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Appeal filed: 1/31/2011
49th day: 3/21/2011
Staff report prepared: 2/16/2011
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Staff report approved by: Dan Carl
Hearing date: 3/11/2011

APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal numberA-3-MRB-11-001, Morro Bay Wastewater Treatment Plant

ApplicantsCity of Morro Bay and Cayucos Community Services District (MBCSD)

AppellantsCommissioners Shallenberger and Stone; Morro Bay Farmers and Ranchers Ag Coalition; Sierra Club; Surfrider Foundation; Alex Beattie; Barry and Vivian Branin; Roger Ewing, Anne Reeves, and Betty Winholtz; Steve Hennigh; Lee Johnson; Michael Lucas; and Linda Stedjee

Local governmentCity of Morro Bay

Local decisionCoastal Development Permit (CDP) Application Number CP0-339 approved by the Morro Bay City Council on January 11, 2011.

Project location160 Atascadero Road in the City of Morro Bay, San Luis Obispo County (APNs 066-331-32, 066-331-33 and 066-331-34).

Project descriptionDemolish an existing wastewater treatment plant and construct a new wastewater treatment plant and related development

File documents.....Final Local Action Notice for Morro Bay CDP Number CP0-339; City of Morro Bay certified Local Coastal Program (LCP); Morro Bay-Cayucos Wastewater Treatment Plant Upgrade Environmental Impact Report, December 2010.

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

A. Staff Recommendation

1. Summary of Staff Recommendation

The City-approved project is for demolition of an existing wastewater treatment plant (WWTP) and construction of a new WWTP on an oceanfront site that is subject to significant development constraints and that raises significant coastal resource concerns, including with respect to hazard avoidance, public viewshed protection, maximizing and optimizing public access and recreational opportunities, protection of archeological resources, and sustainable public infrastructure requirements. Eleven different appeals of the City's approval of a CDP for this project were filed with the Commission, and these appeals make



a wide variety and number of contentions primarily regarding these core coastal resource issues and concerns. Staff has been actively engaged in the local process for this project for multiple years, including providing recommendations to the City for addressing LCP issues, and firmly believes that the City's approval did not adequately analyze the proposed project across the necessary range of feasible alternatives, including fundamentally in terms of alternative appropriate sites, in such a way as to allow an LCP and Coastal Act consistent decision to be made on the proposed project. In short:

- Although the LCP requires that new development such as this be sited and designed to avoid coastal hazards and explicitly prohibits all development in 100-year flood plains, the City-approved project site is located in a 100-year floodplain and tsunami inundation zone directly adjacent to an eroding shoreline where the sea level is rising and in an area subject to known seismic hazards. In conflict with LCP requirements, the approved WWTP would locate new, major public works infrastructure in a highly hazardous area where it is not allowed per the LCP.
- Although the LCP requires the scenic and visual qualities of the coast to be protected and requires development to be sited and designed to protect views to and along the ocean and other coastal areas, and although the WWTP site is located in an LCP-designated sensitive view area between Highway One and Morro Rock, the City-approved project would obstruct and degrade important public views, including through increased structural height for the new WWTP as compared to the old, inconsistent with the LCP.
- Although the LCP requires that significant archaeological and historic resources be preserved to the greatest extent possible, including requiring avoidance of significant archaeological sites if possible, the City-approved project is located in close proximity to numerous documented archaeological sites and is located on top of a significant burial ground of the Salinan Tribe inconsistent with the LCP.
- Although the LCP and the Coastal Act require public recreational access opportunities to be maximized and oceanfront land to be protected for recreational use, the City-approved project would reduce the availability of scarce oceanfront land for potential public recreational purposes, and it could cause adverse impacts to nearby existing public recreational access opportunities due to both construction activities and operation of the new WWTP (e.g., through additional truck traffic and objectionable odors), inconsistent with LCP and Coastal Act public recreational access requirements.
- Although the LCP requires the City to pursue water reclamation as part of this WWTP project, requires water supply to be protected for priority uses, and requires enhancement of Morro and Chorro groundwater basins where feasible, the City-approved project only includes a small amount of recycled water output (e.g., available for agricultural irrigation, urban landscaping, groundwater replenishment, etc.), and continues to propose to discharge (both tertiary and secondary treated effluent) via an ocean outfall when the LCP requires a more meaningful water reclamation program.

In summary, the approved project appears to be inconsistent with numerous policies of the City's LCP, including policies related to coastal hazards, public access and recreation, public works, and visual and archaeological resources. The City-approved WWTP raises significant LCP conformance questions,



including whether a WWTP can be sited at this location at all, consistent with the LCP, and it does not appear that the City’s approval has adequately addressed the LCP in this respect, including in terms of evaluation of alternatives (including alternative sites) that could avoid LCP inconsistencies and better address Coastal Act and LCP objectives and requirements for such major public utility infrastructure.

Staff recommends that the Commission find that the City’s approval of a CDP for this project raises a substantial LCP conformance issue related to core LCP and applicable Coastal Act coastal resource protection requirements, and staff recommends that the Commission take jurisdiction over the CDP application. The Motion and resolution to effect this recommendation is found directly below.

In terms of de novo review of the CDP application, staff believes that such review would be premature absent substantial work on the Applicant/City’s part to develop the necessary supporting documentation for the proposed project, including fundamentally with respect to an adequate analysis of alternative siting and design options. Thus, once such information has been provided in a manner that allows it and the proposed project to be appropriately considered by the Commission in light of the relevant coastal resource issues, the de novo hearing would be scheduled for a later 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 eleven appeals (“appeal”) were 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-11-001 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act. I recommend a No vote.

Staff Recommendation of Substantial Issue. Staff recommends a **NO** vote. Failure of this motion will result in a future de novo hearing on the CDP 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-11-001 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 Location

The proposed project is located adjacent to the dunes and shoreline north of Morro Creek in the City of Morro Bay.

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

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.



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 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 at 160 Atascadero Road in the City of Morro Bay. The site is located just inland of the beach and dunes and seaward of Highway One just upcoast of the Embarcadero, the Morro Bay Power Plant,² Morro Creek, and the area defining Morro Rock. The site is occupied by the existing WWTP, which includes clarifiers, trickling filters, sludge drying beds and operations buildings. It is immediately adjacent to the Morro Dunes R.V. Park and Trailer Storage, Morro Bay High School, the City corporation yard, and a cement business. The WWTP is owned and operated by the co-applicants for the project, the City of Morro Bay and the Cayucos Community Services District (together, MBCSD). The City and the Community Services District operate the plant under a joint powers agreement.

See Exhibit A for location maps, site plans, and photos showing the project location and surrounding area.

2. Project Description

The existing WWTP was initially constructed in 1954, and it was upgraded in 1964 and again in the early 1980s. The upgrades in the early 1980s included: updating the WWTP design to provide secondary treatment for up to 0.97 million gallons per day (mgd) of wastewater; increasing the capacity to accommodate the current peak season dry weather flow (PSDWF) of 2.36 mgd; and extending the ocean outfall pipeline to 2,900 feet offshore.³ The existing WWTP is rated for an average dry weather flow (ADWF) of 2.06 mgd, a PSDWF of 2.36 mgd, and a peak hourly flow (PHF) equating to 6.6 mgd. The existing plant is equipped to treat up to 0.97 mgd of wastewater to secondary treatment levels, and to treat wastewater in excess of 0.97 mgd to primary treatment levels. Between 1995 and 2009, the WWTP treated an annual average measured daily flow of 1.25 mgd, and thus the existing WWTP has been discharging some effluent to the ocean that has only been treated to a primary level for many years.

The WWTP discharges treated effluent to the Pacific Ocean via ocean outfall and is regulated by a National Pollutant Discharge Elimination System (NPDES) Permit in accordance with Section 402 of the federal Clean Water Act. The WWTP is currently covered by a modified NPDES permit with a Clean Water Act Section 301(h) waiver, which waives the Clean Water Act minimum treatment

² The power plant is in the midst of a downsizing and complete modification project that includes essentially dismantling and removing the existing power plant, except for its intake and outfall lines, and constructing two new 600-megawatt power generation units at the site.

³ A 1981 CDP has been identified that appears to apply to this work, but as of the date of this report the file has not yet been retrieved from State archives so it is not clear what exactly was covered by that 1981 CDP.



requirement for full secondary treatment for all discharge. The Regional Water Quality Control Board (RWQCB) generally issues NPDES permits to waste dischargers every five years. The Morro Bay-Cayucos NPDES permit was first issued with a 301(h) waiver in 1985, and was re-issued with the same waiver in 1993, 1999 and 2008. Prior to the 1999 re-issuance, RWQCB staff requested that MBCSD consider upgrading the facility to full secondary treatment to comply with the Clean Water Act, as opposed to continuing to request a 301(h) waiver from discharge requirements, and to avoid discharging inadequately treated effluent into the ocean. MBCSD determined that such an upgrade was not feasible at that time, and again requested that RWQCB issue the 301(h) waiver-modified permit. In November 2005, RWQCB agreed to re-issue the 301(h) waiver-modified permit. In December 2005, the Applicant and RWQCB reached a Settlement Agreement to pursue a schedule for a full upgrade of the plant to eliminate the need for a 301(h) waiver-modified permit in the future. According to the Settlement Agreement, a WWTP upgrade is required to be completed by March 31, 2014.

The City-approved project provides for demolition of the existing WWTP facilities and construction of new WWTP facilities and related development on the same site. The new WWTP would be built mostly on the site of the existing sludge drying beds on the south side of the site. As soon as the new WWTP is completed, the old WWTP would be demolished. After demolition of the existing facilities, the northern portion of the site would be left vacant. The new WWTP facilities would include pumping stations, secondary clarifiers, oxidation ditches and a chlorine contact basin, as well as maintenance and operations buildings. The project also includes construction of new access roads, new fencing and landscaping.

The new WWTP would treat 1.5 mgd to tertiary treatment levels and it would treat additional wastewater to full secondary treatment. The effluent would be discharged via the old WWTP ocean outfall, which would be connected to the new facility as part of the proposed project. The tertiary treated wastewater produced at the WWTP would meet Title 22 standards for disinfected secondary-23 recycled water and could therefore be used for industrial use on-site and for limited off-site purposes such as soil compaction, concrete mixing and dust control. This water could only be used off-site if it is transported using trucks that would utilize the new truck filling station that is part of the approved project. In addition to these limited uses, the project includes a plan for the future production of 0.4 mgd of disinfected tertiary recycled water, the highest standard of reclaimed water, which could be put to a wide range of uses, including agricultural irrigation, groundwater replenishment and residential landscaping. However, as approved, this plan for future reclaimed water is not a requirement, and, the only way to transport the 0.4 mgd of higher quality water off-site would be using the proposed truck filling station and truck transport. Consistent with the RWQCB Settlement Agreement, the City-approved project would thus meet the minimum standards of the Clean Water Act that require at least secondary treatment for such discharge.

See detailed project information in the City's final local action notice attached as Exhibit B, and see site plans and proposed project visual simulations in Exhibit A.

3. City of Morro Bay CDP Approval



On December 20, 2010, the City of Morro Bay Planning Commission unanimously denied a CDP for the proposed project, and denied certification of its associated environmental impact report (EIR). In making this decision, the City Planning Commission found that the proposed project could not be approved consistent with the LCP, including because the project was analyzed as an upgrade to existing development, while it actually constitutes a new project; because the EIR analysis was not sufficient; because the visual impacts were not minimized; and because there was an insufficient scoping process for the project. The Applicant appealed the Planning Commission's denial to the City Council, and on January 11, 2011, the City Council approved the CDP. Notice of City Council action on the CDP was received in the Coastal Commission's Central Coast District Office on January 14, 2011. The Coastal Commission's ten-working day appeal period for this action began on January 18, 2011 and concluded at 5 p.m. on January 31, 2011. Eleven valid appeals (see below) were 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 both seaward of the first public road and within 300 feet of the inland extent of the beach, and because it is a major public works project.

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.

5. Summary of Appeal Contentions

There are eleven appeals of the City's approval. The main issues raised by the appeals are related to hazards, public access and recreation, visual resources, sustainable use of public resources, and archaeological resources. Appellants contend that the City's approval is not consistent with the applicable policies related to these issues, both because the City did not perform an adequate alternatives analysis to determine if other site locations would be feasible, and because the City did not adequately evaluate or condition the project to ensure that development at this site would avoid and minimize resource impacts, as required by the LCP. In addition to these main issues, the Appellants make a variety of other contentions. Some of these additional contentions provide background information⁴ and others are not appropriate appeal contentions and thus are not relevant to the Commission's substantial issue determination.⁵ See Exhibit C for the full text of the appeals.

6. Substantial Issue Determination

A. Applicable LCP Policies

The approved WWTP project would consist of demolishing the existing WWTP and constructing a new WWTP on the existing site. Although the City characterized the project as an "upgrade" to the existing WWTP, it is in fact a complete replacement of the existing facility, and the existing facility itself would be demolished once the new WWTP is fully operating. Therefore, as relevant, the project on appeal is not an upgrade project in a coastal permit sense; rather the project is new development of a WWTP and demolition of an existing facility.

The LCP requires development to avoid hazards, minimize risks to life and property, and minimize landform alterations. In addition, development that creates or contributes to erosion or geologic instability is prohibited. Relevant hazards policies include:

LUP Policy 9.01. All new development located within areas subject to natural hazards from geologic, flood and fire conditions, shall be located so as to minimize risks to life and property.

LUP Policy 9.02. All new development shall ensure structural stability while not creating nor contributing to erosion or geologic instability or destruction of the site or surrounding area.

⁴ These additional contentions that provide background information include: that the City's Planning Commission denied the Draft EIR for the project; that the City's water supply is in peril; that the technology of the wastewater treatment is outmoded; and information about consultants and the costs of contracts for design and construction.

⁵ These appeal contentions include claims that the project approval is inconsistent with CEQA, the City's General Plan and the Estero Area Plan of the San Luis Obispo County LCP. However, contentions regarding the City's compliance with CEQA, and the project approval's consistency with the City General Plan or the County LCP, are not valid appeal contentions because appeal contentions, per the Coastal Act, are limited to questions of LCP consistency and Coastal Act access and recreation consistency.



LUP Policy 9.03. *All development, including construction, excavation and grading, except for flood control projects and agricultural uses shall be prohibited in the 100-year floodplain areas unless off-setting improvements in accordance with the HUD regulations are required...*

LUP Policy 9.05. *Plans for development shall minimize cut and fill operations. Plans showing excessive cutting and filling shall be modified or denied if it is determined that the development could be carried out with less alteration of the natural terrain.*

LUP Policy 9.06. *All development shall be designed to fit the site topography, soils, geology hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. To accomplish this, structures shall be built to existing natural grade whenever possible. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited to development because of known soil geologic, flood, erosion or other hazards shall remain in project open space.*

Chapter X. Section C.2.c.1.0 *Provide for the identification and evaluation of existing structural hazards, and abate those hazards to acceptable levels of risk.*

Chapter X. Section C.2.c.2.0 *Ensure that new development within the City's jurisdiction is designed to withstand natural and man-made hazards to acceptable levels of risk.*

The standard of review for the approved project includes the public access and recreation policies of both the City's certified LCP as well as the Coastal Act. These policies require new development to maximize public access and protect oceanfront land for public access and recreation. Relevant policies include:

Coastal Act Section 30210. *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Coastal Act Section 30211. *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Coastal Act Section 30213. *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...*

Coastal Act Section 30221. *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*



Coastal Act Section 30222. *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

Coastal Act Section 30223. *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

LUP Policy 2.01. *Lower-cost visitor and recreation facilities for persons and families of low or moderate income shall be protected, encouraged, and where feasible, provided. Developments providing public recreation opportunities are preferred.*

The LCP also requires development to minimize visual impacts and protects public views to and along the shoreline. The LCP states:

LUP Policy 12.01. *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic and coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas...*

LUP Policy 12.02. *Permitted development shall be sited and designed to protect views to and along the coast and designated scenic areas and shall be visually compatible with the surrounding areas...*

The LCP requires water reclamation to be a part of any upgraded WWTP, requires water supply to be protected for priority uses, and requires the quantity of water in the Morro and Chorro groundwater basins to be enhanced where feasible. Taken together, these policies require this project to include a meaningful wastewater reclamation program. Relevant LCP policies include:

LUP Policy 3.08(5). *Even with delivery of State Water, use of reclaimed water is the City's second highest priority and remains a productive source of potential conservation for both large and small scale projects, respectively, and as a result, should be pursued when funded by a potential user, required as part of a wastewater plant upgrade or permit condition or when it is shown as cost effective for City use. Staff is further directed to pursue small scale projects as both internal and external funding sources are made available.*

LUP Policy 3.04....*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, recreation boating and fishing and industrial energy development...*

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.

LUP Policy 6.06. *The City shall participate in the efforts of the coastal Conservancy or other public or private agencies to implement agricultural enhancement programs. These programs may include but are not limited to... (4) Assistance programs (water subsidies, recycling methods...)*

The LCP also includes strong protections for archaeological resources. The key LCP policies state:

LUP Policy 4.01. *Where necessary significant archeological and historic resources shall be preserved to the greatest extent possible both on public and privately held lands.*

LUP Policy 4.07. *All available measures, including purchases, tax relief, purchase of development rights, etc. shall be explored to avoid development on significant archaeological sites...*

B. Analysis

The City-approved project provides for the construction of major public infrastructure, a new WWTP, and demolition of an existing outdated plant. As such, the project represents a significant public investment that has the potential to provide substantial benefits to the community and to coastal resources, both by improving the quality of wastewater effluent and by providing an opportunity for a new supply of reclaimed water in a community where the existing water supply is not sustainable and water shortages are frequent. However, the project site is severely constrained by significant hazards and archaeological resources, and due to its oceanfront location, it would have adverse impacts on public access and recreation and visual resources.

The fundamental deficiency in the City's approval of the project is a lack of a thorough and robust alternatives analysis to evaluate whether there is a more appropriate site to locate the plant. Alternative sites may avoid hazards and archaeological resources, and may minimize other coastal resource impacts. In addition, alternative sites (and alternative project components) may increase opportunities for producing and providing recycled water in an efficient manner.

In its approval, the City only considered one off-site alternative. The site is located in the Chorro Valley, more than a mile inland from the shoreline, and would avoid many of the constraints of the existing site. However, the alternative project included constructing a new WWTP in the Chorro Valley that would only treat a portion of the district's wastewater, while the remainder of the wastewater would continue to be treated at the existing WWTP. The City rejected this alternative due to increased impacts related to visual resources, construction impacts, and land use compatibility.

Given the LCP policies that clearly require new development to avoid the coastal resource constraints that are present at the project site, the City should have considered a broader range of alternatives to determine if another site location would allow for an LCP-consistent project. Therefore, the appeal contentions calling for further alternatives analysis raise a substantial issue of conformance with the



certified LCP.

1. Hazards

The LCP requires new development to minimize risks from geologic, flood and fire conditions and requires new development to ensure structural stability while not creating nor contributing to erosion or geological instability or destruction of the site or the surrounding area. The LCP also requires landform alterations to be minimized. LCP Policy 9.05 requires development to minimize cut and fill, and requires projects that have excessive cut and fill to be modified or denied if the development could be carried out with less alteration of the natural terrain; Policy 9.06 requires development to be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions so that grading and other site preparation is kept to a minimum. The LCP also describes the risks of flooding within the City. Page 156 of the LCP states that the floods of 1969 and 1973 showed that flooding could have been worse if the flood plain had been more highly developed, and on page 157, the LCP specifically identifies the fact that the existing WWTP is located in the flood plain as one of the City's flood-related problems in this respect. The LCP goes on, in Policy 9.03, to prohibit all new development in the 100-year floodplain, except for flood control projects, agricultural uses, and off-setting improvements required by the Department of Housing and Urban Development (HUD) regulations.

The project site is subject to significant hazards from flooding, tsunamis, shoreline erosion and liquefaction. It is sited in a topographic depression that is subject to flooding near the mouth of Morro Creek, a watercourse that drains a 24-square-mile watershed. The Flood Hazard Analysis prepared for the site indicates that the depth of flood waters at the site would be between 3 and 4.5 feet during a 100-year storm event. The City's analysis of the impacts of approximately 4.5 feet of sea level rise⁶ indicates that by 2100, storm surges associated with sea level rise alone could inundate the project site. Taken together with other related constraints (floodplain location issues, shoreline erosion issues, creek mouth geometry and volume, etc.), it can reasonably be presumed that such sea level rise will tend to result in even worse flooding and inundation at this site over time,⁷ and that the site will be subject to shoreline erosion and its attendant impacts in the future. Further, the project is located in an identified tsunami inundation area, and is subject to risks from liquefaction, unconsolidated soils and settlement.

As discussed above, the City's approval is deficient in its review of project consistency with the policies of the LCP including the hazards policies because the site is so constrained as to make it difficult to see how such a project could be sited here consistent with the hazards policies, and despite this fundamental

⁶ Sea level has been rising slightly for many years, and there is a growing body of evidence that there has been an increase in global temperature and that acceleration in the rate of sea level rise can be expected to accompany this increase in temperature (some shoreline experts have indicated that sea level could rise 4.5 to 6 feet by the year 2100. For example, the California Climate Action Team has evaluated possible sea level rise for the California coast and, based on several of the Intergovernmental Panel on Climate Change (IPCC) scenarios, projected sea level rise up to 1.4 meters (4.5 feet) by 2100. These projections are in line with 2007 projections by Stefan Rahmstorf ("A Semi-Empirical Approach to Projecting Future Sea-Level Rise", *Science*; Vol 315, 368 – 370.) Research by Pfeffer et al. ("Kinematic Constraints on Glacier Contributions to 21st-Century Sea-Level Rise", *Science*, Vol, 321, 1340 – 1343) projects up to 2 meters of sea level rise by 2100

⁷ For example, mean sea level affects shoreline erosion several ways, and an increase in the average sea level will exacerbate all these conditions. On the California coast, the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore, and an intensification of shoreline hazards at this dynamic water-land interface.



problem, the City's approval lacks the necessary robust alternatives analysis, including with respect to alternative sites. In addition, the City's approval did not adequately address the specific hazards of this site. First, the City did not even acknowledge Policy 9.03, which prohibits all development in the 100-year floodplain, including construction, excavation and grading, except off-setting improvements required by HUD. This project is not an off-setting improvement required by HUD, and therefore, the LCP prohibits the project at this location. Further, in an effort to address the risks of flooding, the approved project includes raising the new WWTP on approximately five feet of new fill. Such an approach does not conform to Policy 9.05, which requires cut and fill to be minimized, and requires projects that include excessive cut and fill to be modified or denied.

With regard to tsunamis, in its approval, the City determined that because the risk of tsunamis to the existing WWTP is the same as the risk of tsunamis to the upgraded WWTP, there is no need to evaluate this risk. However, as discussed above, the approval is for construction of an entirely new WWTP and demolition of the existing WWTP, and therefore, the project must avoid and minimize the risk from tsunamis to ensure compliance with the LCP. To do this, an analysis of the tsunami risk and potential strategies to minimize this risk must be performed.

