation to such future use.

In summary, the City-approved project allows for a private water supply well when such wells are not contemplated by the LCP, and such well was approved absent information and/or terms and conditions to ensure coastal resource protection, including groundwater, creek, habitat, and ESHA resource protection, as required to be consistent with the LCP. Thus, the City-approved project is inconsistent with the LCP.