With regard to shoreline erosion, the City's approval did not include up-to-date information about the risks to the project due to shoreline erosion, including due to global climate change and sea level rise. The EIR that the City certified for the project assumed a maximum of 23 inches of sea level rise by 2100 and concluded that because the site would be higher than 16 feet above current mean sea level, the project would not be at risk from the impacts of sea level rise. However, as discussed above, when considering approximately 4.5 feet of sea level rise by 2100, which is much closer to currently accepted estimates, one study found the site would be inundated by storm surge. This indicates that the site would also be subject to shoreline erosion, which may be exacerbated because future storm surges would impact the existing dune system, altering any erosion protection capability it may have on the project site. Therefore, an analysis of future shoreline erosion is necessary to ensure risks and impacts from this coastal hazard are minimized, as required by the LCP.

And finally, with regard to liquefaction, the City's approval incorporates mitigation measures described in the EIR that rely on future geotechnical investigations to recommend future modifications to the project that would avoid and minimize these hazards. However, relying on future studies and future project modifications does not ensure that the project will minimize seismic risks, as required by the LCP. Instead, any such studies and project changes must be evaluated prior to project approval.

Therefore, the City's approval did not adequately analyze the project for consistency with the hazards policies of the LCP, in part because the City did not consider the project to be new development. However, the project is without a doubt new development because it consists of completely demolishing the existing WWTP and constructing a new WWTP directly adjacent to it. Because of the significant hazards on the site, it is necessary to determine if constructing a new WWTP on an alternative site would avoid or minimize these significant coastal hazard risks. Further, the City did not adequately analyze or condition the project to ensure risks from hazards to the project and surrounding areas would be avoided and minimized, as required by the LCP. Therefore, the appeal contentions related to hazards



raise a substantial issue of conformance with the LCP.

2. Public Access and Recreation

The California Constitution⁸ and the federal Coastal Zone Management Act⁹ mandate the protection and enhancement of public access to and along California's coastline. The Coastal Act and the City's certified LCP refines these requirements, including prioritizing public recreational use and development in areas along the shoreline such as this one. Coastal Act Section 30210 requires that public recreational opportunities be maximized,¹⁰ Section 30211 further requires that development not interfere with existing public access. Section 30221 protects oceanfront land for recreational use, Section 30222 prioritizes the use of suitable lands for visitor-serving commercial recreational facilities, and Section 30223 reserves upland areas necessary to support public recreational uses for such uses. Coastal Act Section 30213 and LCP Policy 2.01 require lower-cost visitor and recreation facilities to be protected, encouraged, and where feasible, provided. In addition, in reference to the area of the project site, LCP Chapter IV Section F.2. states: "...When Embarcadero Road is connected to State Highway 41 this will become a secondary entrance to the City..." In other words, in addition to the public access and recreation policies that clearly require public access to be maximized, protected, and enhanced, the LCP also articulates a vision for the project site area where it transitions to a visitor serving corridor, providing a key component to the City and how visitors use and view the City.

The City's approval did not provide a sufficient evaluation of the project's impacts on public access and recreation. The City determined that because the new WWTP would not increase demand for recreational resources, the way that new commercial or residential development might draw a larger demand for local parks, for example, that the project would thus not cause any impacts on recreational resources at all, and thus recreational access issues weren't identified nor resolved. However, such determination ignores the above-referenced LCP and Coastal Act policies and objectives for this prime shoreline location, including those requiring oceanfront land to be protected and prioritized for recreational uses, and it does not explain how the project could comply with policies requiring that public recreational access opportunities be maximized, that existing access be protected, and that lower cost public recreational access facilities to be protected, encouraged, and where feasible, provided. The City also determined that the project, which includes construction and operation of a WWTP, would not

⁸ Section 4 of Article X of the California Constitution provides: "No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof."

⁹ The federal Coastal Zone Management Act requires its State partners to "exercise effectively [its] responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone" (16 U.S.C. Section 1452(2)) so as to provide for "public access to the coasts for recreational purposes." (Section 1452(2)(e))

¹⁰ Coastal Act Section 30210 direction to maximize access represents a different threshold than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect. In other words, it is not enough to simply provide access to and along the coast, and not enough to simply protect access, rather such access must also be maximized. This terminology distinguishes the Coastal Act in certain respects, and provides fundamental direction with respect to projects along the California coast that raise public access issues, like this one.



cause any impacts to existing recreational resources, such as the adjacent beach and beach parking and the adjacent RV park. However, because it did not provide any basis for this determination, it is not clear how such determination could be made.

It is not clear that using the existing site for a replacement WWTP can be found consistent with these and other similar public recreational access policies, and it is inappropriate to find such project consistent when such determination is based on cursory statements as opposed to actual analysis of issues and concerns applicable to this location and its relation to the City and the LCP vision for this stretch of coast. Absent compelling evidence to the contrary, it appears clear that the highest, best use for property such as this is not for industrial use, particularly when the question is not whether the existing plant should stay, rather it is whether a new replacement plant ought to be constructed in this location. That latter question necessarily involves looking anew at LCP and Coastal Act priorities, and evaluating the manner in which such priorities square with related local and regional long-term visions for redevelopment over time related to this special location.

Moreover, the continuation of a wastewater plant at the proposed location will have impacts on both existing public recreational access and visitor serving resources in the area, as well as the manner in which such existing resources will be enhanced over time, including in terms of expected redevelopment in this area over the life of the project. The City's approval did not include information to quantify these effects so that they could be compared to other potential alternative sites that can meet siting requirements appropriately. It seems reasonable to presume that sites farther inland are likely to have inherently reduced impacts on public recreational access and visitor serving resources, both existing and over time. The City also did not analyze the public access and recreation impacts that could be caused by demolition and construction activities, including impacts caused by construction traffic, staging and traffic detours, as well as ongoing traffic impacts once the plant is fully operating.

Therefore, because the City's approval only analyzed the public access and recreation impacts of the project as they relate to how the project might induce demand for recreational resources, and not how the project may or may not conform to the public access and recreation policies of the LCP and the Coastal Act, the appeal contentions based on public access and recreation raise a substantial issue of conformance with the applicable policies.

3. Visual Resources

The LCP requires the scenic and visual qualities of the coast to be protected and requires development to be sited and designed to protect views to and along the ocean and other coastal areas. The project involves constructing a new WWTP immediately adjacent to multiple areas that are used by the public for access and recreation at and along the coast. The site is located on Atascadero Road, which is shown in LCP Figure 30 as a street providing scenic views. In addition, views from the dunes looking inland across the site include mountain ridgelines and views from the road looking towards the coast across the site include Morro Rock. The site is also visible from Highway One. New development at this location has the potential to obstruct and degrade these important public views.

Because the project site is located in a highly sensitive area for visual resources, as described above,



because the LCP requires such visually sensitive areas to be protected for their scenic resources, and because the City-approved project is for an industrial operation that includes large (including two-story structures) structures and elements that intrude into and on the public viewshed, the first requirement for an approval would be a thorough review of potential alternatives, including as described previously, to determine if there is a different, feasible location for project siting, including in relation to the potential highest, best use for the project site in an LCP and Coastal Act sense. Again, sites further inland are likely to have inherently reduced visual impacts in this respect, and such siting when combined with appropriate design can ensure visual compatibility.¹¹

With regard to the approved project, the LCP requires visual impacts to be minimized. This requirement could be achieved through a variety of measures, including by moving to an alternate site and through reducing the height, scale and bulk of the development if possible, ensuring appropriate building materials, colors, architectural articulation and landscaping are utilized to allow the development to blend with the site, and ensuring lighting plans minimize impacts on nighttime views.

As described previously, the City did not perform an adequate alternatives analysis. Such an analysis would have provided information with which to understand visual impacts and potential mitigation, and may have resulted in moving the project to another location, avoiding or minimizing the visual impacts of the project at the visually prominent site where it is located. In addition, the City's approval did not evaluate whether the height and scale of the accessory buildings could be reduced, and the City did not require submittal of a lighting plan prior to approving the permit. Further, the approved landscaping is minimal and would not adequately screen the development. Therefore, the City's approval is not consistent with the requirements of the LCP and the appeal contentions related to visual resources raise a substantial issue of conformance with the LCP.

4. Sustainable Use of Public Resources

The LCP requires the City to pursue water reclamation as part of this WWTP project. Specifically, LCP Policy 3.08(5) says: "Even with delivery of State Water, use of reclaimed water is the City's second highest priority and remains a productive source of potential conservation for both large and small scale projects, respectively, and as a result, should be pursued when funded by a potential user, required as part of a wastewater plant upgrade or permit condition, or when it is shown as cost effective for City use..." Furthermore, maximum reuse of reclaimed water would help the City meet its water supply needs and ensure water supply is available for priority uses as required by the LCP, especially if/when State Water is restricted or unavailable. Properly treated reclaimed water could be used for many beneficial purposes, including agricultural irrigation inside and/or outside of the district's service area, injection wells to maintain and enhance the water quality and biological resources associated with the Chorro and Morro groundwater basins (including as required by LCP Policy 11.17), and for residential and municipal landscaping, among other uses. LCP Policy 6.06 encourages the City to support agricultural assistance programs, including through water subsidies and recycling methods. In addition, LCP Policy 11.17 states: "the biological productivity of the City's environmentally sensitive habitat

¹¹ For example, the rural agricultural design aesthetic approved last year by the Commission for the wastewater treatment plant in nearby Los Osos (Commission CDP A-3-SLO A-3-SLO-09-055/069).



areas shall be maintained and, where feasible, restored through maintenance and enhancement of the quantity and quality of Morro and Chorro groundwater basins...” In short, the LCP requires that the new WWTP provide for a meaningful reclaimed water component because the LCP requires: (1) water reclamation to be a part of the WWTP upgrade; (2) water supply to be protected for priority uses; and (3) the quantity of water in the Morro and Chorro groundwater basins to be enhanced where feasible.

The project includes a plan for only a small amount of wastewater reclamation. The tertiary treated wastewater produced at the new plant would meet Title 22 standards for disinfected secondary-23 recycled water and could therefore be used for industrial use on-site and for limited off-site purposes such as soil compaction, concrete mixing and dust control. This water could only be used off-site if it is transported using trucks that would utilize the new truck filling station that is part of the approved project. In addition to these limited uses, the project includes a plan for the future production of 0.4 mgd of disinfected tertiary recycled water, the highest standard of recycled water, which could be put to a wide range of uses, including agricultural irrigation, groundwater replenishment and residential landscaping. However, as approved, there is no requirement to carry out this plan, and the only way to transport this 0.4 mgd of higher quality water off-site would be by using the proposed truck filling station and truck transport. No additional infrastructure is included as part of the project and the project does not include any provisions or planning to accommodate future infrastructure that could be used to transport the water, except for through the use of trucks.

It is clear that the City-approved project includes some capability to produce reclaimed water, but it is equally clear that it has not been designed to address sustainable public utility infrastructure more holistically as the LCP appears to envision. For a City that has significant water supply issues, including fragile groundwater basins, and given that there is a strong correlation between the health of the groundwater basins and broader environmental resource health, it is incumbent on the City to explore options for addressing such LCP issues more thoroughly than has been done to date, particularly for a major public improvement project such as this. The City’s approval lacks the level of data and analysis that would allow for informed LCP decisions to be made on this point, including with respect to the manner in which alternative sites and/or infrastructure may be more or less appropriate in that context than what has been approved to date. This represents a missed opportunity to take into account on-going public service needs as comprehensively as possible, including with respect to the manner in which the location of the disposal of the treated wastewater can be used to maximize its groundwater/water supply utility within its basic framework. For example, a more comprehensive water reclamation program would help the City carry out the policies of the LCP by reducing the quantity of water pumped from groundwater basins due to reduced demand, and by potentially allowing for injection wells that could help to recharge groundwater basins. More recycled water used in this way correspondingly reduces the need for ocean discharge, promoting other Coastal Act and LCP priorities related to the shoreline area and the area offshore. The City’s WWTP approval does not adequately identify information necessary for decision-makers to make LCP decisions on this point, and does not adequately account for LCP wastewater reclamation requirements, and therefore, the approval raises a substantial issue of conformance with the LCP.



5. Archaeological Resources

The project site is located in close proximity to numerous documented archaeological sites and is located on top of a significant burial ground of the Salinan Tribe. The LCP requires that such significant archaeological and historic resources be preserved to the greatest extent possible, and requires all available measures, including tax relief and purchase of development rights, in order to avoid development on significant archaeological sites. The new WWTP requires significant ground disturbance and excavation at this sensitive location, and would cover a large area with significant WWTP facilities. It is not clear that all measures have been taken to avoid disturbing archaeological resources, including because the City's approval did not thoroughly evaluate potential alternative sites that could be used to avoid impacting such resources known to be present at this location. Thus, the appeal contentions related to archaeological resources raise a substantial issue of conformance with the LCP.

6. Other Issues

Plant Capacity

Several Appellants contend that the capacity of the plant is not sufficient to accommodate existing and planned development within the wastewater district. Specifically, appeal contentions include that using historic flow rates to project future flows, without considering potential changes in the demographic make-up of the City and related housing occupancy ratios, is not sufficient to ensure the plant is adequately sized. The LCP requires the City to ensure wastewater treatment capacity for certain priority uses, including commercial fishing and agriculture and coastal dependent land uses. Also, LCP Policy 3.06 specifically requires the City to provide wastewater treatment facilities to accommodate the LCP-consistent build-out. In addition to the City's residential population, the upgraded WWTP must also serve the residential population of the Cayucos portion of the service district in the unincorporated County area, as well as the entire district's industrial and commercial needs. The City utilized the population projections developed by the San Luis Obispo Council of Governments, but because it did not account for additional potential demographic changes, it may not have ensured sufficient wastewater treatment capacity would be available for priority uses and for LCP envisioned development otherwise, as required by the LCP. Further, the plant has been sized to accommodate growth until 2030, but no discussion of the impacts of expanding the plant in the future has been provided. Given the magnitude of investment in this major infrastructure and the requirements of the LCP, it is not appropriate to focus on the 2030 horizon and thus not evaluate what will happen at 2030 (or before) in relation to the project lifetime. Rather, it is necessary to evaluate the ability of the WWTP to accommodate demand for wastewater treatment beyond 2030. Therefore, because it is not clear that the City adequately identified future LCP consistent wastewater needs, and did not plan for wastewater treatment capacity beyond 2030 and the expected design life, its approval raises a substantial issue of conformance with the LCP policies requiring treatment facilities to accommodate LCP consistent build-out and to ensure wastewater treatment capacity is available for priority uses.

Coastal Dependent Development

The City's approval considered the WWTP to be coastal dependent development because it is connected



to an ocean outfall. Several appeals argued that such a determination was inappropriate due to the fact that although the ocean outfall is coastal dependent, the WWTP is not. In fact, current technology may allow for the elimination of the ocean outfall altogether, as shown by the recently approved wastewater plant in nearby Los Osos,¹² or for use of the ocean outfall (if it is proven necessary) by a plant that is located further inland. As such, the coastal-dependent nature of the plant as it relates to the ocean outfall is a much more nuanced question than a rote reliance on its current use of the ocean outfall to justify the current site location. Again, because the City's approval did not include a robust alternatives analysis to explore whether it is possible to eliminate the need for the outfall or connect a WWTP that is located farther inland to the existing outfall, it is not possible to make the determination that it is coastal dependent, and these appeal contentions raise a substantial issue of conformance with the LCP.

In addition, the City's approval relies on LCP Policy 5.03, which allows for protection of the existing WWTP at its current location because the ocean outfall line is coastal-dependent. However, this policy does not apply to the approved project because this project is for construction of a new WWTP. The policy in question is meant to indicate that the existing plant could be protected in situ (e.g., a floodwall to address flooding) if that were deemed appropriate for other reasons, but it is not a basis to justify a replacement plant incorporating different technologies at the same location. In short, LCP Policy 5.03 is not controlling in terms of the current project, and cannot be used as a reason for siting the project at the current location. The appeal contentions that argue the City's approval misinterpreted Policy 5.03 raise a substantial issue of conformance with the LCP.

Impacts on ESHA

Some appeal contentions include that the City's approval did not adequately protect environmentally sensitive habitat areas (ESHA), as required by the LCP. The LCP requires ESHA to be protected, and requires new development adjacent to ESHAs to avoid and minimize impacts to the resource. The approved WWTP is approximately 400 feet from the edge of the vegetated dunes, and approximately 500 feet from the edge of the riparian corridor associated with Morro Creek to the south of the site. The approved project has the potential to cause impacts to these areas from polluted runoff and increased erosion. However, the City's approval includes a requirement to prepare a storm water pollution prevention plan to control erosion, sedimentation, and hazardous materials release. Because the City's approval includes this requirement, and due to the distance between the project site and these ESHAs, this part of the contention does not raise a substantial issue of conformance with the LCP.

More broadly, though, and as discussed above, the City's approval has not adequately explored the relationship (and/or potential relationship) of the WWTP to groundwater basins and other water supply features, and the way a re-envisioned project could affect such resources (and the ESHA they support in some cases) on the positive side of the ledger. As previously indicated, the watercourses in this area as well as Morro Bay itself are significant habitat resources, and their importance underscores the need for a project like this to be understood in relationship to how it affects or could affect these resources, including positively. Similarly, the City's action presumed that the discharge from the ocean outfall was

¹² The Los Osos WWTP, approved by the Commission last year, was premised on returning all treated wastewater effluent to beneficial uses, and did not include any ocean outfall.



not an issue because it would be treated to a higher level than the existing effluent stream currently discharged overall.¹³ However, there was only limited data and analysis to support this conclusion, and it again misses the critical questions regarding whether an ocean outfall is even necessary if the project included a more significant wastewater reclamation component, or if it were constructed at a different location. Therefore, these appeal contentions raise a substantial issue of conformance with the LCP.

Treatment of Biosolids

Several appeal contentions discuss how the project would eliminate the onsite treatment of biosolids and the composting program associated with the existing WWTP. This change has the potential to cause coastal resource impacts by requiring an increase in truck trips to remove solids from the site. Such truck traffic has the potential to impact public access to the coast. Therefore, this contention may or may not raise a substantial issue of conformance with the LCP, based on the additional truck traffic it would create. The lack of analysis of the impacts to public access from operation of the new plant is discussed under the Public Access and Recreation section, above.

Impacts on the High School

Several appeal contentions discuss the impacts of the WWTP on the neighboring high school. Although these contentions may raise valid issues, schools are not a coastal resource that are categorically protected under the LCP. Lacking further articulation in relation to LCP policies on this point, these contentions do not raise a substantial issue of conformance with the LCP.

C. Substantial Issue Determination Conclusion

The City-approved project raises significant coastal resource issues, including with respect to hazard avoidance, public viewshed protection, maximizing and optimizing public access and recreational opportunities, protection of archeological resources, and sustainable public infrastructure requirements. The project site is subject to multiple significant constraints, including risks from a variety of coastal hazards, a location within a scenic public shoreline viewshed, and the presence of significant archeological resources. In addition, it is located on prime oceanfront land where it is not clear that continuation of industrial use is appropriate in light of LCP and Coastal Act objectives, and it may well be that the site is better-suited for public access and recreation. The City also authorized a major public works project which does not appear to have properly countenanced the sustainable public works provisions of the LCP.

The City's approval is fundamentally flawed in that it lacks a thorough alternatives analysis that evaluates a broad range of alternatives, including fundamentally in terms of alternative appropriate sites, such as is required to be able to find a WWTP project consistent with the LCP and the Coastal Act. Such

¹³ The ocean outfall is located within the Coastal Commission's retained CDP jurisdiction, and it appears that the approved project would require a CDP from the Commission for development associated with the outfall. The Commission has not to date received any such application, and it necessarily is affected by the need to identify the purpose and need for the outfall, including in relation to alternative sites and technologies, and including with respect to more aggressive water reclamation components and a different site altogether. In short, this aspect of the project has not yet been well defined, and is dependent on a better understanding of the appealed project in a de novo review.



alternative sites, especially if located further inland, have the potential to completely avoid the constraints of the subject site, and the potential to allow consideration of a WWTP project that can resolve other coastal resource issues associated with the City-approved project. As it is, it appears that the City-approved project is inconsistent with the LCP and the Coastal Act on multiple grounds, perhaps most critically because it is not clear that WWTP development at this site can even be found LCP and the Coastal Act consistent in terms of hazards avoidance, public recreational access, the public viewshed, sustainable use of public resources, and archaeological protection.

Therefore, the Commission finds that the City's approval raises a substantial issue of conformance with the LCP and the public access and recreation policies of the Coastal Act, and takes jurisdiction over the CDP application for the proposed project.

Additional information necessary for de novo review

Prior to bringing this matter back for Coastal Commission review in a de novo CDP hearing context, the applicant will need to provide the information necessary to evaluate the project for consistency with the LCP and the public access and recreation policies of the LCP. Absent information regarding alternative siting and design, the Commission will not be in a position to evaluate the proposed project against these requirements, and does not intend to schedule a hearing until the City and/or the Applicant has developed and provided further information to bridge the analytic gaps that are currently present and associated with the proposed project. Such information includes the following:

Alternatives Analysis

The Applicant must provide a thorough and robust alternatives analysis designed to address each of the substantial issues identified above. Clearly, the primary focus of such alternatives analysis needs to be one of looking at a range of feasible alternative sites to the site of the City-approved project. The alternatives analysis needs to be focused on a co-equal evaluation across the same range of evaluation factors, and it must identify and account for additional sites that would at a minimum be capable of avoiding the identified coastal resource impacts, addressing the identified coastal resource issues otherwise (including with respect to reclamation), and accommodating a wastewater treatment plant to meet the Applicant's needs. The analysis must provide clear and documented information about the costs and benefits of alternative project locations, and it must provide clear and documented information relative to treated wastewater disposal options associated with the sites, including with respect to the manner reclamation for beneficial uses could be accommodated for each (for agricultural irrigation, landscaping, groundwater augmentation, etc.). For example, a site location farther inland has the potential to not only avoid hazard issues and significantly reduce the project's impacts on water quality, biological resources, public viewsheds, public recreational and visitor-serving access, and archaeological resources, but it could also increase the efficacy and utility of potential water reclamation components, including with respect to distribution of reclaimed water to appropriate locations (e.g., agricultural irrigation, landscaping irrigation, etc.), and including the manner in which such reclamation can reduce related groundwater drawdown and augmentation on a location-specific basis. The Applicant is encouraged to review the Commission's action with respect to San Luis Obispo's nearby Los Osos Wastewater Treatment Project (that was approved by the Commission last year) for general information



regarding the parameters of an approvable WWTP project.

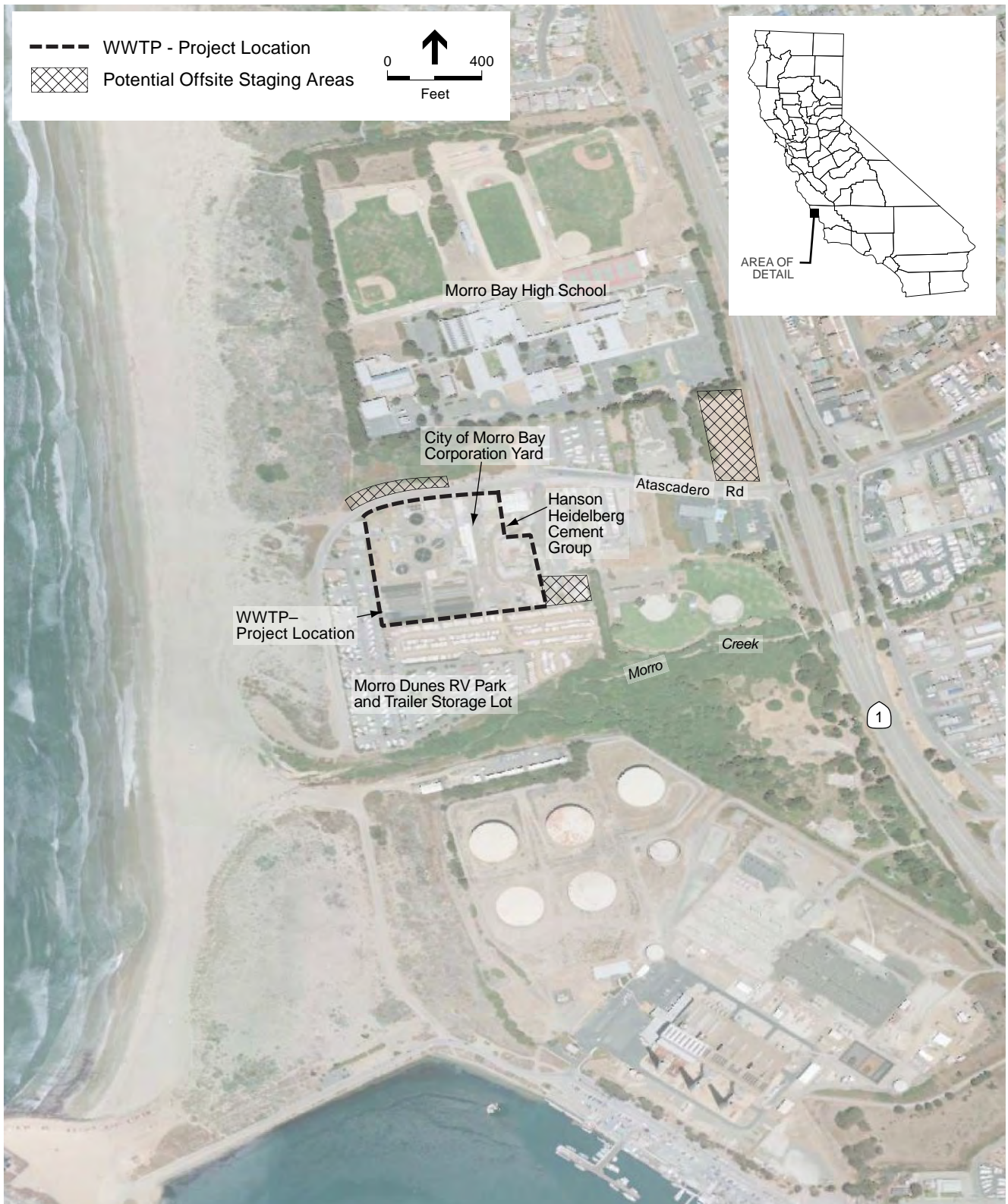
Updated Water Reclamation Feasibility Study

The Applicant must also provide a complementary, updated water reclamation feasibility study that explores all potential demand for reclaimed water, including for agricultural irrigation inside and outside of the City limits, and the way in which the project could be reconceived to dispose of treated effluent in this manner. The study must evaluate the feasibility of constructing infrastructure to accommodate such water reclamation program, and it must evaluate the benefits of a water reclamation program, including potential benefits to stream habitats and water supply, potential revenue generation from providing such water to users and offsetting the need for purchased State Water credits, and the potential for elimination of the existing ocean outfall.

Additional Site Specific Hazard Information

The Applicant must submit a comprehensive coastal hazards study applicable to the current site, including in terms of expected shoreline erosion over the life of the project, and the relationship of global climate change and sea level rise to expected hazard problems that accrue to this site. Such study must include an evaluation of the impacts to the project as measured against a range of sea level rise conditions and the interaction of the various coastal hazards described in this report, including information specific to the threshold when the WWTP would be in danger from erosion. The study must also include the elevation and inland extent of storm surge and flooding that might occur over the life of the development due to shoreline dangers, including as this changes with expected sea level rise over the expected life of the project. Such information must include how far inland and how high such water would go when the combination of hazardous factors are at their most extreme, and must include evaluation of impacts from and appropriate responses to same. At a minimum, such combination of factors to be evaluated should factor in an eroded beach, a 100-year storm event (or the equivalent of the 1982/83 El Nino event if the 100-year storm event has not be determined), an extreme high tide, and a 100-year rise in sea level at both optimistic and conservative ends of the projection spectrum. All assumptions and methodologies for identifying the expected degree of danger must be clearly identified and documented. This study must also include a description of any shoreline protection or other project modifications that would be necessary to protect the WWTP under such future hazardous conditions. The study must include an analysis of the tsunami and liquefaction risk and strategies to minimize this risk. All information must be supported by appropriate studies, reports and related data (e.g., geotechnical reports, soils reports, soil stability reports, etc.).

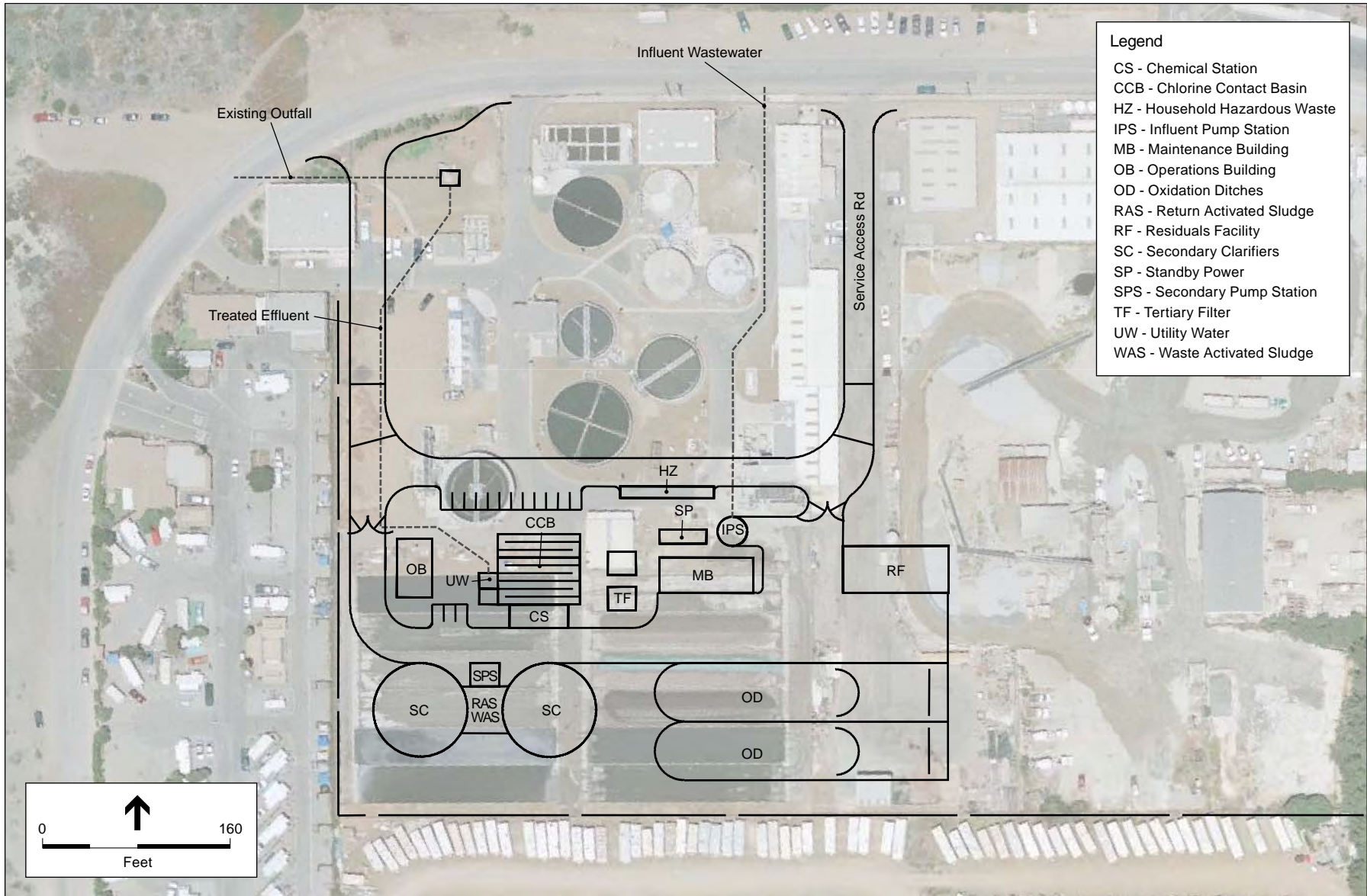




SOURCE: GlobeXplorer; ESA, 2010

Morro Bay Cayucos Wastewater Treatment Plant EIR . 208013

Figure 2-1
Project Vicinity



SOURCE: MWH, 2010.

Morro Bay Cayucos Wastewater Treatment Plant EIR . 208013



SOURCE: RRM Design Group, 2010

Morro Bay Cayucos Wastewater Treatment Plant EIR . 208013

Figure 2-3
Site Layout, Visual Simulation
A-3-MRB-11-001 (MRB WWT)
Page 3 of 5



SOURCE: Crawford, Multari & Clark, 2004; GlobeXplorer; ESA, 2010

Morro Bay Cayucos Wastewater Treatment Plant EIR . 208013

Figure 3.1-1
 Scenic Resources



Existing



Proposed

NOTICE OF FINAL ACTION ON COASTAL DEVELOPMENT PERMIT

FINAL LOCAL ACTION NOTICE

REFERENCE # 3-MRB-11-011

APPEAL PERIOD 1/18-1/31/2011

RECEIVED

JAN 14 2011

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

CITY OF MORRO BAY

Public Services Department

Date of Notice: JANUARY 12, 2011

NOTICE SENT TO (VIA CERTIFIED MAIL):

California Coastal Commission-Central Coast District Office

Please note the following Final City of Morro Bay Action on a Coastal Permit, Coastal Permit Amendment, or Coastal Permit extension application (all local appeals have been exhausted for this matter):

Project Information

Application number: CP0-339
 Project Applicant: City of Morro Bay and Cayucos Sanitary District
 Applicant's Representative: Bruce Keogh, 955 Shasta, Morro Bay, CA 93442
 Project location: 160 Atascadero Road
 Project description: The project proposal is to upgrade the Morro Bay-Cayucos Wastewater Treatment Plant Facilities. The plant will be constructed to provide full secondary treatment for all effluent discharged through its ocean outfall and to provide tertiary filtration capacity equivalent to a PSDWF of 1.5 mgd. The tertiary filtered effluent would meet Title 22 standards for disinfected secondary-23 recycled water and as such could be used for limited beneficial uses. The project includes construction of facilities including but not limited to buildings, circulation, hardscape and landscaping. Once the upgraded wastewater treatment facilities are complete the existing wastewater treatment facilities will be demolished. The project includes an Environmental Impact Report which identified various concerns associated with the project; however the EIR does not identify any potentially significant impacts which cannot be mitigated to a less than significantly

Final Action Information

Final Local Action: Approved with Condition

Final Action Body: Zoning Administrator Planning Commission City Council

Final Action Date: January 11, 2011

Required Materials Supporting the Final Action	Enclosed	Previously Sent (date)
Adopted Staff Report	X	
Adopted Findings	X	
Adopted Conditions	X	
Site Plans	X	
Elevations	X	

Additional Materials Supporting the Final Action	Enclosed	Previously Sent (date)
CEQA Document(s)		September 20, 2010
Geotechnical Report (s)	X	
Biotic Report(s)	See EIR	
Other CEQA Findings of Fact	See staff report	

Coastal Commission Appeal Information

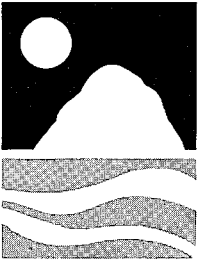
This Final Action is:

NOT APPEALABLE to the California Coastal Commission (site is outside of the Coastal Commission Appeal Jurisdiction). The Final City of Morro Bay Action is now effective.

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. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives adequate notice of this Final Action. The Final Action is not effective until after the Coastal Commission's appeal period has expired and no appeal has been filed. Any such appeal must be made in writing directly to the California Coastal Commission Central Coast District Office at 725 Front Street, Suite 300, Santa Cruz, Ca 95060-4508, 415-427-4863; there is no fee for such an appeal. Should you have any questions regarding the Coastal Commission appeal period or process, please contact the Santa Cruz Office at the above address or phone.

Copies of this notice have also been sent via first-class mail to:

- The applicant
- Interested parties who arranged for mailing of the notice.



City of Morro Bay

Morro Bay, CA 93442 • 805.762.1000
www.morro-bay.ca.us

FINAL LOCAL ACTION NOTICE
REFERENCE # 3-MRB-11-011
APPEAL PERIOD 1/18-1/31/2011

RECEIVED

JAN 14 2011

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST AREA

January 13, 2011

City of Morro Bay/Cayucos Sanitary District
955 Shasta Avenue
Morro Bay, Ca 93442

SUBJECT: Case No.: Coastal Development Permit SITE: 160 Atascadero Road
CP0-339 and Use Permit UP0-307

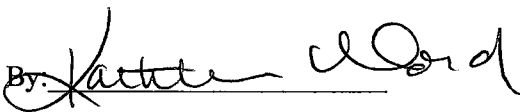
Dear Mr. Keogh:

At its regular meeting on January 11, 2011 the City of Morro Bay's City Council conditionally approved your request for an upgrade of the Morro Bay/Cayucos Sanitary District Wastewater Treatment Plan. 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 within thirty (30) days.***

Please be advised that due to the location of the project, within the Coastal Commission appeals Jurisdiction that the Coastal Development Permit can be appealed to the Coastal Commission. The appeal process can be found on the Final Action of Coastal Development Permit Form enclosed with this letter.

Sincerely,

Robert Livick
Director Public Services Department

By: 

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

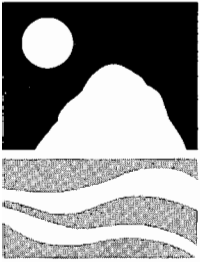
FINANCE
595 Harbor Street
HARBOR DEPARTMENT
1275 Embarcadero Road

ADMINISTRATION
595 Harbor Street
CITY ATTORNEY
955 Shasta Avenue

FIRE DEPARTMENT
715 Harbor Street
POLICE DEPARTMENT
850 Morro Bay Boulevard

PUBLIC SERVICES
1001 Kennedy Way
RECREATION AND PARKS
1001 Kennedy Way

EXHIBIT B
A-3-MRB-11-005 (MRB-SWWTP)
Page 2 of 121



City of Morro Bay

Morro Bay, CA 93941 805-772-1000
www.morrobay.ca.us

COASTAL DEVELOPMENT & CONDITIONAL USE PERMIT

RECEIVED
JAN 14 2011
CALIFORNIA COASTAL COMMISSION
CENTRAL COAST AREA

CASE NO: CP0-339 & UP0-307

THIS PERMIT IS HEREBY APPROVED AND ISSUED FOR

SITE ADDRESS: 160 Atascadero Road

APPLICANT: City of Morro Bay and Cayucos Sanitary District

DATE APPROVED: January 11, 2011

APPROVED BY City Council

CEQA DETERMINATION: Certified EIR.

DESCRIPTION OF APPROVALThe project proposal is to upgrade the Morro Bay-Cayucos Wastewater Treatment Plant Facilities. The plant will be constructed to provide full secondary treatment for all effluent discharged through its ocean outfall and to provide tertiary filtration capacity equivalent to a PSDWF of 1.5 mgd. The tertiary filtered effluent would meet Title 22 standards for disinfected secondary-23 recycled water and as such could be used for limited beneficial uses. The project includes construction of facilities including but not limited to buildings, circulation, hardscape and landscaping. Once the upgraded wastewater treatment facilities are complete the existing wastewater treatment facilities will be demolished. The project includes an Environmental Impact Report which identified various concerns associated with the project; however the EIR does not identify any potentially significant impacts which cannot be mitigated to a less than significantly

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:

ATTEST: *Lashen D. [Signature]*

DATE: 1/13/2011

FINANCE
595 Harbor Street
HARBOR DEPARTMENT
1275 Embarcadero Road

ADMINISTRATION
595 Harbor Street
CITY ATTORNEY
955 Shasta Avenue

FIRE DEPARTMENT
715 Harbor Street
POLICE DEPARTMENT
850 Morro Bay Boulevard

PUBLIC SERVICES
1001 Kennedy Way
EXHIBIT B
A-3-MRB-11-001 (MRB VAWTP)
Page 3 of 124
RECREATION AND PARKS

RESOLUTION NO. 08-11

**A RESOLUTION OF THE CITY COUNCIL OF MORRO BAY
MAKING THE FINDINGS FOR APPROVAL OF CONDITIONAL USE PERMIT UP0-307
AND COASTAL DEVELOPMENT PERMIT CP0-339
FOR THE WASTEWATER TREATMENT PLANT PROJECT**

**City Council
City of Morro Bay, California**

WHEREAS, on January 11, 2011 the City Council did hold a public hearing, received public testimony, both written and oral, and after closing the public hearing fully considered the various issues surrounding the case; and

WHEREAS the City Council made findings as follows for the approval of a Coastal Development Permit and Conditional Use Permit:

The City Council finds that the use, a wastewater treatment facility, is an allowable use in the M-1 (Light Industrial) district as it has been determined that the use is similar and consistent with the General Plan and Local Coastal Plan.

That the project (Wastewater Treatment Plant) is an allowable use within the M-1 Zone District and is also in accordance with the certified Local Coastal Program and the General Plan for the City of Morro Bay based on the analysis and discussion in the attached staff report; and

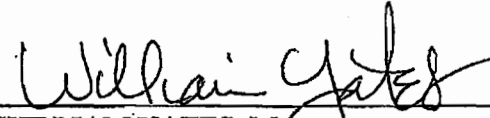
The establishment, maintenance, or operation of the use applied for will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use as the project is consistent with all applicable zoning and plan requirements as indicated in the attached staff report; and

The use will not be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the City since the project, as conditioned, will be conducted consistent with all applicable City regulations, as indicated in the attached staff report; AND

NOW, THEREFORE, BE IT RESOLVED that the recitations are true and correct and constitute the finding of the City Council on this matter and that the City Council hereby approves Coastal Development Permit CPO-339 and Conditional Use Permit UP0-307 for the Morro Bay-Cayucos Wastewater Treatment Plant Upgrade Project subject to the conditions as contained Exhibit B.

PASSED AND ADOPTED by the Planning Commission of the City of Morro Bay, California, at a regular meeting held on the 11th day of January 2011, by the following vote:

AYES: Borchard, Johnson, Leage, Yates
NOES: Smukler
ABSENT: None
ABSTAIN: None



WILLIAM YATES, Mayor

ATTEST:



JAMIE BOUCHER, Deputy City Clerk

EXHIBIT B
CONDITIONS OF APPROVAL

STANDARD CONDITIONS

This permit is granted for the land described in the staff report dated December 20, 2010 and referenced above for the project depicted on the attached plans labeled "Exhibit F", date stamped November 10, 2010 on file with the Public Services Department, as modified by these conditions of approval, and more specifically described as follows:

An upgrade of all onsite facilities at the Wastewater Treatment Plant. The plant will be constructed to provide full secondary treatment for all effluent discharged through its ocean outfall and to provide tertiary filtration capacity equivalent to a PSDWF of 1.5 mgd. The tertiary filtered effluent would meet Title 22 standards for disinfected secondary-23 recycled water and as such could be used for limited beneficial uses. The project includes construction of facilities including but not limited to buildings, circulation, hardscape and landscaping. Once the upgraded wastewater treatment facilities are complete the existing wastewater treatment facilities will be demolished.

1. **Precise Plan Submittal**: A Precise Plan must be submitted to the Planning Commission within one year from the date of City Council approval or approval of the State Coastal Commission where said plan requires their approval. Without further action, concept plans shall automatically become null and void after one year has elapsed.
2. **Changes**: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Director of Public Services. Any changes to this approved permit determined not to be minor by the Director shall require the filing of an application for a permit amendment subject to Planning Commission review.
3. **Compliance with the Law**: (a) 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 (b) This project shall meet all applicable requirements under the Morro Bay Municipal 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.
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**: The applicant's establishment of the use and/or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed here on shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Director of Public Services 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. Acceptance of Conditions: Prior to obtaining a building permit the applicant shall file with the Director of Public Services written acceptance of the conditions stated herein.
7. State and County Compliance: Prior to the any final issued for the project the applicant shall demonstrate compliance with all State and County regulations and provide documentation to the Public Services Department.
8. 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. on weekdays 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.
9. Dust Control: Prior to issuance of a grading permit, a method of control to prevent dust, construction debris, and windblown earth problems shall be submitted to and approved by the Building Official to ensure conformance with the performance standards included in MBMC Section 17.52.070.
10. Screening of Equipment/Utility Meters/Fencing: All roof-mounted air conditioning, or heating equipment, vents, ducts and/or utility meters shall be screened from view from adjoining public streets in a manner approved by the Director of Planning and Building. Prior to building permit issuance, the approved method of screening shall be shown on the project plans.
11. Timing of Landscaping: Prior to issuance of a final Certificate of Occupancy, all required plantings, groundcover and irrigation systems shall be in place to the satisfaction of the Director of Planning & Building. The landscape consultant shall provide a watering schedule and certify that all plantings and irrigation systems have been installed pursuant to the approved plans prior to issuance of the final Certificate of Occupancy.
12. Maintenance of Landscaping: All required plant materials shall be maintained in accordance with the watering schedule as specified in the approved landscape plan notes. All landscaping shall be cared for, maintained, watered, fertilized, fumigated, pruned and kept in a healthy growing condition for the life of the project. Where required plant(s) have not survived, it shall be promptly replaced with new plant materials of similar species, functional, size, and characteristics as specified in the approved landscape plant notes.
13. 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 and implementation of any protective measures as determined by the Director of Planning & Building.

14. Property Line Verification: It is owner's responsibility to verify lot lines. Prior to foundation inspection the lot corners shall be staked and setbacks marked by a licensed professional.

PLANNING CONDITIONS

1. Parking: In accordance with MBMC Chapter 17.44 a minimum of 11 parking stalls shall be provided. One space shall be a van accessible space.
2. Parking lot: The Precise Plan submittal shall include a fully dimensioned parking lot plan. The plan shall include the required landscape planters and landscaping. The design of the parking facilities shall be in accordance with all the standards as set forth within Chapter 17.44.
3. Lot Line Adjustment or Lot Merger: The project as proposed depicts structures that are located across property lines, which is not allowed by the Morro Bay Municipal Code. The applicant shall submit an application for either a lot line adjustment or lot merger in order to bring the project into conformance.

BUILDING CONDITIONS

1. Precise Plan Submittal: At the time of precise plan submittal, the applicant shall submit a plan for the phasing of construction, demolition and the construction of other site improvements.
2. Accessibility: At the time of precise plan submittal, the project plans shall depict those site elements that are required for handicapped accessibility, including a van accessible parking space, accessible paths of travel to building entrances, and an accessible path of travel to the public way.

ENVIRONMENTAL CONDITIONS

1. Environmental Impact Report: All mitigations contained in the Environmental Impact Report entitled "MORRO BAY-CAYUCOS WASTEWATER TREATMENT PLANT UPGRADE" shall be incorporated as conditions of approval.

FIRE CONDITIONS

1. Fire Safety During Construction and Demolition: In the course of construction, alteration, or demolition, including those in underground locations, compliance with 2007 California Fire Code, Chapter 14 and NFPA 241, is required.
2. Fire Protection in Wastewater Treatment and Collection Facilities (NFPA 820): This standard establishes minimum requirements for protection against fire and explosion hazards in wastewater treatment plants and associated collection systems, including the hazard classification of specific areas and processes, compliance with this standard is required.
3. Fire Protection Systems (2007 California Fire Code, Chapter 9 and NFPA 820, Chapter 7): These chapters specify where fire protection systems (Fire Sprinkler, Alarm, and Standpipe Systems) are required and apply to the design, installation, inspection,

operation, testing and maintenance of all fire protection systems. The plan identifies a number of different occupancies where automatic fire sprinklers are required, based on their hazard classification, as outlined in CFC Section 903, and shall be addressed during fire sprinkler plan submittal.

4. Hazardous Materials-General Provisions (2007 California Fire Code, Chapter 27 and NFPA 45): Prevention, control and mitigation of dangerous conditions related to storage, dispensing, use and handling of hazardous materials shall be in accordance with the above chapters.
5. Fire Apparatus Access: Fire apparatus access roads shall be provided and maintained in accordance with CFC Chapter 5 and Appendix D.
6. Fire-Flow Requirements for Buildings: Determination of fire-flows for buildings shall be in accordance with CFC Appendix B.
7. Fire Hydrant Locations and Distribution: Fire hydrants shall be provided for the protection of buildings, or portions, in accordance with CFC Appendix C.

PUBLIC WORKS

1. Damage to City Facilities: Relocate/rebuild any City facility damaged or removed due to construction.
2. Stormwater Treatment: The project shall provide stormwater treatment for all improved areas of the site.
3. Design Standards: Design Standards for Structural or Treatment Control BMPs
4. Post –Construction Treatment Control BMP: Post-construction treatment control BMP incorporate, at a minimum, either a volumetric or flow based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) stormwater runoff:

Volumetric Treatment Control BMP

- a.) The 85th percentile 24-hour runoff event determined as the maximized capture stormwater volume for the area (0.75in/24-hr), or equivalent method to be approved by the City Engineer.

Flow Based Treatment Control BMP

- a.) The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the area ($2 \times 0.193 \text{ in/hr} = 0.385 \text{ in/hr}$); or equivalent method to be approved by the City Engineer.

5. Driveway Approach: The commercial driveway approach shall have a minimum pan width between 24 and 35 feet. The driveway approach near the curve in Atascadero Rd shall meet the minimum sight distance. The minimum distance from the top of the approach to the BCR of the curve shall be the curb return radius plus five feet.
6. Stabilization: Include a plan for final stabilization of the entire site.

7. Household Hazardous Waste Facility: Precise plan shall provide a space for the IWMA Household Hazardous Waste facility.

The following items shall be included with the building permit submittal:

8. Conditional Letter of Map Revision: A Conditional Letter of Map Revision (CLOMR), based on the required fill, shall be completed prior to issuance of a building permit. The CLOMR shall be followed up with a Letter of Map Revision (LOMR) prior to final inspection and acceptance. The applicant/developer shall pay the Flood Hazard Development permit fee of \$174 at building permit submittal.
9. Frontage improvements: ADA driveway approaches are required at any proposed driveways along Atascadero Rd. Any proposed driveways shall meet City standard B-6. Any damage to City facilities, i.e. curb, gutter, sidewalk, street, sewer line, water line, or any public improvements shall be repaired at no cost to the City of Morro Bay. The existing driveway shall be abandoned and City standard sidewalk, curb and gutter shall be built. Street trees shall be planted from the City's master tree list located behind the sidewalk. One street tree shall be planted for every 50 feet of the property frontage.
10. Storm Drain Pipe: Repair or replace the storm drain pipe (located along the Atascadero Rd. property frontage) and reconstruct the outlet to provide adequate stormwater conveyance from the property.
11. Intersection at Highway One: Pay a pro rata share for signalization and related improvements at the intersection at Highway One, Highway 41, and Main Street. The said fee shall be proportional to increased traffic generated by the subject project as said intersection as estimated by a traffic engineer and subject to review and approval by the City Engineer. The traffic volume on Atascadero Road at Highway One is 2,800 ADT. The estimated cost of the improvements to the intersection is \$980,000 base on the 1988 Circulation Element of the General Plan (ENR=4519). Present day cost is estimated at \$1,940,000 (ENR=8951).
12. WDID Permit Numbers: Provide the WDID permit numbers for the Construction and Industrial Discharge permits issued by the State Resources Water Quality Control Board.
13. Erosion and Sediment Control Plan: Provide an erosion and sediment control plan including dust control measures. The plan shall include BMP's to control erosion and sedimentation on the site. The applicant/developer shall follow the City's erosion and sediment control manual which can be viewed on the City website www.morro-bay.ca.us/stormwater under quick links.



AGENDA NO: B-2

MEETING DATE: January 11, 2011

Staff Report

TO: City Council **DATE:** January 4, 2011
FROM: Kathleen Wold, Planning Manager
SUBJECT: Appeal of the Planning Commission's decision to deny certification of the Morro Bay Cayucos Sanitary District Wastewater Treatment Plant Environmental Impact Report and denial of the Coastal Development Permit CP0-339 and Conditional Use Permit UP0-307.

RECOMMENDATIONS:

Staff's Recommendation:

Staff recommends the City Council adopt the facts and findings as presented in Attachment 3 by adopting Resolution Number 07-11 and make the findings for approval of the Conditional Use Permit and Coastal Development Permit by adopting Resolution Number 08-11. Certify Morro Bay Cayucos Sanitary District's Wastewater Treatment Plant Upgrade EIR and conditionally approve Coastal Development Permit CP0-339 and Conditional Use Permit UP0-307.

Planning Commission's Recommendation:

1. That the following nine criteria be used in a screening report to evaluate properties within and outside of the City limits in a public process with the baseline of a new wastewater project proposal and that a letter be submitted to the Regional Water Quality control Board asking for time extension in order to conduct the site analysis.

1. Flood plain impacts 2. Cultural Resources 3. Visual resources 4. Greenhouse Gases 5. Accommodation of build out 6. Water reclamation 7. Cogeneration opportunities 8. Lifecycle costs 9. Economic benefits.

2. Deny the Certification of the Morro Bay Cayucos Sanitary District's Wastewater Treatment Plant Upgrade EIR, Coastal Development Permit CP0-339 and Conditional Use Permit UP0-307 of the applicant of City of Morro Bay and Cayucos Sanitary District based on the following findings:

1. The proposed project constitutes a new project, 2. The EIR analysis was insufficient, 3. Aesthetics are questionable and 4. Insufficient scoping of the project.

Prepared By: _____ Dept Review: _____
City Manager Review: _____
City Attorney Review: _____

FISCAL IMPACT:

The fiscal impacts of the proposed project have been previously approved by the City of Morro Bay and the Cayucos Sanitary District as signatories of the Joint Powers Agreement (JPA) when the Facility Master Plan document was adopted. There will be additional fiscal impacts associated with the Planning Commission's recommendation to provide a new screening report analyzing additional sites based on a new baseline and updating the EIR to reflect this analysis, a new project description and additional scoping.

The fiscal impacts for performing the requested alternatives analysis and producing an EIR based on a new project description and new baseline for all impacts could be significant. A recent local example is the Los Osos Sewer Project on which the County of San Luis Obispo has spent approximately \$8 million dollars and 2 1/2 years of effort to screen the alternative sites and to prepare the project's EIR report. Depending on the level of effort put into a screening analysis, and the action taken tonight on the EIR report, the City could see impacts from over one half to multiple millions of dollars. In addition the delay created by starting the project over from scratch could result in fines which would only add to the financial impacts.

BACKGROUND:

The WWTP is operated under a National Pollutant Discharge Elimination System (NPDES) Permit (No. CA0047881) issued by the US Environmental Protection Agency (USEPA) and the Central Coast Regional Water Quality Control Board (RWQCB). The current NPDES permit allows for the discharge of a blend of primary and secondary treated effluent to the ocean through the existing 27-inch diameter outfall pipeline. This discharge is in accordance with Section 301(h) of the federal Clean Water Act that modifies the requirement for full secondary treatment in certain cases. MBCSD has made a commitment to the Central Coast RWQCB to phase out the need for the 301(h) modified discharge permit by upgrading the WWTP to at least full secondary treatment by March 2014. The proposed project would construct facilities to provide full secondary treatment for all effluent discharged through its ocean outfall and to provide enhanced treatment with tertiary filtration capacity equivalent to the PSDWF of 1.5 mgd.

The process of examining the various planning and design options were carefully analyzed during the past several years through a Facility Master Plan (FMP), which was prepared by Carollo Engineers. The process involved intense technical analysis and public input and discussion, which resulted in the current project description. Based on the analysis and public input, the Council and District Board adopted the final recommendation to upgrade the plant to tertiary treatment using an oxidation ditch with filtration as the preferred treatment option and retire many of the existing facilities.

Since August 2006, the Joint Powers Agreement (JPA) Board, which is comprised of both the City of Morro Bay (City) Council and members of the Cayucos Sanitary District (CSD) Board, have been working to develop a FMP for upgrade of the Morro Bay Cayucos Sanitary District (MBCSD) wastewater treatment plant (WWTP) through the twenty-year planning period. During this time, the JPA Board has been presented with various technical topics

ranging from regulatory requirements to wastewater and biosolids treatment alternatives, and has consistently provided feedback and direction. Impacts on the receiving waters, the ratepayers in both communities, and local sustainability were topics that framed discussion in seven public meetings and other smaller technical subcommittee meetings. The public meetings were intended to educate the residents of the local community and JPA Board. The result of this process has been the selection of tertiary treatment with offsite solids disposal as the preferred project for upgrade of the WWTP. The decisions made by the JPA Board have supported local sustainability by positioning the community for future water reuse, from this project.

The FMP considered historical and projected flows and loadings were analyzed for the twenty-year planning period. New flows and loadings projections are used to design treatment alternatives for upgrade of the WWTP as well as assist in determining future capacity needs for the City and CSD.

PROJECT OBJECTIVES:

The objectives of the proposed project are as follows:

- Comply with the secondary treatment standards contained in 40 CFR Part 133;
- Phase out the need for a 301(h) modified discharge permit;
- Minimize flooding impacts onsite at the WWTP and adjoining properties; and
- Accommodate future installation of reclamation capability to meet Title 22 requirements for disinfected tertiary recycled water for unrestricted use.
- Compliance with “Settlement Agreement for Issuance of Permits to and Upgrade of Morro Bay Cayucos Wastewater Treatment Plant” and be fully operational by March 31, 2014.

DISCUSSION:

Coastal Act Regulations Regarding the Review of Wastewater Treatment Facilities:

Section 30412 of the Coastal Act pertains to the Wastewater Treatment Facilities and sections C.1, 2 and 3 specifically set down perimeters that the Coastal Commission can review.

Section 30412. C. 1, 2, and 3 states: Any development within the coastal zone or outside the coastal zone which provides service to any area within the coastal zone that constitutes a treatment work shall be review by the commission and any permit it issues, if any, shall be determinative only with respect to the following aspects of the development:

- (1) The siting and visual appearance of treatment works within the coastal zone
- (2) The geographic limits of service areas within the coastal zone which are to be served by particular treatment works and the timing of the use of capacity of treatment works for those service areas to allow for phasing of development and use of facilities consistent with this division.
- (3) Development projects which determine the sizing of treatment works for providing service within the coastal zone.

Consistency with the Local Coastal Program:

For the proposed project to be approved, findings must be made that the project is consistent

with applicable goals, objectives and policies of the Local Coastal Program (as defined above to include the General Plan, the Local Coastal Plan and the implementing zoning regulations).

Staff has reviewed the project pursuant to the various applicable goals, objectives and policies of the LCP and determined that the project is consistent. Below are applicable policies, programs, and objectives that relate to this project.

The California Coastal Act establishes a framework for resolving conflicts among competing uses for limited coastal lands. There are policies which spell out the priority of uses. The Coastal Act places as its highest priority the preservation and protection of natural resources including environmentally sensitive habitat areas and prime agricultural lands. On lands not suited for agricultural use, coastal-dependent development, a use which requires a site adjacent to or on the sea to function, has the highest priority. The adopted LCP designates the subject site as an area for coastal dependent development (policy 5.03).

In addition to the overall priority status given to coastal-dependent development there are also specific sections contained within the LCP pertaining to industrial development.

Section 30250(a) states: New residential, commercial or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it, or where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land division, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels. *The proposed project is in compliance with this section as the proposal is to upgrade facilities at the existing site which is within the core of the city with adequate access.*

Section 30250(b) where feasible, new hazardous industrial development shall be located away from existing developed areas. *The upgrade of the WWTP is not new development but instead is a project whose objectives are to improve the processing of the City's wastewater by constructing new facilities and implementing new processes to accomplish this objective. The use will continue onsite throughout the process of the upgrade, therefore the project is not a new use.*

The LCP establishes two industrial land use categories; General Industry and Coastal-Dependent Industrial Land use. The Coastal-Dependent land use category was specially created to address the industrial land uses which are given priority by the Coastal Act of 1976 for location adjacent to the coastline, such as thermal power plants, seawater intake structures, discharge structure tanker support facilities and other similar uses which must be located on or adjacent to the sea in order to function. The LCP further states that the City of Morro Bay's wastewater treatment facilities are protected in their present location since an important operational element, the outfall line, is coastal-dependent (see policy 5.03). *The proposed project consists of an upgrade (modernization) to the wastewater facilities at the current protected site, however there will be some relocation of facilities on the site to allow the*

existing facilities to remain functioning while the new facilities are constructed. In addition, the facilities will continue to use the outfall line as an integral element of the facilities thus firmly establishing the facilities as coastal dependent and securing the WWTP's right to continue to be located at 160 Atascadero. The use (a treatment facility) will continue on site without interruption.

The certified LCP also acknowledges the demands on the coastal area for public works-related development and the Coastal Act contain numerous general and specific policies regarding public works-related development. Although the Coastal Act emphasizes the protection, enhancement, and restoration of coastal resources, it also recognizes that public works development is necessary for the social and economic well-being of the state.

Section 30260 states: "Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with the section and sections 30261 and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare, and (3) adverse environmental effects are mitigated to the maximum extent feasible." *This Section of the Coastal Act allows special consideration for industrial development that may not be consistent with other Coastal Act policies, yet may be necessary to provide for the public welfare. The proposed project site is a grouping of many small parcels and includes the wastewater facilities, the City of Morro Bay's corporation yard and a cement plant. As stated in the LCP long term plans for the Wastewater Treatment Plant has always included upgrades and expansions. Policies within the LCP protect the overall site for this coastal dependent use encouraging it to upgrade or expand on the existing site to facilitate reasonable long term viability. It is clear that the proposed project (an upgrade of the Wastewater Treatment Plant at it protected site location) is consistent with the LCP*

There are also two policies (policy 5.03 & 5.04) contained within the LCP which reinforce that the location of the upgraded wastewater treatment facilities is consistent with the LCP.

Policy 5.03 states: The Morro Bay Wastewater Treatment facilities shall be protected in their present location since an important operational element, the outfall line, is coastal-dependent.

Coastal Act requires reserving areas for the WWTP per 30412.d

Policy 5.4 states: In the areas designated for industrial land uses, coastal-dependent uses shall have priority over non-coastal-dependent uses.

The City of Morro Bay has policies which mirror the policies contained within the LCP. They are as follows:

General Plan Program LU-39.3: The Morro Bay Wastewater Treatment facilities shall be protected in their present location since an important operational element, the outfall line, is coastal-dependent. *As stated above this policy as well as those contained in the LCP refer to the facilities as a land use, they do not specifically state the existing plant. Other coastal policies substantiate that the intent of protecting the facilities as a Coastal Dependent Use would allow for the potential expansion or upgrading of facilities to ensure that the site would be viable in the long run.*

General Plan program LU-39.4: In the areas designated for industrial land uses, Coastal-dependent uses shall have priority over non-coastal-dependent uses.

General Plan Program LU-81.1: The City will continue a program of providing wastewater treatment facilities to accommodate the build-out population of 12,195, determined to be the build out figure in Coastal Development Permit NO. 406-01, which permits further expansion of the wastewater treatment facilities to 2.4 mgd. *The certified LCP contains information regarding the sizing of the Wastewater Treatment plant and the community's future needs. The sizing of the plant contained within this document assumes that the plant would continue with the same technologies as those that the plant was operating under in 1988 and the same consumer patterns as the population had in 1988. Today just over twenty years later three issues have had a significant effect on the amount of plant capacity necessary to meet demand. Since 1988, there have been improvements to technology resulting in improved wastewater processing, the Morro Bay consumer has embraced conservation, and finally the community growth has not kept up with population projections contained in the LCP.*

Typically, the capacity of a wastewater treatment plant is upgraded incrementally, often in 20 year increments, to meet demand for the projected growth of that time frame. The proposed plant upgrade was sized to accommodate the growth that is projected to occur within a time frame ending in 2030. This timeframe is consistent with what is estimated to be the life span of this upgrade. The population accommodated by this plant upgrade did not consider total community build out of 13,500 as projected in the LCP but instead utilized the projected population growth for 2030 as provided by the San Luis Obispo Council of Governments of between 11,910 and 12,610. In addition, the City's population is constrained by Measure F, which limits the City's overall population to 12,200. Increases to this figure would require a vote of the people. As such a WWTP design capacity based on a population of 12,500 for Morro Bay is appropriate. The Estero Area Plan which governs Cayucos calls for a full build-out of Cayucos by 2022 with a population of 4,765. The proposed project assumes a population of 5,730 in Cayucos by the year 2030. As with any public facility there is a balancing act that must occur between providing sufficient resources for projected growth and over sizing facilities for growth that is far into the future. Over sizing facilities can be growth inducing and costly as the additional cost associated with the increased capacity are realized. So the sizing of the plant as proposed is consistent with the LCP as it provides the necessary capacity for orderly and well-planned growth consistent with the policies in the LCP, Measure F and the growth trends projected by the regional planning agency.

California Coastal Commission Issues:

The Commission submitted electronically their response to the Draft EIR on November 12, 2010. Their correspondence while stating their general support of the proposed project based on the beneficial effects to the water quality in Estero Bay, that it bring into compliance the Cayucos Sanitary District with its National Pollutant Discharge Elimination System Phase II permit and providing an avenue to address other public utility constraints related to water supplies in the area, they did have a number of issues with both the EIR and the project.

An overview of the these issues follows:

1. The District's proposed preferred site location appears to be inappropriate for the development proposed. The concept of locating major public works infrastructure in an area that is subject to multiple significant hazards is not consistent with the hazards policies of the LCP. Further, the location is directly adjacent to the shoreline in a visually sensitive area where such objectives, and lead to adverse public viewshed impacts. Finally, the area has significant archaeological resources that, as required by the LCP, must be avoided. All of these impacts could be avoided or minimized by moving the project to an alternative location.
2. The proposal to reduce the capacity of the new WWTP is not consistent with LCP policies requiring infrastructure to accommodate future growth that is planned for in the LCP.
3. The proposal does not include a plan for water reclamation that meets the expectation of the City of Morro Bay LCP, the San Luis Obispo County LCP, or recent actions of the Commission including in its recent approval of the Los Osos Wastewater Project. Under the current proposal, the new WWTP would produce a large quantity of highly treated wastewater, and the vast majority of it would be disposed of through the ocean outfall.

The City of Morro Bay has relied on policies contained within the Coastal Act, The City's Local Coastal Land Use Plan, The City's General Plan as well as the City of Morro Bay Zoning Ordinance when choosing to move forward with the plant's upgrade at the 160 Atascadero Road site. Both the City's General Plan and its Local Coastal Land Use Plan designate the 160 Atascadero Road site as an Industrial site and identify the Morro Bay wastewater treatment facilities as a land use protected at this site because an important operational element, the outfall line, is coastal-dependent. As we know these documents are intended to provide a future vision for the City and guide growth and development. They are comprehensive documents that provide goals, objectives, policies and programs all guide for the City's long-term development. At the very core of the document are the Land Use designations and the map which indicates where these land uses are to occur. These certified documents establish that a wastewater facility is an intended use at this site and goes on further to state it is protected. The issues mentioned above, public view shed, archaeological resources and hazard policies were all known at the time the California Coastal Commission certified these documents and yet they certified the documents protecting the wastewater land use at this site. To suggest that reliance of the land use designations and protections provided for within these documents are now invalid is very concerning. If there were statewide policies adopted which invalidated wastewater treatment facilities and their associate outfall

element as coastal dependent uses then it would supersede our documents but that is not the case. There are examples of recently approved wastewater facilities with major upgrades such as what is proposed here in Morro Bay. These would include the one for the Cities of Goleta and Pismo Beach that were permitted in close proximity to the coast. The inability to rely on the land use designations contained within these documents creates a city without any long-term development policies upon which the citizenry can move forward with development proposals and places development of any kind in a situation where there are no known perimeters for development within their community.

The Coastal Commission letter indicates that this is not an upgrade to facilities but a new plant and therefore must be analyzed in relationship to the LCP and the Coastal Act as a new plant capable of being located anywhere. While it is true that majority of the existing treatment plant will be retired is somewhat of a shortsighted view to then assume for purposes of review that the site is vacant. There are two major components to provide wastewater services to a community. The first is the treatment plant and the second is the wastewater collection facilities. Since the incorporation of the city the long term planning documents including subsequent facility master plans have shown the treatment facilities at 160 Atascadero site. Over the last 50+ years the collection facilities have all be designed to convey the City's and District's wastewater to this location. To suggest that this modernization or upgrade of the facilities is an opportunity to redesign a City's entire wastewater facilities including its collection system is a bit far reaching. In addition, under the proposed project scenario there will be no termination of the land use at this site. The existing facilities will continue to provide service to the district while the new facilities are being constructed and only when the new facilities are up and running will the majority of the older antiquated facilities will be retired. The intent of the project was to modernize the plant facilities including compliance with the secondary treatment standards contained in 40 CFR Part 133, phase out the need for a 301(h) modified discharge permit, minimize flooding impacts onsite at the WWTP and adjoining properties, and accommodate future installation of reclamation capabilities to meet Title 22 requirements for disinfected tertiary recycled water for unrestricted use and compliance with "Settlement Agreement for Issuance of Permits to and Upgrade of Morro Bay Cayucos Wastewater Treatment Plant". It was the decision of the district that the most cost effective way to modernize the plant while continuing to provide reliable service to its community was to continue to use the existing facilities while constructing the new modern facilities onsite.

It should be pointed out that if the site is determined to be unsuitable for any development associated with a "new" wastewater treatment facility due to the hazards identified in CCC's letter, it would prohibit the construction of a lift station for the same reasons, a lift station which would be required to utilize the existing collection system if the plant were forced to be relocated. As such, it would result in project consisting of both a new treatment plant and all new collection facilities with the elimination of the outfall element. In other words, a much more comprehensive project resulting in increased costs to the community far beyond those associated with the current project.

The certified LCP contains information regarding the sizing of the Wastewater Treatment

Plant and the community's future needs. The sizing of the plant contained within this document assumes that the plant would continue with the same technologies as those that the plant was operating under in 1988 and the same consumer patterns as the population had in 1988. Today just over twenty years later three issues have had a significant effect on the amount of plant capacity necessary to meet demand. Since 1988, there have been improvements to technology resulting in improved wastewater processing, the Morro Bay consumer has embraced conservation, and finally the community growth has not kept up with population projections contained in the LCP.

Typically, the capacity of a wastewater treatment plant is upgraded incrementally, often in 20 year increments, to meet demand for the projected growth of that time frame. The proposed plant upgrade was sized to accommodate the growth that is projected to occur within a time frame ending in 2030. This timeframe is consistent with what is estimated to be the life span of this upgrade. The population accommodated by this plant upgrade did not consider total community build out of 13,500 as projected in the LCP but instead utilized the projected population growth for 2030 as provided by the San Luis Obispo Council of Governments of between 11,910 and 12,610. In addition, the City's population is constrained by Measure F, which limits the City's overall population to 12,200. Increases to this figure would require a vote of the people. As such a WWTP design capacity based on a population of 12,500 for Morro Bay is appropriate. The Estero Area Plan which governs Cayucos calls for a full build-out of Cayucos by 2022 with a population of 4,765. The proposed project assumes a population of 5,730 in Cayucos by the year 2030. As with any public facility there is a balancing act that must occur between providing sufficient resources for projected growth and over sizing facilities for growth that is far into the future. Over sizing facilities can be growth inducing and costly as the additional cost associated with the increased capacity are realized. So the sizing of the plant as proposed is consistent with the LCP as it provides the necessary capacity for orderly and well-planned growth consistent with the policies in the LCP, Measure F and the growth trends projected by the regional planning agency.

In response to the CCC point regarding the City's plan for water reclamation as identified in the City of Morro Bay's LCP and those within the San Luis Obispo County LCP, the project is not in conflict with these policies. The project as design is the foundation and first steps toward providing a comprehensive water reclamation system. These first steps, providing reclaimed water for wash down, landscaping and construction uses is meeting the identified current demand. The project does include a truck fill station for the public which will allow the public to put the water treated to 23 to full use. As additional demand is identified the City and/or the District will pursue development of a full reclaimed water system. The fact that the City is implementing the process incrementally and only when additional demand is identified is not in conflict with the LCPs but recognizes that these types of systems are the way of the future and need to be fluid in their design to accommodate ever changing regulations and new demands as they emerge.

PLANNING COMMISSION ISSUES:

- There were sufficient alternatives studied. Additional alternatives should be screened using the following criteria: Flood plain impacts, Cultural resources, visual resources,

greenhouse gases, accommodation of build out, water reclamation, cogeneration opportunities, lifecycle costs and economic benefits. The existing site shall be evaluated with a baseline of zero or as a vacant site.

- The shortened time schedule from 14 years to 8 years.
- The project is not an upgrade of the existing plant but should be viewed as a new project being proposed on a vacant site.
- The scoping provided for the Environmental Document was insufficient.
- The EIR analysis was insufficient.
- Technical merits of the project including effluent quality discharged through ocean outfall, water reclamation, building height and whether it can be lowered and the visual impacts associated with two-story versus a one-story building;
- The importance of the Household Hazardous Waste Collection facility program to the community.

The alternative analysis provided within the EIR document is sufficient analysis as required under CEQA regulations. There was additional analysis conducted by the district prior to engaging consultants to perform an EIR on the project site. Since August 2006, the Joint Powers Agreement (JPA) Board, which is comprised of both the City of Morro Bay (City) Council and members of the Cayucos Sanitary District (CSD) Board, have been working to develop a FMP for upgrade of the Morro Bay Cayucos Sanitary District (MBCSD) wastewater treatment plant (WWTP) through the twenty-year planning period. During this time, the JPA Board has been presented with various technical topics ranging from regulatory requirements to wastewater and biosolids treatment alternatives, and has consistently provided feedback and direction. Impacts on the receiving waters, the ratepayers in both communities, and local sustainability were topics that framed discussion in seven public meetings and other smaller technical subcommittee meetings. The public meetings were intended to educate the residents of the local community and JPA Board. The result of this process has been the selection of tertiary treatment with offsite solids disposal as the preferred project for upgrade of the WWTP. The decisions made by the JPA Board have supported local sustainability by positioning the community for future water reuse, from this project. Other sites were not pursued due to the additional costs and the fact that the General Plan and the Local Coastal Plan protected this site for a wastewater treatment use.

In response to the Planning Commission desire to analyze the existing site as if it were a vacant site, this is in conflict with the rights afforded to projects under CEQA. Pursuant to Section 15125 the baseline shall be established under the environmental setting portion of the EIR which describes the physical environmental conditions as they exist at the time the Notice of Preparation is published.

The time schedule is part of a settlement agreement and not subject to modification without buy in from all parties.

The project is an upgrade or modernization of treatment facilities. The use, wastewater treatment facilities, is currently on site and will remain in use continually throughout the

process. There will be new structures and processing equipment built on the site as part of the modernization but the use remains the same.

The scoping provided for the Morro Bay Cayucos Sanitary District Wastewater Treatment Plant EIR met all legal requirements under the California Environmental Quality Act.

No details were provided on the inadequacy of the analysis except under the alternatives analysis, please see response above.

Plant processes are a function of the engineered design, existing regulations and our Water Board permit and are not elements reviewed by the Planning Commission except on how these elements may affect the environment.

The hazardous materials facility is operated by a separate entity, relocation of their facility is at their discretion.

ENVIRONMENTAL DETERMINATION:

Section 15151 of the CEQA guidelines provides standards for the adequacy of an EIR: It states: An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main point of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

The City of Morro Bay as the Lead Agency has prepared a Draft Environmental Impact Report (Draft EIR) to provide the public and trustee agencies with information about the potential effects on the local and regional environment associated with the Morro Bay-Cayucos Wastewater Treatment Plant Upgrade (WWTP Upgrade Project or proposed project).

The Draft EIR has been prepared in compliance with the California Environmental Quality Act (CEQA) of 1970 (as amended), codified at California Public Resources Code Sections 21000 et. seq., the Guidelines for California Environmental Quality Act (CEQA Guidelines) in the Code of Regulations, Title 14, Chapter 3, Sections 15000 et. seq., and CEQA-Plus requirements of the State Water Resources Control Board (SWRCB). The proposed project would be implemented in conjunction with the Cayucos Sanitary District (CSD), which shall serve as a Responsible Agency under CEQA.

The Draft EIR describes the proposed project and the existing environmental setting, identifies short-term, long-term, and cumulative environmental impacts, identifies mitigation measures for impacts found to be significant, and provides an analysis of project alternatives. The environmental baseline for determining potential impacts is the date the NOP for the proposed project is published (CEQA Guidelines, Section 15125(a), in this case October 13, 2009.

Significance criteria have been developed for each environmental resource analyzed in Draft EIR. Impacts are categorized as follows:

- Significant and Unavoidable:** mitigation might be recommended but impacts are still significant;
- Less than Significant with Mitigation:** potentially significant impact but mitigated to a less-than-significant level;
- Less than Significant:** mitigation is not required under CEQA but may be recommended; or
- No Impact.**

The level of significance for each impact was determined using significance criteria (thresholds) developed for each category of impacts; significant impacts are those adverse environmental impacts that meet or exceed the significance thresholds; less-than-significant impacts would not exceed the thresholds. The EIR contains a table which identifies the measures that will be implemented to avoid, minimize, or otherwise reduce significant impacts to a less-than-significant level. The EIR concluded that there were no impacts to any environmental resource which could not be mitigated to a level of Less than Significant with Mitigation.

In addition to the requirements contained under the State CEQA regulations, the City also has their own CEQA guidelines. The City's Local CEQA guidelines (Resolution number 25-81) contains the regulations under which the decision making body shall review an Environmental Impact Report (EIR). The following is a brief overview of these regulations:

If the Planning Commission finds that the EIR is adequate and complete, the Planning Commission shall then determine, on the basis of the EIR, the facts presented and these guidelines whether or not, in light of the effects of the project, the project should be:

- A) Approved
- B) Denied
- C) Whether or not alternatives or mitigation conditions should be required to mitigate adverse environmental effects.

Findings: No city agency shall approve or carry out a project for which an Environmental Impact Report has been completed which identifies one or more significant effects of the project unless the body agency makes one or more of the following written findings for each of those significant effects, accompanied by a statement of the facts supporting each finding.

- 1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant environmental effects thereof as identifies in the final EIR.

2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the City of Morro Bay. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

3) Specific economic, social, or other considerations make infeasible the mitigation measures or project alternative identified in the final EIR

4) The findings required by subsection.(a) shall be supported by substantial evidence in the record.

5) The finding number 2 shall not be made if the City agency making the finding has concurrent jurisdiction with another public agency to deal with identified feasible mitigation measures or alternatives.

The EIR is an attachment to this report and due to the lengthy analysis contained in the document is not repeated here in the staff report but is incorporated into this report by reference.

PROJECT FEATURES:

Please refer to the attached Planning Commission staff report for the analysis on project features.

CONCLUSION:

Based on the information contained in this report and all documents referenced within including the Morro Bay Cayucos Sanitary District Wastewater Treatment Plant EIR staff recommends that the City Council approve Resolution Number 07-11 adopting the findings of fact to allow certification of the EIR, Certify the EIR, approve Resolution Number 08-11 adopting the findings of approval for the Coastal Development Permit and Conditional Use Permit and finally conditionally approve Coastal Development Permit CP0-339 and Conditional Use Permit UP0-307.

ATTACHMENTS:

Attachment 1 – Planning Commission Staff Report with exhibits dated December 20, 2010

Attachment 2 – Draft Planning Commission Meeting Synopsis Minutes for December 20, 2010

Attachment 3 – Finding of Fact, MBCSD Wastewater Treatment Plant Upgrade Project, dated January 2011

Attachment 4 – Mitigation Monitoring and Reporting Program, MBCSD Wastewater Treatment Plant Upgrade Final Environmental Impact Report, dated January 2011

Attachment 5 – Appeal Form date stamped December 22, 2010

Attachment 6 – Plans and Visual Simulations



AGENDA NO: Supplement to B-2
MEETING DATE: January 11, 2011

Staff Report

TO: City Council **DATE:** January 6, 2011
FROM: Rob Livick, PE/PLS/Public Services Director
SUBJECT: Appeal of the Planning Commission's decision to deny certification of the Morro Bay Cayucos Sanitary District Wastewater Treatment Plant Environmental Impact Report and denial of the Coastal Development Permit CP0-339 and Conditional Use Permit UP0-307.

SUMMARY:

On January 6, 2011 the City received the attached correspondence from Roger Briggs the Executive Director for the California Regional Water Quality Control Board – Central Coast Region. The letter supports the currently proposed upgrade project and certification of the Final EIR. The letter also reminds the City and Cayucos Sanitary District of failure to comply with the time schedule stipulated in the Settlement Agreement has consequences.

ATTACHMENT:

Attachment 1 – Letter Dated January 6, 2011 from the California Regional Water Quality Control Board – Central Coast Region

Prepared By: RL Dept Review: RL
City Manager Review: _____
City Attorney Review: _____



California Regional Water Quality Control Board
Central Coast Region

Attachment 1



Linda S. Adams
Acting Secretary for
Environmental Protection

895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906
(805) 549-3147 • Fax (805) 543-0397
<http://www.waterboards.ca.gov/centralcoast>

Edmund G. Brown Jr.
Governor

January 6, 2011

Morro Bay City Council
595 Harbor Street
Morro Bay, CA 93442

Honorable City Council Members:

**PENDING ADOPTION OF THE FINAL ENVIRONMENTAL IMPACT REPORT FOR
THE UPGRADE OF THE MORRO BAY-CAYUCOS WASTEWATER TREATMENT
PLANT, SAN LUIS OBISPO COUNTY**

I am writing this letter in support of the proposed wastewater treatment facility upgrade project and to recommend you certify the December 13, 2010, Final Environmental Impact Report (FEIR) for the project and approve the proposed conditional use permit and coastal development permit. The timely completion of the project pursuant to the time schedule spelled out within the December 4, 2008, *Settlement Agreement for Issuance of Permits to and Upgrade of the Morro Bay-Cayucos Wastewater Treatment Plant* (Settlement Agreement) between the Water Board and the Joint Powers Agreement Board (JPA) consisting of the City of Morro Bay and Cayucos Sanitary District is currently dependent on the adoption/certification of the FEIR and accompanying permits. Failure of the JPA to implement the project pursuant to the schedule set forth in the Settlement Agreement may subject the JPA to Water Board enforcement actions, including imposition of monetary liabilities. Moreover, not approving the project will result in delaying required upgrades to the existing wastewater treatment facility that will improve the quality of wastewater discharged to Estero Bay and bring the facility into full compliance with the federal Clean Water Act. The proposed project also sets the stage for water recycling that will decrease the volume of wastewater discharged to Estero Bay over time and help provide sustainable water supplies for the community.

Based on our review of the comments and responses contained within the FEIR, I would like to provide our perspective on several key issues before you.

Although we cannot specifically comment on the consistency of proposed project with the Coastal Act or Local Coastal Plan (LCP), we do not consider the proposed project to be a new development project at a new location, but rather an upgrade to an existing wastewater treatment facility at an existing site currently designated for that use. This

is consistent with our facility permitting activities and oversight of numerous facility upgrade projects. This appears to be the first case within our Region in which various permitting authorities are claiming a wastewater treatment facility upgrade project is a new development project. Using this argument to leverage an alternative project location could result in the project either being stillborn or the increased expenditure of public monies to evaluate, design, permit, build, and operate a new facility at a different location that will likely result in additional and potentially significant and ongoing impacts to public resources above those which have been identified for the proposed project at the existing facility location. The proposed upgrade project is designed to mitigate or completely eliminate various impacts associated with the existing facility and should therefore be considered the environmentally preferred alternative.

Questions and concerns have arisen regarding the proposed facility upgrade design flows (i.e., treatment capacity), which are less than the existing facility design capacity and projected buildout wastewater flows specified within the Estero Area Plan and LCP. Although we agree that the response to comments contained within the FEIR sufficiently addresses this issue (see response to COASTAL-15 on page 10-25), we would like to provide some additional context. General planning documents are useful in estimating buildout wastewater flow conditions, but should not be relied on as the sole basis for determining appropriate design capacity. This is particularly true when more detailed analyses are available such as those which are contained within the Morro Bay Cayucos Sanitary District Wastewater Treatment Plant Facility Master Plan (FMP). The proposed design flows specified within the FEIR as supported by the FMP provide sufficient excess capacity above existing wastewater flows as documented within discharger monitoring reports submitted to our agency. As noted in the FEIR, it is also customary to size wastewater treatment facilities based on the projected buildout flows at the time the facility is expected to reach its useful life and not total projected buildout flows. Furthermore, it should be noted that oversizing wastewater treatment facilities is not only cost prohibitive from both a construction and operational/maintenance standpoint, but can also result in operational problems leading to inconsistent or diminished effluent quality.

In May 2007 the Morro Bay City Council and Cayucos Sanitary District Board of Directors both unanimously approved, independently of each other, an upgrade of the facility to achieve tertiary treatment standards. However, the Settlement Agreement only requires the JPA to upgrade the facility to full secondary treatment in compliance with the Clean Water Act. Consequently, the proposed project goes above and beyond the Settlement Agreement by proposing an upgrade capable of treating 100 percent of the effluent to Clean Water Act secondary treatment standards plus tertiary filtration to initially achieve Title 22 Water Recycling Criteria for "disinfected secondary-23 recycled water" for up to 1.5 million gallons per day (mgd). The proposed tertiary filtration provides additional treatment beyond secondary standards that will result in an initial limited diversion of wastewater for reuse/reclamation via end uses that are immediately

available based on existing demand, allow for increased reuse of up to 1.5 mgd of recycled water, and allow for the future expansion/upgrade of tertiary treatment facilities as new end uses are identified and implemented. The proposed project is forward thinking with regard to water recycling given significant end uses for recycled water have yet to be identified and developed within the area and it clearly sets the stage for the development and implementation of a recycled water master plan. The proposed project is therefore in alignment with the statewide water recycling and conservation goals set forth within the State Water Resources Control Board Recycled Water Policy (Resolution No. 2009-0011) and California's 20x2020 Water Conservation Plan. Given the tertiary filtration portion of the project is not required pursuant the Settlement Agreement or any other existing statutes, we are concerned that a protracted stalemate over the approval of the FEIR or required permits based on potentially unreasonable or unrealistic conditions could result in a JPA decision to scrap the proposed project and implement only the minimum upgrades required to comply with the Settlement Agreement and the Clean Water Act. This would be a significant loss to the local community in improving water supply sustainability.

In conclusion, I urge you to approve the FEIR and adopt the permits in an effort to move this project forward given it will provide significant benefits not only to the communities of Morro Bay and Cayucos, but also to the surrounding communities and the environment. Failure to do so may result in a less desirable project and/or potential Water Board enforcement action pursuant to the Settlement Agreement.

If you have any questions regarding this matter, please contact **Matthew Keeling** at **(805) 549-3685** or at mkeeling@waterboards.ca.gov, Harvey Packard at (805) 542-4639.

Sincerely,



Roger W. Briggs
Executive Officer

S:\NPDES\NPDES Facilities\San Luis Obispo Co\Morro Bay-Cayucos WWTP\FEIR Comment
010510.doc
Facility ID 241479



ATTACHMENT 1

AGENDA ITEM: X-A
ACTION: _____

CITY OF MORRO BAY PLANNING COMMISSION

December 20, 2010

FILE NUMBERS/ADDRESS

Coastal Development Permit (CP0-339)
and Conditional Use Permit (UP0-307)

LEGAL DESCRIPTION (S)

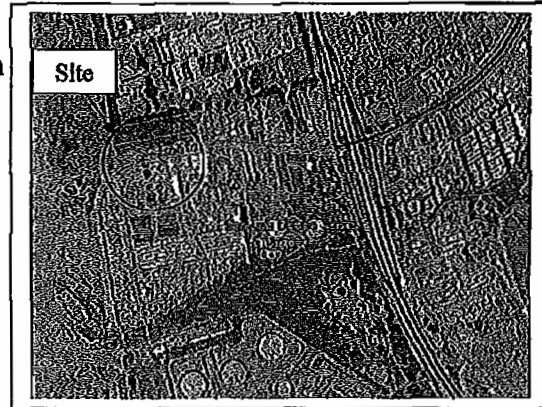
Being a portion of Block 28 of the Atascadero Beach Subdivision in the City of Morro Bay, County of San Luis Obispo State of California, According to a Map Filed in Book 2 at Page 15 of Maps, on July 2, 1917 in the Office of the County Recorder

APN/ADDRESS

APN-066-332-32, 33 & 34, 160 Atascadero

APPLICANT

City of Morro Bay/Cayucos Sanitary District



Vicinity Map

ATTACHMENTS

1. Findings, Exhibit A
2. Conditions, Exhibit B
3. Graphics/Plan Reductions, Exhibit C
4. Chronology of Major Milestones in WWTP Upgrade Project and Settlement Agreement, Exhibit D
5. Environmental Impact Report, Exhibit E
6. Plans, Exhibit F
7. Correspondence from the Cayucos Sanitary District, Exhibit G

STAFF RECOMMENDATION

That the Planning Commission forward a favorable recommendation to the City Council to Certify the EIR and conditionally approve Coastal Development Permit (CP0-339) and Conditional Use Permit (UP0-307) by adopting a motion including the following action(s):

- A. That the Planning Commission forward a favorable recommendation to the City Council via resolution number 01-10 to adopt the Findings included as Exhibit "A" including those pertaining to the completeness and adequacy of the Environmental Impact Report prepared for the project pursuant to the California Environmental Quality Act (CEQA);
- B. That the Planning Commission forward a favorable recommendation to the City Council to conditionally approve Conditional Use Permit (CP0-339) and Coastal Development Permit (UP0-307), subject to the Conditions included as Exhibit "B" and the site development plans, on file with the Public Services Department date stamped November 10, 2010.

PROJECT SUMMARY

The applicant is requesting approval of Conditional Use Permit and Coastal Development Permit for the Morro Bay-Cayucos Wastewater Treatment Plant (WWTP) Upgrade Project. The project will upgrade all onsite facilities. The plant will be constructed to provide full secondary treatment for all effluent discharged through its ocean outfall and to provide tertiary filtration capacity equivalent to a PSDWF of 1.5 mgd. The tertiary filtered effluent would meet Title 22 standards for disinfected secondary-23 recycled water and as such could be used for limited beneficial uses. The project includes construction of facilities including but not limited to buildings, circulation, hardscape and landscaping. Once the upgraded wastewater treatment facilities are complete the existing wastewater treatment facilities will be demolished. The project includes an Environmental Impact Report which identified various concerns associated with the project; however the EIR does not identify any potentially significant impacts which cannot be mitigated to a less than significant level.

PROJECT OBJECTIVES

The objectives of the proposed project are as follows:

- Comply with the secondary treatment standards contained in 40 CFR Part 133;
- Phase out the need for a 301(h) modified discharge permit;
- Minimize flooding impacts onsite at the WWTP and adjoining properties; and
- Accommodate future installation of reclamation capability to meet Title 22 requirements for disinfected tertiary recycled water for unrestricted use.
- Compliance with "Settlement Agreement for Issuance of Permits to and Upgrade of Morro Bay Cayucos Wastewater Treatment Plant" and be fully operational by March 31, 2014.

ENVIRONMENTAL DETERMINATION

Section 15151 of the CEQA guidelines provides standards for the adequacy of an EIR. It states: An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main point of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

The City of Morro Bay as the Lead Agency has prepared a Draft Environmental Impact Report (Draft EIR) to provide the public and trustee agencies with information about the potential effects on the local and regional environment associated with the Morro Bay-Cayucos Wastewater Treatment Plant Upgrade (WWTP Upgrade Project or proposed project).

The Draft EIR has been prepared in compliance with the California Environmental Quality Act (CEQA) of 1970 (as amended), codified at California Public Resources Code Sections 21000 et. seq., the Guidelines for California Environmental Quality Act (CEQA Guidelines) in the Code of Regulations, Title 14, Chapter 3, Sections 15000 et. seq., and CEQA-Plus requirements of the State Water Resources Control Board (SWRCB). The proposed project would be implemented in conjunction with the Cayucos Sanitary District (CSD), which shall serve as a Responsible Agency under CEQA.

The Draft EIR describes the proposed project and the existing environmental setting, identifies short-term, long-term, and cumulative environmental impacts, identifies mitigation measures for

impacts found to be significant, and provides an analysis of project alternatives. The environmental baseline for determining potential impacts is the date the NOP for the proposed project is published (CEQA Guidelines, Section 15125(a), in this case October 13, 2009).

Significance criteria have been developed for each environmental resource analyzed in Draft EIR. Impacts are categorized as follows:

- Significant and Unavoidable:** mitigation might be recommended but impacts are still significant;
- Less than Significant with Mitigation:** potentially significant impact but mitigated to a less-than-significant level;
- Less than Significant:** mitigation is not required under CEQA but may be recommended;
- or
- No Impact.**

The level of significance for each impact was determined using significance criteria (thresholds) developed for each category of impacts; significant impacts are those adverse environmental impacts that meet or exceed the significance thresholds; less-than-significant impacts would not exceed the thresholds. The EIR contains a table which identifies the measures that will be implemented to avoid, minimize, or otherwise reduce significant impacts to a less-than-significant level. The EIR concluded that there were no impacts to any environmental resource which could not be mitigated to a level of Less than Significant with Mitigation.

In addition to the requirements contained under the State CEQA regulations, the City also has their own CEQA guidelines. The City's Local CEQA guidelines (Resolution number 25-81) contains the regulations under which the decision making body shall review an Environmental Impact Report (EIR). The following is a brief overview of these regulations:

If the Planning Commission finds that the EIR is adequate and complete, the Planning Commission shall then determine, on the basis of the EIR, the facts presented and these guidelines whether or not, in light of the effects of the project, the project should be:

- A) Approved
- B) Denied
- C) Whether or not alternatives or mitigation conditions should be required to mitigate adverse environmental effects.

Findings: No city agency shall approve or carry out a project for which an Environmental Impact Report has been completed which identifies one or more significant effects of the project unless the body agency makes one or more of the following written findings for each of those significant effects, accompanied by a statement of the facts supporting each finding.

- 1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant environmental effects thereof as identifies in the final EIR.
- 2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the City of Morro Bay. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

- 3) Specific economic, social, or other considerations make infeasible the mitigation measures or project alternative identified in the final EIR
- 4) The findings required by subsection (a) shall be supported by substantial evidence in the record.
- 5) The finding number 2 shall not be made if the City agency making the finding has concurrent jurisdiction with another public agency to deal with identified feasible mitigation measures or alternatives.

The EIR is an attachment to this report and due to the lengthy analysis contained in the document is not repeated here in the staff report but is incorporated into this report by reference.

BACKGROUND

The WWTP is operated under a National Pollutant Discharge Elimination System (NPDES) Permit (No. CA0047881) issued by the US Environmental Protection Agency (USEPA) and the Central Coast Regional Water Quality Control Board (RWQCB). The current NPDES permit allows for the discharge of a blend of primary and secondary treated effluent to the ocean through the existing 27-inch diameter outfall pipeline. This discharge is in accordance with Section 301(h) of the federal Clean Water Act that modifies the requirement for full secondary treatment in certain cases. MBCSD has made a commitment to the Central Coast RWQCB to phase out the need for the 301(h) modified discharge permit by upgrading the WWTP to at least full secondary treatment by March 2014. See exhibit D for a summary of the project history. The proposed project would construct facilities to provide full secondary treatment for all effluent discharged through its ocean outfall and to provide enhanced treatment with tertiary filtration capacity equivalent to the PSDWF of 1.5 mgd.

COASTAL ACT REGULATIONS REGARDING THE REVIEW OF WASTE WATER TREATMENT FACILITIES

Section 30412 of the Coastal Act pertains to the Wastewater Treatment Facilities and sections C 1, 2 and 3 specifically set down perimeters that the Coastal Commission can review.

Section 30412. C. 1, 2, and 3 states: Any development within the coastal zone or outside the coastal zone which provides service to any area within the coastal zone that constitutes a treatment work shall be review by the commission and any permit it issues, if any, shall be determinative only with respect to the following aspects of the development:

- (1) The siting and visual appearance of treatment works within the coastal zone
- (2) The geographic limits of service areas within the coastal zone which are to be served by particular treatment works and the timing of the use of capacity of treatment works for those service areas to allow for phasing of development and use of facilities consistent with this division.
- (3) Development projects which determine the sizing of treatment works for providing service within the coastal zone.

CONSISTENCY WITH THE LOCAL COASTAL PROGRAM

For the proposed project to be approved, findings must be made that the project is consistent with applicable goals, objectives and policies of the Local Coastal program (as defined above to include the General Plan, the Local Coastal Plan and the implementing zoning regulations). In staff's opinion the proposed project is consistent with the various applicable goals, objectives and policies of the LCP. Below are applicable policies, programs, and objectives that relate to this project.

The Coastal Act establishes a framework for resolving conflicts among competing uses for limited coastal lands. There are policies which spell out the priority of uses. The Coastal Act places as its highest priority the preservation and protection of natural resources including environmentally sensitive habitat areas and prime agricultural lands. On lands not suited for agricultural use, coastal-dependent development, a use which requires a site adjacent to or on the sea to function, has the highest priority. The adopted LCP designates the subject site as an area for coastal dependent development (policy 5.03).

In addition to the overall priority status given to coastal-dependent development there are also specific sections contained within the LCP pertaining to industrial development.

Section 30250(a) states: New residential, commercial or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it, or where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land division, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels. *The proposed project is in compliance with this section as the proposal is to upgrade facilities at the existing site which is within the core of the city with adequate access.*

Section 30250(b) where feasible, new hazardous industrial development shall be located away from existing developed areas. *The upgrade of the WWTP is not new development but instead is a project whose objectives are to improve the processing of the City's wastewater by constructing new facilities and implementing new processes to accomplish this objective. Therefore the project is not in conflict with this policy.*

The LCP establishes two industrial land use categories; General Industry and Coastal-Dependent Industrial Land use. The Coastal-Dependent land use category was specially created to address the industrial land uses which are given priority by the Coastal Act of 1976 for location adjacent to the coastline, such as thermal power plants, seawater intake structures, discharge structure tanker support facilities and other similar uses which must be located on or adjacent to the sea in order to function. The LCP further states that the City of Morro Bay's wastewater treatment facilities are protected in their present location since an important operational element, the outfall line, is coastal-dependent (see policy 5.03). *The proposed project consists of an upgrade to the wastewater facilities at the current protected site, however there will be some relocation of facilities on the site to allow the existing facilities to remain functioning while the new facilities are constructed. In addition, the facilities will continue to use the outfall line as an integral element of the facilities thus firmly establishing the facilities as coastal dependent and securing the WWTP's right to continue to be located at 160 Atascadero.*

The certified LCP also acknowledges the demands on the coastal area for public works-related development and the Coastal Act contain numerous general and specific policies regarding public works-related development. Although the Coastal Act emphasizes the protection, enhancement, and restoration of coastal resources, it also recognizes that public works development is necessary for the social and economic well-being of the state.

Section 30260 states: "Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with the section and sections 30261 and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare, and (3) adverse environmental effects are mitigated to the maximum extent feasible." This Section of the Coastal Act allows special consideration for industrial development that may not be consistent with other Coastal Act policies, yet may be necessary to provide for the public welfare. *The proposed project site is a grouping of many small parcels and includes the wastewater facilities, the City of Morro Bay's corporation yard and a cement plant. As stated in the LCP long term plans for the Wastewater Treatment Plant has always included upgrades and expansions. Policies within the LCP protect the overall site for this coastal dependent use encouraging it to upgrade or expand on the existing site to facilitate reasonable long term viability. It is clear that the proposed project (an upgrade of the Wastewater Treatment Plant at its protected site location) is consistent with the LCP*

There are also two policies (policy 5.03 & 5.04) contained within the LCP which reinforce that the location of the upgraded wastewater treatment facilities is consistent with the LCP.

Policy 5.03 states: The Morro Bay Wastewater Treatment facilities shall be protected in their present location since an important operational element, the outfall line, is coastal-dependent.

Coastal Act requires reserving areas for the WWTP per 30412.d

Policy 5.4 states: In the areas designated for industrial land uses, coastal-dependent uses shall have priority over non-coastal-dependent uses.

The City of Morro Bay has policies which mirror the policies contained within the LCP. They are as follows:

General Plan Program LU-39.3: The Morro Bay Wastewater Treatment facilities shall be protected in their present location since an important operational element, the outfall line, is coastal-dependent. *As stated above this policy as well as those contained in the LCP refer to the facilities as a land use, they do not specifically state the existing plant. Other coastal policies substantiate that the intent of protecting the facilities as a Coastal Dependent Use would allow for the potential expansion or upgrading of facilities to ensure that the site would be viable in the long run.*

General Plan program LU-39.4: In the areas designated for industrial land uses, Coastal-dependent uses shall have priority over non-coastal-dependent uses.

General Plan Program LU-81.1: The City will continue a program of providing wastewater treatment facilities to accommodate the build-out population of 12,195, determined to be the build out figure in Coastal Development Permit NO. 406-01, which permits further expansion of

the wastewater treatment facilities to 2.4 mgd. The certified LCP contains information regarding the sizing of the Wastewater Treatment plant and the community's future needs. The sizing of the plant contained within this document assumes that the plant would continue with the same technologies as those that the plant was operating under in 1988 and the same consumer patterns as the population had in 1988. Today just over twenty years later three issues have had a significant effect on the amount of plant capacity necessary to meet demand. Since 1988, there have been improvements to technology resulting in improved waste water processing, the Morro Bay consumer has embraced conservation, and finally the community growth has not kept up with population projections contained in the LCP.

Typically, the capacity of a wastewater treatment plant is upgraded incrementally, often in 20 year increments, to meet demand for the projected growth of that time frame. The proposed plant upgrade was sized to accommodate the growth that is projected to occur within a time frame ending in 2030. This timeframe is consistent with what is estimated to be the life span of this upgrade. The population accommodated by this plant upgrade did not consider total community build out of 13,500 as projected in the LCP but instead utilized the projected population growth for 2030 as provided by the San Luis Obispo Council of Governments of between 11,910 and 12,610. In addition, the City's population is constrained by Measure F, which limits the City's overall population to 12,200. Increases to this figure would require a vote of the people. As such a WWTP design capacity based on a population of 12,500 for Morro Bay is appropriate. The Estero Area Plan which governs Cayucos calls for a full build-out of Cayucos by 2022 with a population of 4,765. The proposed project assumes a population of 5,730 in Cayucos by the year 2030. As with any public facility there is a balancing act that must occur between providing sufficient resources for projected growth and over sizing facilities for growth that is far into the future. Over sizing facilities can be growth inducing and costly as the additional cost associated with the increased capacity are realized. So the sizing of the plant as proposed is consistent with the LCP as it provides the necessary capacity for orderly and well-planned growth consistent with the policies in the LCP, Measure F and the growth trends projected by the regional planning agency.

SITE CHARACTERISTICS

Adjacent Zoning/Land Use			
North:	C-VS (PD) Vacant	East:	C-VS (PD) Trailer park
South:	M-1 (PD/I), Interim Use of Trailer storage	West:	C-VS (PD) Short term visitor serving trailer park & OA-1 (PD) Beach 7 Ocean

Site Characteristics	
Site Area	5.34 acres
Existing Use	Waste water Treatment Plant, City Maintenance Yard & Cement Plant
Terrain:	The project site is located within the coastal plain and contains a slope of less than 20 percent.
Vegetation/Wildlife	Urbanized site with landscaping
Archaeological Resources	The project area is considered to have high archaeological sensitivity.
Access	Atascadero Road

General Plan, Zoning Ordinance & Local Coastal Plan Designations	
General Plan/Coastal Plan Land Use Designation	General (Light) Industrial
Base Zone District	Light Industrial (M-1)
Zoning Overlay District	Planned Development (PD) & Interim use (I) overlay zone.
Special Treatment Area	N/A
Combining District	N/A
Specific Plan Area	N/A
Coastal Zone	Yes, within the appeals jurisdiction

PLANNED DEVELOPMENT (PD)

The PD Overlay elevates the level of review for all development to the Planning Commission via the conditional use permit process. For projects located on public property or on private property exceeding one (1) acre, the PD Overlay requires a heightened review process involving concept plans and precise plans and action by both the Planning Commission and City Council. The proposed project is subject to this procedural requirement because it is over one acre in size and on public property.

The PD Overlay also allows flexibility from strict application of zoning standards, such as density and setbacks, where a better design or public benefit would result. As stated in Section 17.40.030(A) of the Zoning Ordinance, the purpose of the PD Overlay designation is:

“...to provide for detailed and substantial analysis of development on parcels which, because of location, size or public ownership, warrant special review. This Overlay Zone is also intended to allow for the modification of or exemption from the development standards of the primary zone which would otherwise apply if such action would result in better design or other public benefit.”

Finally, the site is located in Interim use (I) overlay zone. This overlay zone is for certain properties being held for future use. This would not pertain to the majority of the site which will have permanent uses; it may pertain to the area of the site which will be left vacant after decommissioning of the existing plant.

PROJECT FEATURES

The Use Permit approval sought by the applicant is a concept plan level approval. Section 17.40.030.F.1 states that the plans submitted for a conceptual plan shall be general development plans. The plans submitted show the overall site layout, the height, conceptual design and exterior materials of the buildings and visual simulations of the buildings on the site. The precise plan will contain a specific development plan showing precise location and dimensions of all structures, parking and landscaping. The submittal will also include fully developed architectural elevations of all structures, signs and fencing including colors and material of construction. The landscape plan will be submitted that show plant materials, type and size, and engineering plan will be submitted showing site grading, amount of cut and fill including finished grades and proposed drainage facilities.

Design of the Buildings:

The residuals facility, operations building and the maintenance building are designed with a consistent architectural theme that is compatible with the project site and its surroundings. Potential exterior treatments include reinforced concrete, concrete masonry block or a

combination of the two materials. Concept designs for the new WWTP facilities are included as Exhibit C.

Landscaping:

Perimeter landscaping will include trees, bushes or vines to provide a natural screening of the WWTP from public view. Landscaping within the fence line of the new WWTP will be minimal to reduce maintenance.

Parking Spaces & Onsite Circulation:

The site plan indicates the provision of 15 parking spaces and a new road which provides access to the new facility. The project is required to provide at least 11 parking spaces one of which shall be van accessible. The project has proposed 15 parking spaces with no accessible space. A condition has been placed on the project to provide the accessible space.

Public Improvements:

No new frontage improvements have been proposed. The site has all frontage improvements already existing. The project is conditioned to provide minor frontage improvements such as the planting of street trees and reconstruction of disturbed frontage or damaged improvements.

Sustainable features:

The new WWTP will be designed to incorporate sustainable features such as the following:

- Use of existing site results in a lower environmental disturbance than would occur with the development of a new site.
- Utilization of durable, easy to maintain materials (like concrete block), ensures a long life for the buildings and reduced environmental impacts of consistent maintenance (i.e. painting).
- Selection of regional materials that are produced within a relatively close proximity to the site reduces the amount of embodied energy of a product (less environmental impact from shipping overseas or trucking from across the states).
- Low-emitting materials will ensure that the building occupants are staying healthy and safe. When possible, all adhesives, sealants, paints, flooring, and composite wood products would contain low to no VOC's.
- By controlling indoor chemical and pollutant sources, building occupant exposure to potentially hazardous particulates and chemical pollutants can be minimized.
- Daylighting the interior space with glass transom windows will insure that all occupied rooms will receive natural light.
- Views will help provide the building occupants a connection to the outdoors through the introduction of daylight and views to regularly occupied areas of the building.
- Low flow modern fixtures will provide the restrooms and break areas with a water reduction compared to existing facilities

Design Standards for the M-1 district

	M-1 Zone District	Proposed Plan
Setbacks Front:	25 feet	Approximately 300 feet
Side Interior: Exterior:	0 feet N/A	Meets Minimum N/A
Rear:	0 feet	Meets minimum standard
Lot Coverage	90% maximum lot coverage	Approximately 40%
Building Height	30 feet. An increase in height is allowed in the M-1 zone for public buildings not to exceed 45 feet upon the securing of a conditional use permit, provided that the front, rear and side yards shall be increased one foot for each one foot by which such building exceeds the height limit of the district	Maintenance building is 24 feet and the Operations building is 26 feet above finished. These are the only two story buildings proposed. *
Parking	11 parking spaces 1 van accessible space required	15 spaces provided (total building square footage is 5,210, parking is 1 per 500 square feet for a total of 11 spaces)

- Note: Finish grade is dependent on the processing of a letter of map amendment through FEMA. Finish grade shall be one foot above the 100 year water surface elevation. This will add between four and six feet of fill across the site to comply with the City's Flood Damage Prevention Regulations (MBMC14.72)

PUBLIC NOTICE

Notice of this item was posted at the site and published in the San Luis Obispo Telegram-Tribune newspaper on December 10, 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

As documented in this staff report the project as proposed and conditioned is in compliance with the goals and policies of the Local Coastal Plan, General Plan and the Zoning Ordinance. Therefore staff is recommending that the Planning Commission forward a favorable recommendation to the City Council for both the Coastal Development Permit and the Use Permit subject to the conditions as stated in Exhibit B and all the mitigations contained in the EIR.

Report prepared by: Kathleen Wold, Planning Manager

RESOLUTION NO. 01-10

A RESOLUTION OF THE PLANNING COMMISSION OF MORRO BAY MAKING THE FINDINGS FOR A RECOMMENDATION OF APPROVAL TO THE CITY COUNCIL FOR THE WASTEWATER TREATMENT PLANT PROJECT INCLUDING THE CEQA, CONDITIONAL USE PERMIT AND COASTAL DEVELOPMENT FINDINGS

THE PLANNING COMMISSION
City of Morro Bay, California

WHEREAS, on December 20, 2010 the Planning Commission did hold a public hearing, received public testimony, both written and oral, and after closing the public hearing fully considered the various issues surrounding the case; and

WHEREAS, public meetings were held on October 4, 2010, October 14, 2010 and October 28, 2010 for taking public input on the draft EIR and

WHEREAS, the Commission made findings required by the California Environmental Quality Act (CEQA) and the City of Morro Bay procedures for implementation of CEQA; and

WHEREAS the Planning Commission made findings in Exhibit A required for the approval of a Coastal Development Permit and Conditional Use Permit and;

NOW, THEREFORE, BE IT RESOLVED that the recitations are true and correct and constitute the finding of the Planning Commission on this matter and:

1. That the Planning Commission hereby recommends certification of the Morro Bay -Cayucos Wastewater Treatment Plant Upgrade Final Environmental Impact Report dated December 2010
2. That the Planning Commission hereby recommends approval of the Coastal Development Permit and the Conditional Use Permit for the Morro Bay -Cayucos Wastewater Treatment Plant Upgrade Project subject to the conditions as contained in Exhibit B.

PASSED AND ADOPTED by the Planning Commission of the City of Morro Bay, California, at a regular meeting held on the 20th day of December 2010, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

, Chairperson

Rob Livick, Planning Commission Secretary

EXHIBIT A:
FINDINGS

California Environmental Quality Act (CEQA)/Local CEQA Guidelines:

That for purposes of the California Environmental Quality Act, an Environmental Impact Report (EIR) has been conducted for Wastewater Treatment Plant Project (Use Permit UP0-307 and Coastal Development Permit (CP0-339). The EIR is adequate and complete and satisfies all CEQA requirements.

Local CEQA guideline findings: No city agency shall approve or carry out a project for which an environmental impact report has been completed which identifies one or more significant effects of the project unless the body agency makes one or more of the following written findings for each of those significant effects, accompanied by a statement of the facts supporting each finding.

- 1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant environmental effects thereof as identifies in the final EIR. *The EIR contains mitigations which reduce all environmental impacts to a level of less than significant.*
- 2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the City of Morro Bay. Such changes have been adopted by such other agency or can and should be adopted by such other agency. *N/A*
- 3) Specific economic, social, or other considerations make infeasible the mitigation measures or project alternative identified in the final EIR. *N/A*
- 4) The findings required by subsection (a) shall be supported by substantial evidence in the record. *The Planning Commission has reviewed the project EIR and finds that the document is complete and adequate.*
- 5) The finding number 2 shall not be made if the City agency making the finding has concurrent jurisdiction with another public agency to deal with identified feasible mitigation measures or alternatives. *N/A*

Conditional Use & Coastal Development Permit Findings

The Planning Commission finds that the use, a wastewater treatment facility, is an allowable use in the M-1 (Light Industrial) district as it has been determined that the use is similar and consistent with the General Plan and Local Coastal Plan.

That the project (Wastewater Treatment Plant) is an allowable use within the M-1 Zone District and is also in accordance with the certified Local Coastal Program and the General Plan for the City of Morro Bay based on the analysis and discussion in the attached staff report; and

The establishment, maintenance, or operation of the use applied for will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use as the project is consistent with all applicable zoning and plan requirements as indicated in the attached staff report; and

The use will not be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the City since the project, as conditioned, will be conducted consistent with all applicable City regulations, as indicated in the attached staff report.

The Planning Commission finds that the project EIR is adequate and complete and has determined based on the EIR, the facts presented, the local CEQA guidelines and in light of the effects of the project that the project should be approved subject to proposed project mitigations and conditions.

EXHIBIT B
CONDITIONS OF APPROVAL

STANDARD CONDITIONS

This permit is granted for the land described in the staff report dated December 20, 2010 and referenced above for the project depicted on the attached plans labeled "Exhibit F", date stamped November 10, 2010 on file with the Public Services Department, as modified by these conditions of approval, and more specifically described as follows:

An upgrade of all onsite facilities at the Wastewater Treatment Plant. The plant will be constructed to provide full secondary treatment for all effluent discharged through its ocean outfall and to provide tertiary filtration capacity equivalent to a PSDWF of 1.5 mgd. The tertiary filtered effluent would meet Title 22 standards for disinfected secondary-23 recycled water and as such could be used for limited beneficial uses. The project includes construction of facilities including but not limited to buildings, circulation, hardscape and landscaping. Once the upgraded wastewater treatment facilities are complete the existing wastewater treatment facilities will be demolished.

1. **Precise Plan Submittal:** A Precise Plan must be submitted to the Planning Commission within one year from the date of City Council approval or approval of the State Coastal Commission where said plan requires their approval. Without further action, concept plans shall automatically become null and void after one year has elapsed.
2. **Changes:** Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Director of Public Services. Any changes to this approved permit determined not to be minor by the Director shall require the filing of an application for a permit amendment subject to Planning Commission review.
3. **Compliance with the Law:** (a) 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 (b) This project shall meet all applicable requirements under the Morro Bay Municipal 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.
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:** The applicant's establishment of the use and/or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed here on shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Director of Public Services 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. Acceptance of Conditions: Prior to obtaining a building permit the applicant shall file with the Director of Public Services written acceptance of the conditions stated herein.
7. State and County Compliance: Prior to the any final issued for the project the applicant shall demonstrate compliance with all State and County regulations and provide documentation to the Public Services Department.
8. 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. on weekdays 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.
9. Dust Control: Prior to issuance of a grading permit, a method of control to prevent dust, construction debris, and windblown earth problems shall be submitted to and approved by the Building Official to ensure conformance with the performance standards included in MBMC Section 17.52.070.
10. Screening of Equipment/Utility Meters/Fencing: All roof-mounted air conditioning, or heating equipment, vents, ducts and/or utility meters shall be screened from view from adjoining public streets in a manner approved by the Director of Planning and Building. Prior to building permit issuance, the approved method of screening shall be shown on the project plans.
11. Timing of Landscaping: Prior to issuance of a final Certificate of Occupancy, all required plantings, groundcover and irrigation systems shall be in place to the satisfaction of the Director of Planning & Building. The landscape consultant shall provide a watering schedule and certify that all plantings and irrigation systems have been installed pursuant to the approved plans prior to issuance of the final Certificate of Occupancy.
12. Maintenance of Landscaping: All required plant materials shall be maintained in accordance with the watering schedule as specified in the approved landscape plan notes. All landscaping shall be cared for, maintained, watered, fertilized, fumigated, pruned and kept in a healthy growing condition for the life of the project. Where required plant(s) have not survived, it shall be promptly replaced with new plant materials of similar species, functional, size, and characteristics as specified in the approved landscape plant notes.
13. 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 and implementation of any protective measures as determined by the Director of Planning & Building.

14. Property Line Verification: It is owner's responsibility to verify lot lines. Prior to foundation inspection the lot corners shall be staked and setbacks marked by a licensed professional.

PLANNING CONDITIONS

1. Parking: In accordance with MBMC Chapter 17.44 a minimum of 11 parking stalls shall be provided. One space shall be a van accessible space.
2. Parking lot: The Precise Plan submittal shall include a fully dimensioned parking lot plan. The plan shall include the required landscape planters and landscaping. The design of the parking facilities shall be in accordance with all the standards as set forth within Chapter 17.44.
3. Lot Line Adjustment or Lot Merger: The project as proposed depicts structures that are located across property lines, which is not allowed by the Morro Bay Municipal Code. The applicant shall submit an application for either a lot line adjustment or lot merger in order to bring the project into conformance.

BUILDING CONDITIONS

1. Precise Plan Submittal: At the time of precise plan submittal, the applicant shall submit a plan for the phasing of construction, demolition and the construction of other site improvements.
2. Accessibility: At the time of precise plan submittal, the project plans shall depict those site elements that are required for handicapped accessibility, including a van accessible parking space, accessible paths of travel to building entrances, and an accessible path of travel to the public way.

ENVIRONMENTAL CONDITIONS

1. Environmental Impact Report: All mitigations contained in the Environmental Impact Report entitled "MORRO BAY-CA YUCOS WASTEWATER TREATMENT PLANT UPGRADE" shall be incorporated as conditions of approval.

FIRE CONDITIONS

1. Fire Safety During Construction and Demolition: In the course of construction, alteration, or demolition, including those in underground locations, compliance with 2007 California Fire Code, Chapter 14 and NFPA 241, is required.
2. Fire Protection in Wastewater Treatment and Collection Facilities (NFPA 820): This standard establishes minimum requirements for protection against fire and explosion hazards in wastewater treatment plants and associated collection systems, including the hazard classification of specific areas and processes, compliance with this standard is required.
3. Fire Protection Systems (2007 California Fire Code, Chapter 9 and NFPA 820, Chapter 7): These chapters specify where fire protection systems (Fire Sprinkler, Alarm, and Standpipe Systems) are required and apply to the design, installation, inspection,

operation, testing and maintenance of all fire protection systems. The plan identifies a number of different occupancies where automatic fire sprinklers are required, based on their hazard classification, as outlined in CFC Section 903, and shall be addressed during fire sprinkler plan submittal.

4. Hazardous Materials-General Provisions (2007 California Fire Code, Chapter 27 and NFPA 45): Prevention, control and mitigation of dangerous conditions related to storage, dispensing, use and handling of hazardous materials shall be in accordance with the above chapters.
5. Fire Apparatus Access: Fire apparatus access roads shall be provided and maintained in accordance with CFC Chapter 5 and Appendix D.
6. Fire-Flow Requirements for Buildings: Determination of fire-flows for buildings shall be in accordance with CFC Appendix B.
7. Fire Hydrant Locations and Distribution: Fire hydrants shall be provided for the protection of buildings, or portions, in accordance with CFC Appendix C.

PUBLIC WORKS

1. Damage to City Facilities: Relocate/rebuild any City facility damaged or removed due to construction.
2. Stormwater Treatment: The project shall provide stormwater treatment for all improved areas of the site.
3. Design Standards: Design Standards for Structural or Treatment Control BMPs
4. Post-Construction Treatment Control BMP: Post-construction treatment control BMP incorporate, at a minimum, either a volumetric or flow based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) stormwater runoff:

Volumetric Treatment Control BMP

- a.) The 85th percentile 24-hour runoff event determined as the maximized capture stormwater volume for the area (0.75in/24-hr), or equivalent method to be approved by the City Engineer.

Flow Based Treatment Control BMP

- a.) The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the area ($2 \times 0.193 \text{ in/hr} = 0.385 \text{ in/hr}$); or equivalent method to be approved by the City Engineer.

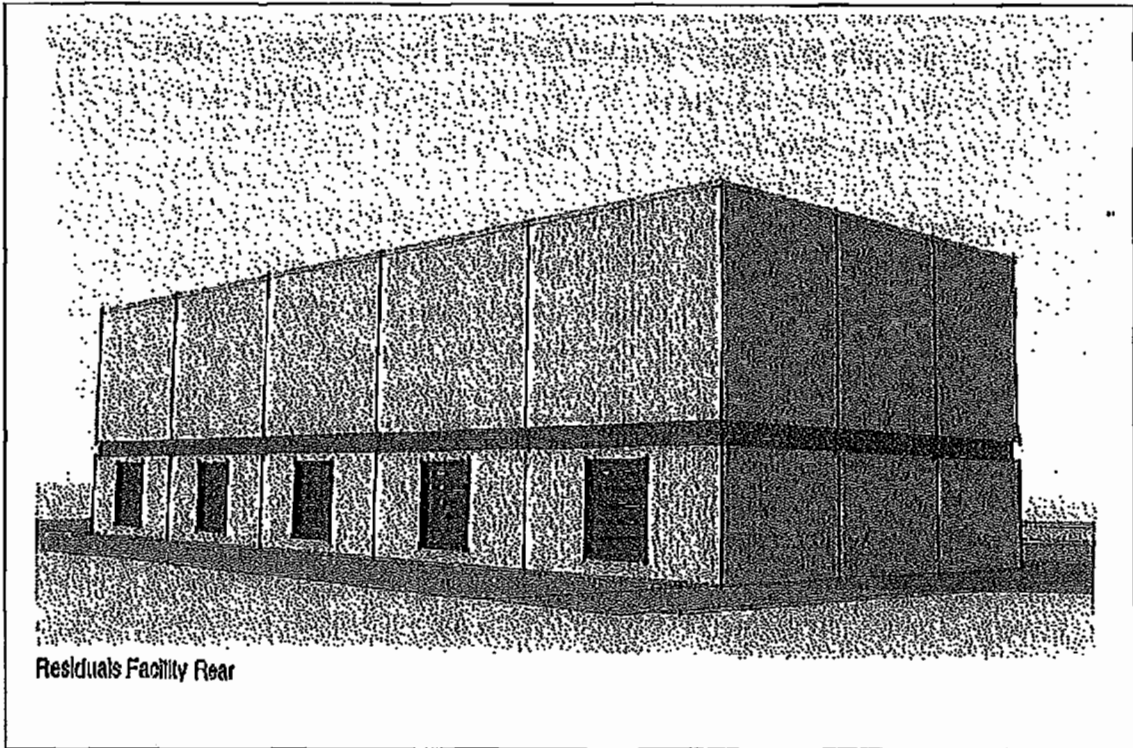
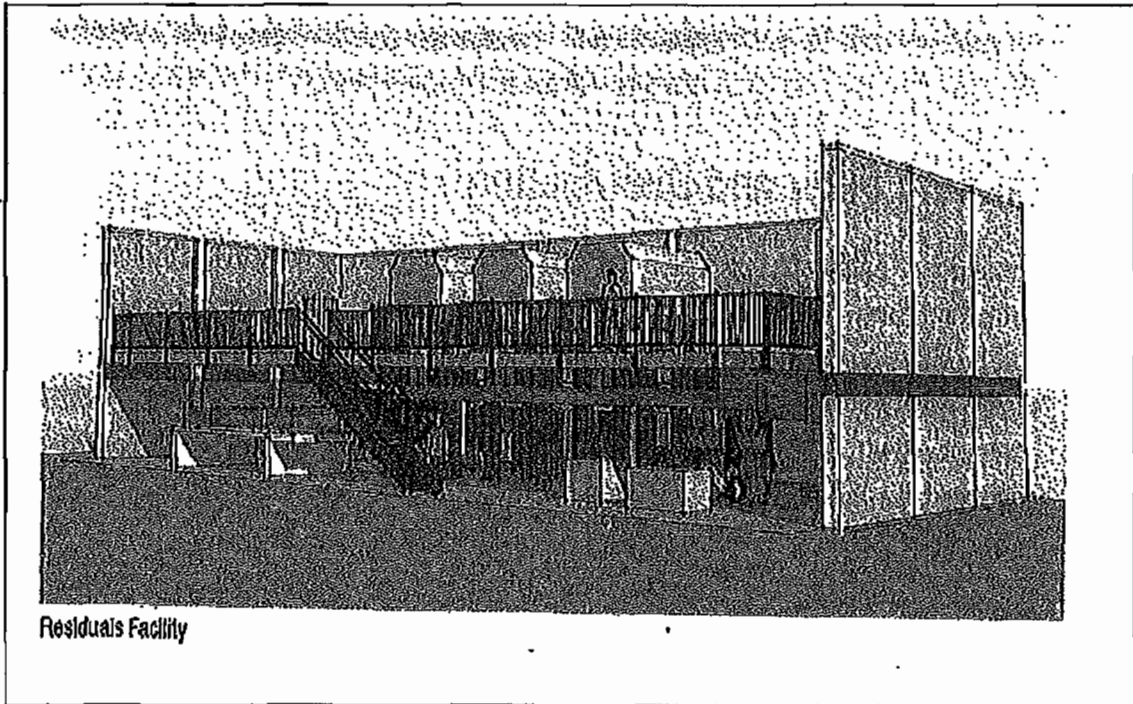
5. Driveway Approach: The commercial driveway approach shall have a minimum pan width between 24 and 35 feet. The driveway approach near the curve in Atascadero Rd shall meet the minimum sight distance. The minimum distance from the top of the approach to the BCR of the curve shall be the curb return radius plus five feet.
6. Stabilization: Include a plan for final stabilization of the entire site.

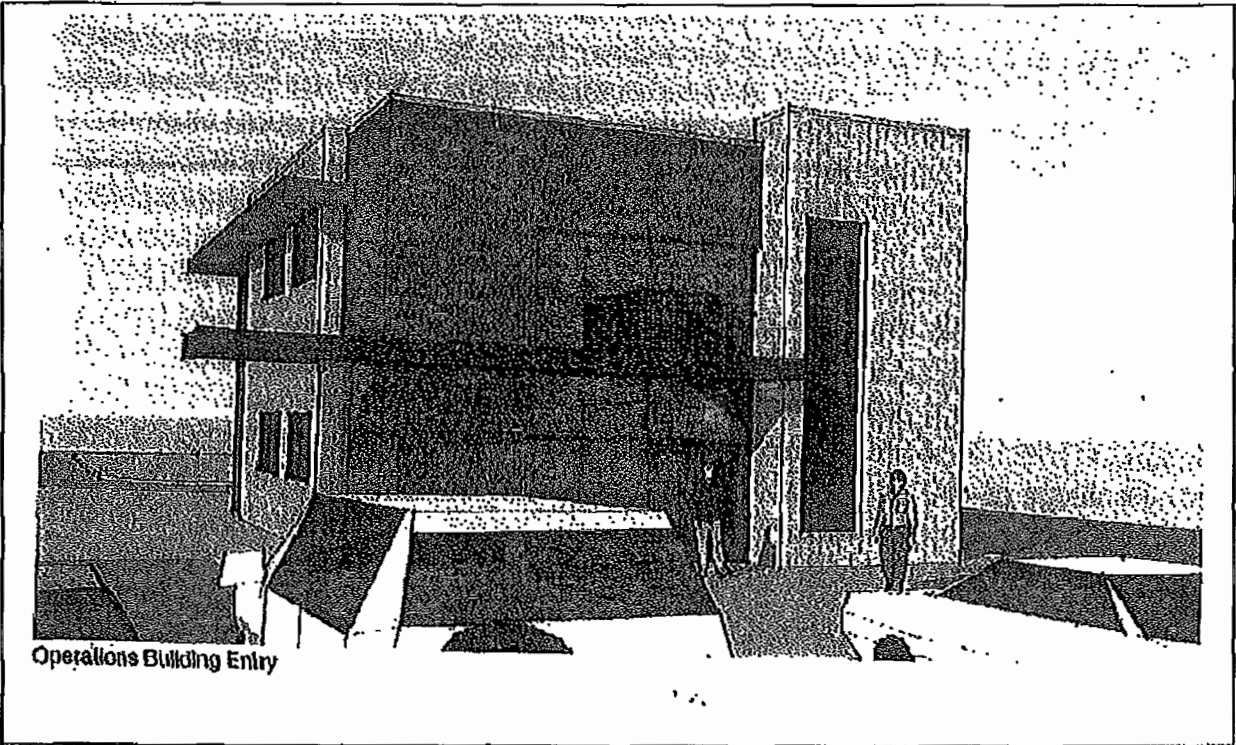
7. Household Hazardous Waste Facility: Precise plan shall provide a space for the IWMA Household Hazardous Waste facility.

The following items shall be included with the building permit submittal:

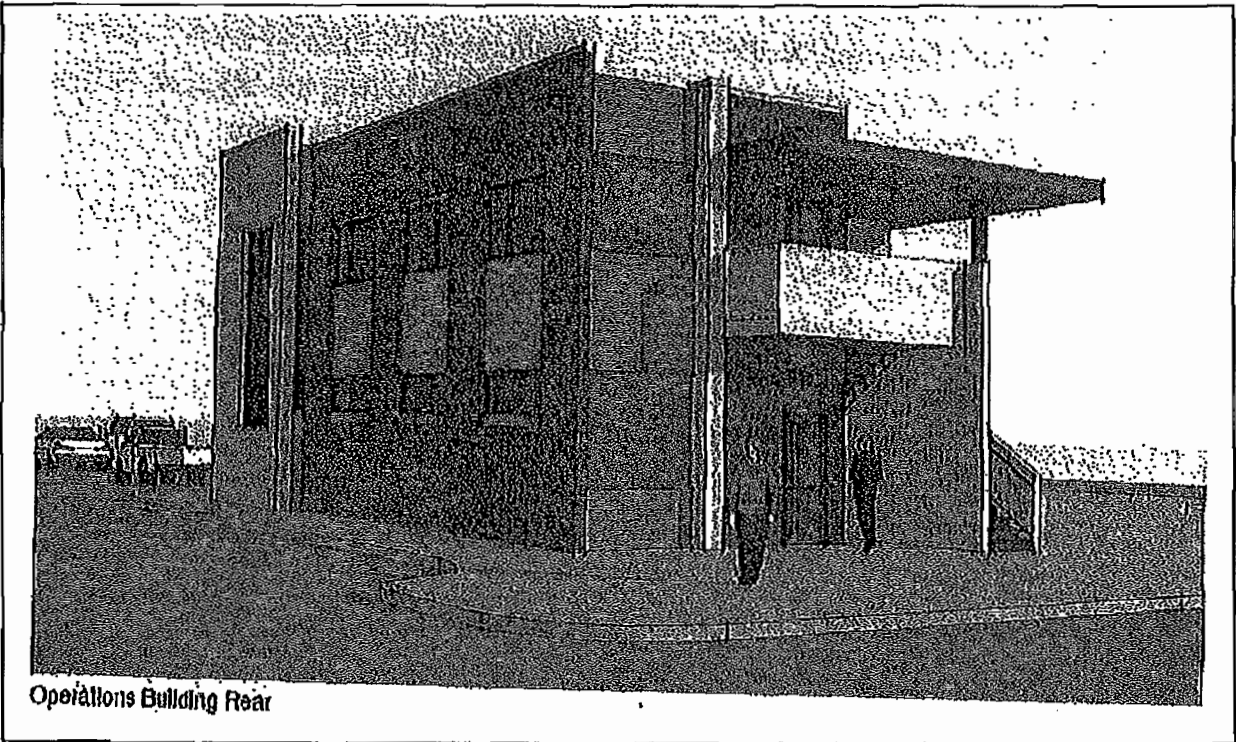
8. Conditional Letter of Map Revision: A Conditional Letter of Map Revision (CLOMR), based on the required fill, shall be completed prior to issuance of a building permit. The CLOMR shall be followed up with a Letter of Map Revision (LOMR) prior to final inspection and acceptance. The applicant/developer shall pay the Flood Hazard Development permit fee of \$174 at building permit submittal.
9. Frontage improvements: ADA driveway approaches are required at any proposed driveways along Atascadero Rd. Any proposed driveways shall meet City standard B-6. Any damage to City facilities, i.e. curb, gutter, sidewalk, street, sewer line, water line, or any public improvements shall be repaired at no cost to the City of Morro Bay. The existing driveway shall be abandoned and City standard sidewalk, curb and gutter shall be built. Street trees shall be planted from the City's master tree list located behind the sidewalk. One street tree shall be planted for every 50 feet of the property frontage.
10. Storm Drain Pipe: Repair or replace the storm drain pipe (located along the Atascadero Rd. property frontage) and reconstruct the outlet to provide adequate stormwater conveyance from the property.
11. Intersection at Highway One: Pay a pro rata share for signalization and related improvements at the intersection at Highway One, Highway 41, and Main Street. The said fee shall be proportional to increased traffic generated by the subject project as said intersection as estimated by a traffic engineer and subject to review and approval by the City Engineer. The traffic volume on Atascadero Road at Highway One is 2,800 ADT. The estimated cost of the improvements to the intersection is \$980,000 base on the 1988 Circulation Element of the General Plan (ENR=4519). Present day cost is estimated at \$1,940,000 (ENR=8951).
12. WDID Permit Numbers: Provide the WDID permit numbers for the Construction and Industrial Discharge permits issued by the State Resources Water Quality Control Board.
13. Erosion and Sediment Control Plan: Provide an erosion and sediment control plan including dust control measures. The plan shall include BMP's to control erosion and sedimentation on the site. The applicant/developer shall follow the City's erosion and sediment control manual which can be viewed on the City website www.morro-bay.ca.us/stormwater under quick links.

EXHIBIT C





Operations Building Entry



Operations Building Rear

EXHIBIT D



City of Morro Bay

Morro Bay, CA 93442
(805) 772-6200

Chronology of Major Milestones in WWTP Upgrade Project

January 2003: RWQCB sends a letter to MBCSD urging them to look to the future and to upgrade the plant so a 301(h) modified discharge permit would no longer be required.

January 2003: City and District form a subcommittee to study the long term future of the plant.

July 2003: MBCSD submits a timely application to RWQCB for renewal of the 301(h) modified discharge permit.

September 2003: MBCSD contracts with Cannon Associates to analyze feasibility of EQ Basin and upgrades to trickling filters to negate the need for a 301(h) permit.

February 2004: RWQCB administratively extends 301(h) permit until renewal process can be completed.

June 2004: MBCSD receives Alternatives Evaluation Report from Cannon Associates. The report states, "Prior to investing significant funds in the implementation of flow equalization and trickling filter modifications, a more comprehensive capacity evaluation of the entire WWTP (both liquid and solids streams) should be conducted based on potentially more stringent effluent discharge requirements."

June 2004: MBCSD approves a recommendation by the WWTP (MBCSD) Subcommittee that the governing bodies of the MBCSD approve a process that will explore the possibility of upgrading the plant on a fifteen-year Time Schedule; MBCSD authorizes staff to prepare an RFP for development of a Time Schedule for upgrading the plant.

November 2004: MBCSD awards Carollo Engineers contract for development of a Time Schedule for upgrades to the WWTP.

April 2005: Carollo presents a 15 Year Time Schedule to the MBCSD; Carollo told to shorten Time Schedule and get the upgrade done "as quick as possible" Environmental groups including Natural Resource Defense Council, Surfrider, Sierra Club begin an intensive lobbying campaign to shorten the time schedule.

FINANCE
595 Harbor Street

ADMINISTRATION
595 Harbor Street

FIRE DEPT.
715 Harbor Street

PUBLIC SERVICES
955 Shasta Avenue

HARBOR DEPT.
1275 Embarcadero Road

CITY ATTORNEY
595 Harbor Street

POLICE DEPT.
850 Morro Bay Boulevard

RECREATION & PARKS
1001 Kennedy Way

May 2005: MBCSD adopts a revised 9.5 year Time Schedule for upgrading the plant; Compliance date is June 23, 2015; MBCSD agrees to form a subcommittee composed of two members of each governing body.

September 2005: MBCSD directs staff to prepare RFP for Facility Master Plan.

September 2005: RWQCB staff sends a draft Settlement Agreement for review by MBCSD staff. Settlement Agreement contains the following monetary penalties for not completing the project as outlined in the 9.5 Year Time Schedule.

December 2005: MBCSD approves "Settlement Agreement for Issuance of Permits to and Upgrade of Morro Bay Cayucos Wastewater Treatment Plant." The Agreement contains the 9.5 Year Timeline for upgrading the plant.

December 2005: RWQCB public notices draft NPDES permit for public comment; NRDC submits 75 page comment letter titled "Time is of the Essence"; comments also submitted by Surfrider, Sierra Club, and other environmental organizations demanding a shorter Time Schedule for upgrading the plant.

April 2006: MBCSD agrees to shorten the Time Schedule to the current 8 Year Schedule due to intense pressure from the NRDC, Surfrider and other various environmental organizations despite City and District staffs and Carollo Engineers recommendation not to shorten the Schedule. Attached hereto is the 8 Year Conversion Schedule.

April 2006: MBCSD awards contract for Facility Master Plan to Carollo Engineers.

May 2006: RWQCB and EPA hold a joint hearing on the renewal of the 301(h) permit; outcome of the hearing was the continuance of the hearing until US Fish & Wildlife Service and USEPA perform an informal Section 7 consultation on the effects of the discharge on sea otters and the Balanced Indigenous Population.

June 2006: MBCSD contracts with Carollo Engineers for the development of a Facility Master Plan. The MBCSD meets regularly for the next year to discuss and consider the recommendation in the draft FMP; Environmental organizations continue lobbying for a shorter schedule with tertiary treatment.

December 2006: MBCSD awards a joint contract for the preparation of Draft Revenue Programs for the two agencies for establishing rate structures capable of meeting the SRF loan requirements.

December 2006: City Council awards contract to Cannon Associates for the City of Morro Bay Wastewater Treatment Alternatives in the Chorro Valley.

May 2007: City accepts Chorro Valley Wastewater Treatment Alternatives in the Chorro Valley analysis developed by Cannon Associates. Study concluded that construction of a stand alone treatment facility in the Chorro Valley with a creek discharge is a viable option and they provide revised project costs estimates of \$68.7M.

May 2007: Cayucos Board votes to include tertiary treatment in recommended project (extended aeration (ox ditch) followed by filtration); City delays decision pending more comparison of treatment alternatives.

August 2007: City of Morro Bay votes to include tertiary treatment in the recommended project, ox ditch with filtration.

September 2007: MBCSD adopts the draft FMP, with the recommended project alternative being the rehabilitation and upgrade of the existing plant location with an oxidation ditch with tertiary filtration.

October 2007: Cayucos Sanitary adopts Resolution 2007-6 establishing new wastewater user fees schedule. Resolution follows the Prop 218 notification process.

November 2007: MBCSD approves RFP for environmental review and analysis for the upgrade project.

November 2007: Morro Bay adopts Resolution 55-07 establishing new wastewater user fees schedule. Resolution follows the Prop 218 notification process.

November 2007: MBCSD public notices RFP for Environmental Services for the WWTP upgrade project.

January 2008: MBCSD receives letter from US Fish & Wildlife that they had concurred with the USEPA determination that the continued ocean discharge from the plant is not likely to adversely effect the sea otter or brown pelican; this determination allows permit renewal process to resume.

May 2008: MBCSD awards contract for Environmental Review Process for the upgrade project to Environmental Science Associates (ESA).

October 2008: A Notice of Preparation (NOP) of an Environmental Impact Report for the upgrade project was public noticed, with a thirty day comment period.

December 2008: RWQCB and USEPA vote to renew the 301(h) modified discharge permit; permit includes the Settlement Agreement and the 8-Year Time Schedule that calls for the plant to achieve full secondary compliance no later than March 2014. Attached is the 8-Year Conversion Schedule.

January 2009: The California Coastal Commission determined that the 301(h) modified discharge permit complies with the California Coastal Zone Management Act.

January 2009: The Natural Resources Defense Council (NRDC), The Otter Project, the Environmental Center of San Luis Obispo, and the Santa Lucia Chapter of the Sierra Club file a petition with the State Water Resources Control Board (SWRCB) titled: "Petition For Review of Central Coast Regional Water Board Action of Adopting Order NO. R3-2008-0065, NPDES No. CA0047881." The petitioners request that this Petition be held in abeyance, and reserve the right to supplement the legal arguments and authorities in support of this Petition. On January 8, the SWRCB responded to the NRDC stating that they will hold the Petition in abeyance. It is staff's understanding that the NRDC and the other groups filed the Petition to ensure that the City and District adhere to the 8 Year Time Schedule for upgrading the plant to tertiary treatment.

March 2009: MBCSD receives a renewed 301(h) discharge permit, the permit is valid until March 2014.

June 2009: MBCSD staff informs the Council and District Board of the results of the Flood Hazard Analysis conducted by Wallace Group and the potential serious implications of this report.

August 2009: Amendment No. 1 to the FMP was presented at the MBCSD meeting; Amendment discusses moving treatment facility to the area currently being occupied by the sludge drying beds and/or the trailer storage area.

September 2009: The Council and District Board vote to designate the property to the south as the new treatment plant site and conduct the according environmental analysis; the Council and District Board reaffirmed their designation of the oxidation ditch with filtration as the recommended treatment technology.

October 2009: MBCSD public notices an RFP for Engineering Design Services.

October 2009: A revised Notice of Preparation was public noticed; the revised NOP includes a modified project description that reflects construction of a new treatment plant next to the existing plant and demolition of the existing plant is constructed and brought on-line.

February 2010: MBCSD awards contract for Engineering Design Services to MWH.

March 2010: Contract with MWH executed, design process begins.

April 2010: MBCSD directs staff to prepare RFP for Project Management Services.

**City of Morro Bay/Cayucos Sanitary District
 8-Year Conversion Schedule**

Task	Date of Completion ¹
Preliminary Activities:	
1. Issuance of Request for Consulting Engineering Proposals for Facilities Master Plan	November 11, 2005
2. Award of Consulting Engineering Contracts	April 27, 2006
Facilities Planning:	
1. Submit Final Draft Facilities Master Plan	November 30, 2007
2. Submit Final Facilities Master Plan	September 30, 2009
Environmental Review and Permitting:	
1. Complete and Circulate Draft CEQA Document	February 27, 2009
2. Certification of Final CEQA Document	December 31, 2009
3. Submit proof of application for all necessary permits	June 1, 2010
4. Obtain all necessary permits	May 31, 2011
Financing:	
1. Complete Draft Plan for Project Design and Construction Financing	December 31, 2007
2. Complete Final Plan for Project Financing	June 30, 2008
3. Submit proof that all necessary financing has been secured, including compliance with Proposition 218	October 30, 2009
Design and Construction:	
1. Initiate Design	September 30, 2010
2. 30 Percent Design	April 29, 2011
3. 60 Percent Design	July 29, 2011
4. 90 Percent Design	September 30, 2011
5. 100 Percent Design	December 27, 2011
6. Issue Notice to Proceed with Construction	March 29, 2012
7. Construction Progress Reports	Quarterly (with SMRS)
8. Complete Construction and Commence Debugging and Startup	January 31, 2014
9. Achieve Full Compliance with Secondary Treatment	March 31, 2014
1. Liquidated damages shall be \$250/day for the first 180 days if the Discharger fails to achieve compliance with the requirements by the date specified in the Conversion Schedule. For the next 185 days, liquidated damages shall be \$500/day until the Discharger achieves full compliance with the requirements. After 365 days, liquidated damages shall be \$1,000/day until the Discharger achieves full compliance with the requirements.	

**SETTLEMENT AGREEMENT FOR ISSUANCE OF PERMITS TO
AND UPGRADE OF THE
MORRO BAY-CAYUCOS WASTEWATER TREATMENT PLANT**

THIS AGREEMENT ("Agreement") is made by and between the CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, CENTRAL COAST REGION (the "Water Board"), on the one hand, and the CITY OF MORRO BAY and the CAYUCOS SANITARY DISTRICT (collectively, the "Discharger"), on the other hand. The Water Board and the Discharger are collectively referred to as the "Parties," and each of them may be singularly referred to as a "Party."

Recitals

A. Pursuant to the requirements of Clean Water Act ("CWA") section 402 (33 U.S.C. §1342) and Water Code sections 13000 et seq., the Water Board or the United States Environmental Protection Agency (the "EPA") must prepare and adopt a National Pollutant Discharge Elimination System ("NPDES") permit for the Discharger's wastewater discharge, every five (5) years.

B. Although NPDES permits issued to publicly owned treatment works generally specify secondary treatment of wastewater (33 U.S.C. §1311(b)(1)(B)) or more stringent standards, Congress has authorized the issuance of discharge permits with modified secondary treatment standards under CWA section 301(h) (33 U.S.C. §1311(h)). To qualify for a modified discharge permit, a discharger must satisfy the conditions of CWA Section 301(h) and applicable regulations. The Discharger currently discharges its treated wastewater under a 301(h) modified discharge permit (No. CA0047881) jointly issued by the EPA and the Water Board, which became effective on March 1, 1999. On July 3, 2003, the Discharger applied to EPA and the Water Board for another 301(h) modified discharge permit with a peak seasonal dry weather flow limit of 2.36 million gallons per day ("mgd").

C. A modified discharge permit was issued to the discharger in March 1985 (Permit No. CA0047881) by the U.S. Environmental Protection Agency (EPA), Region 9 and the California Regional Water Quality Control Board, Central Coast (RWQCB). This original permit expired in March of 1990 and has been reissued by EPA and the RWQCB

twice since, in March 1993 and March 1999. The current (re-issued) permit expired on March 1, 2004, and has been administratively extended until a decision regarding the application is made. On November 10, 2005, USEPA issued its Tentative Decision for the renewal of Discharger's application for a 301(h) modified discharge permit. The USEPA's Tentative Decision states the Discharger has successfully demonstrated (through past performance) the ability to comply with the California Ocean Plan water quality standards for suspended solids, dissolved oxygen, and pH and will be in compliance with all applicable Federal water quality criteria. The Water Board will consider the USEPA's Tentative Decision at the time of the issuance of the Modified Discharge Permit.

D. Subject to the provisions of this Agreement regarding Water Board discretion and New Evidence (defined below), this Agreement contemplates that the Water Board will concur in the Modified Discharge Permit (defined below) and issue the NPDES Permit (defined below), which will effect the Discharger's obligation to complete the upgrade of its treatment facility to a minimum of full secondary treatment standards within a nine-and-one-half-year period. Pursuant to the May 1984 Memorandum of Understanding for Modified NPDES Permits Under Section 301(h) of the Clean Water Act between the California State Water Resources Control Board and EPA Region 9, the Water Board concurs with EPA 301(h) modified discharge permits and issues Clean Water Act Section 401 certification by issuing final waste discharge requirements. Concurrently with issuance of the waste discharge requirements, EPA issues a NPDES permit including the 301(h) modified discharge permit provisions. References in this Agreement to the Water Board "issuing" a permit mean, as applicable, issuance by the Water Board of waste discharge requirements that constitute Section 401 certification of and concurrence with an EPA NPDES permit that includes modifications under Section 301(h), or issuance by the Water Board of an NPDES permit.

E. Disputes have arisen between the parties who wish to avoid unnecessary delay, expense and the uncertainties resulting from litigation over treatment plant upgrades and the currently pending and future applications for discharge permits. The Parties, therefore, have agreed to settle and resolve issues related to the pending application for permit renewal as set forth in this Agreement.

Agreement

In consideration of the foregoing and the following and for other valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

A. DEFINITIONS

1. **Modified Discharge Permit:** A five year NPDES permit and waste discharge requirements jointly issued to the Discharger by the United States Environmental Protection Agency (EPA) and the Water Board in or about February 2006 that will include requirements for biochemical oxygen demand (BOD₅) and suspended solids that are modified pursuant to CWA section 301(h), and that are no more stringent than the limits in the Discharger's current NPDES permit.

2. **NPDES Permit:** A five year NPDES permit issued to the Discharger upon the expiration of the Modified Discharge Permit that includes final effluent limits for biochemical oxygen demand (BOD₅) and suspended solids that are at least as stringent as the CWA requirements for full secondary treatment. Interim effluent limits to effect the Conversion Schedule will be set forth in the NPDES Permit, if allowed by law, or in a 13385(j)(3) Order.

3. **Conversion Schedule:** The schedule for upgrading to full secondary treatment as set forth in Section B.1. It is not the intent of this Agreement to impose numeric or narrative requirements for other constituents (e.g., limits for bacteria) that would effectively require the Discharger to upgrade to full-secondary treatment faster than provided under the Conversion Schedule.

4. **Conversion Period:** The nine-and-one-half-year upgrade period, commencing with the issuance of the Modified Discharge Permit and ending on the last date listed in the Conversion Schedule.

5. **New Evidence:** Clear and convincing evidence not in the administrative record at the time the Modified Discharge Permit is issued that more stringent limits for biochemical oxygen demand (BOD₅) or suspended solids are necessary.

6. **13385(j)(3) Order:** A time schedule order or cease and desist order that requires the Discharger to complete the upgrade according to the Conversion Schedule, and that

meets the requirements of Water Code section 13383(j)(3), in order to allow the Water Board to avoid imposing mandatory minimum penalties.

B. TERMS.

1. Conversion Schedule

The Discharger agrees to undertake a program to install and operate equipment at its treatment plant capable of achieving, and that will achieve, full secondary treatment requirements set forth in 40 C.F.R. Part 133, other than 40 C.F.R. section 133.105. The upgraded treatment plant must adequately address future wastewater flows, projected as of the end of the Conversion Schedule. The Discharger shall complete the planning, design, construction and operation of the facilities necessary to attain compliance with the secondary treatment requirements in accordance with the schedule set forth below (the "Conversion Schedule").

CONVERSION SCHEDULE

Task	Date of Completion ¹
Preliminary Activities:	
1. Morro Bay/ Cayucos Negotiations for Shared Facility Plan and Cost Allocation	April 1, 2006
2. Issuance of Request for Consulting Engineering Proposals for Facilities Master Plan	October 3, 2006
3. Award of Consulting Engineering Contracts	December 22, 2006
Facilities Planning:	
1. Submit Final Draft Facilities Master Plan	September 18, 2008
2. Submit Final Facilities Master Plan	July 22, 2010
Environmental Review and Permitting:	
1. Complete and Circulate Draft CEQA Document	December 18, 2009
2. Certification of Final CEQA Document	October 18, 2010
3. Submit proof of application for all necessary permits	March 17, 2011
4. Obtain all necessary permits	March 19, 2012
Financing:	
1. Complete Draft Plan for Project Design and Construction Financing	October 22, 2008
2. Complete Final Plan for Project Financing	April 20, 2009
3. Submit proof that all necessary financing has been secured, including compliance with Proposition 218	August 20, 2010
Design and Construction:	
1. Initiate Design	April 19, 2011
2. 30 Percent Design	February 7, 2012
3. 60 Percent Design	May 7, 2012
4. 90 Percent Design	July 16, 2012
5. 100 Percent Design	October 19, 2012
6. Issue Notice to Proceed with Construction	January 23, 2013
7. Construction Progress Reports	Quarterly (w/ SMRs)
8. Complete Construction and Commence Debugging and Startup	April 22, 2015
9. Achieve Full Compliance with Secondary Treatment	June 23, 2015

¹ Any completion date falling on a Saturday, Sunday or State holiday shall be extended until the next business day. The Discharger shall submit proof of completion of each task within 30 days after the due date for completion.

Task	Date of Completion ¹
Requirements	

2. Secondary Treatment Limits and Discharger's Conversion to Secondary.

a. First Permit Cycle – Waiver Permit.

1. At its February 2, 2006 meeting, or as soon thereafter as practicable, the Water Board's Executive Officer shall recommend that the Water Board (i) concur in the issuance of the Modified Discharge Permit, and (ii) provide water quality certification of the Modified Discharge Permit under Clean Water Act Section 401 (33 U.S.C. §1341).

2. The BOD₅ and suspended solids limits to be recommended by the Executive Officer for approval are as follows:

Constituent	Units	Monthly (30-day) Average	Maximum at any time
BOD ₅ (20°C)	mg/L	120	180
	lbs/day	2062	3092
	kg/day	936	1404
Suspended Solids	mg/L	70	105
	lbs/day	1203	1804
	kg/day	546	819

3. The findings in the Modified Discharge Permit shall reference this Agreement and shall incorporate the Conversion Schedule. The draft Modified Discharge Permit's findings shall also state that:

(i) Subject to the provisions of this Agreement regarding Water Board Discretion (below) and New Evidence, this Agreement contemplates that the Water Board will concur in the Modified Discharge Permit and issue the NPDES Permit in order to effect the Discharger's agreement and obligation to complete the upgrade of its treatment facility to full secondary treatment standards within a nine-and-one-half-year period.

(ii) Based on the administrative record, including population growth projections through 2015, known environmental and cumulative impacts of the Discharger's existing wastewater treatment facilities, and evidence submitted by the Discharger of the time needed for upgrading the plant, the Conversion Schedule is reasonable, necessary and appropriate.

4. The Modified Discharge Permit shall require the Discharger, as a condition of the Modified Discharge Permit, to submit an application to the Water Board at least 180 days before the expiration of the Modified Discharge Permit, which application requests the NPDES Permit. The Discharger agrees not to apply for a permit that includes modifications to full secondary discharge requirements after the expiration of the Modified Discharge Permit.

5. If the Water Board concurs with the Modified Discharge Permit and issues water quality certification, the Discharger shall complete the tasks in the Conversion Schedule by their respective due dates, except as extended in accordance with this Agreement.

b. **Second Five-Year Permit Cycle – NPDES Permit.** For the five (5) year period following the expiration of the Modified Discharge Permit, the Water Board shall (i) issue a NPDES Permit that includes effluent limits consistent with CWA full secondary treatment requirements, or any more stringent requirements that are necessary due to New Evidence or that the Discharger agrees to, and (ii) concurrently issue a 13385(j)(3) Order. The 13385(j)(3) Order shall include interim effluent limits for BOD₅ and suspended solids that are the same as those in the Modified Discharge Permit. Notwithstanding the foregoing, the Water Board may include more stringent limits for BOD₅ and suspended solids if there is New Evidence. The Water Board may include a shorter Conversion Schedule, after considering the feasibility of meeting a shorter Conversion Schedule, if there is New Evidence that a shorter schedule is necessary. In either case, the NPDES Permit findings shall clearly identify the New Evidence.

c. **Other Permit Provisions.** This Agreement does not address any effluent limits of the Modified Discharge Permit and the NPDES Permit other than BOD₅ or suspended solids. Notwithstanding anything herein to the contrary, Discharger reserves the right to challenge any other provision of the Modified Discharge Permit and the NPDES Permit besides BOD₅ and suspended solid limits or the Conversion Schedule.

d. **Water Board Discretion.**

1. This Agreement does not limit the discretion the Water Board would otherwise have regarding the subject matter of this Agreement. The Parties understand that the Water Board

members must consider the evidence before them and exercise their authority consistent with applicable laws, the record before them, and the discretion vested in them by applicable laws. Any decision by the Water Board not to issue the Modified Discharge Permit, NPDES Permit or 13385(j)(3) Order, or to issue a permit that includes more stringent requirements than those set forth herein, i.e., more stringent BOD₅ or suspended solids limits or a shorter Conversion Period (either explicitly or through the imposition of effluent limits or other requirements that require a shorter Conversion Period), shall not constitute a breach of this Agreement by the Water Board. However, the Water Board's concurrence with the Modified Discharge Permit and related water quality certification, and the issuance of the 13385(j)(3) Order concurrently with the NPDES Permit, are conditions precedent to the Discharger's continuing obligations under this Agreement.

2. The Discharger does not waive the right to challenge the imposition of more stringent limits or standards or a shorter conversion schedule than set forth herein, but agrees not to challenge any provision of the Modified Discharge Permit, NPDES Permit or other order of the Water Board that are consistent with the standards set forth in this Agreement (i.e., Conversion Schedule; BOD₅ and suspended solids effluent limits; remedies for not meeting the Conversion Schedule). Nothing in this Agreement relieves the Discharger of the requirement to exhaust applicable administrative remedies, including those set forth in Water Code Section 13320, to challenge any provision of the Modified Discharge Permit, the NPDES Permit or the 13385(j)(3) Order. The Discharger's sole remedy for any claimed violation of this Agreement shall be by petition pursuant to Water Code Section 13320 and, if applicable, a writ under Water Code Section 13330. The parties acknowledge that the State Board may decline to review any petition filed pursuant to this Agreement. The Discharger hereby waives all of its rights, if any, to seek damages from the Water Board or any of its employees in the event the Discharger claims a breach of this Agreement. Nothing herein shall operate as a waiver of any defenses the Water Board or its employees may assert in such an action.

C. REQUIRED ACTIONS DURING CONVERSION PERIOD.

1. Force Majeure

a. A "force majeure event" is any event beyond the control of the Discharger, its contractors, or any entity controlled by the Discharger, including, but not limited to third party litigation that delays the performance of any obligation under this Agreement despite the

Discharger's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent feasible. If any event occurs that the Discharger believes is a force majeure event, the Discharger shall immediately notify the Water Board by telephone, and shall notify the Water Board in writing within fifteen (15) calendar days of the date on which the Discharger first knew of the event. The notice shall describe the anticipated length of time the delay may persist, the precise cause or causes of the delay, the measures taken or to be taken by the Discharger to prevent or minimize the delay as well as to prevent future delays, and the timetable by which those measures will be implemented. Failure by the Discharger to comply with the notice requirements of this Paragraph, without good cause shall constitute a waiver of the Discharger's right to obtain an extension of time for its obligations based on such incident.

b. If the Executive Officer agrees that a violation has been caused by a force majeure event, the time for performance of an affected requirement shall be extended for a period not to exceed the actual delay in performance resulting from such circumstance. In addition, liquidated damages shall not be due for said delay. The Executive Officer or the Executive Officer's designee shall notify the Discharger of the agreement or disagreement with the Discharger's claim of a delay or impediment to performance within fifteen (15) calendar days of receipt of the Discharger's notice. If the Executive Officer does not so agree, or does not notify the Discharger of its decision within fifteen (15) calendar days, the request for force majeure classification shall be deemed denied, and the Discharger may appeal that determination to the Water Board and, if denied thereby, may appeal to the State Board. Notwithstanding anything herein to the contrary, Discharger reserves the right to seek judicial review of the State Board decision. The Discharger bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Discharger gave the notice required by this Section; that the force majeure event caused the delay the Discharger claims was attributable to that event; and that the Discharger reasonably attempted to prevent or minimize any delay caused by the event.

c. Unless determined to be a force majeure event, unanticipated or increased costs or expenses associated with the implementation of this Agreement, or changed financial

circumstances, shall not, in any event, serve as a basis for extensions of time under this Agreement, unless otherwise agreed by the Executive Officer.

d. An extension of one compliance date based on a particular incident may, but shall not necessarily result in an extension of a subsequent compliance date or dates.

e. Where the Executive Officer agrees to an extension of time, the appropriate modification shall be made to this Agreement.

f. If the Discharger fails to timely complete a task in the Conversion Schedule because the Discharger must first complete another task with a later due date, the later due date shall not be a defense to missing the earlier due date.

E. ENFORCEMENT

1. Except for force majeure events as provided above, and except as otherwise agreed by the Parties, if the Discharger fails to complete a required action by the date set forth in the Conversion Schedule, liquidated damages shall accrue as set forth below. Liquidated damages shall accrue only with respect to one task on the Conversion Schedule at a time. In other words, if the Discharger is behind schedule with respect to more than one required task, liquidated damages shall accrue only for the most recent task.

a. Liquidated damages shall be \$100/day for the following milestones, which are to be completed prior to the Discharger's issuance of a Notice to Proceed: Issuance of Request for Consulting Engineering Proposals, Submit Final Draft Facilities Plan, Complete and Circulate Draft CEQA Document, Obtain all Necessary Permits, submit proof that all necessary financing has been secured, Initiate Design, 30 Percent Design, and 100 Percent Design. The Discharger shall pay all such accrued liquidated damages within thirty (30) days following the due date for achieving full compliance with secondary treatment requirements. If the Discharger is current (i.e. has "caught up" with the Conversion Schedule) by the due date for achieving full compliance with secondary treatment requirements, or if the Water Board does not issue the 13385(j)(3) Order, any accrued liquidated damages thereon shall be cancelled and forgiven.

b. Liquidated damages shall be \$200/day if the Discharger fails to issue a timely Notice to Proceed. The Discharger shall pay all such accrued liquidated damages, within thirty (30) days following the due date for achieving full compliance with secondary treatment requirements. If the Discharger is current (i.e. has "caught up" with the Conversion Schedule) by

the due date for achieving full compliance with secondary treatment requirements, any accrued liquidated damages thereon shall be cancelled and forgiven.

c. Liquidated damages shall be \$250/day for the first 180 days if the Discharger fails to achieve compliance with secondary treatment requirements by the date specified in the Conversion Schedule. For the next 185 days following the initial 180 days, liquidated damages shall be \$500/day until the Discharger achieves full compliance with full secondary treatment requirements. After 365 days, liquidated damages shall be \$1,000/day until the Discharger achieves full compliance with full secondary treatment requirements. Liquidated damages under this paragraph shall be paid by the Discharger quarterly, commencing on the first day of the next calendar quarter that is at least thirty (30) days following the date on which the stipulated penalty is incurred.

2. In addition to or in lieu of seeking liquidated damages, the Water Board may seek judicial enforcement, including specific performance, of this Agreement, including without limitation enforcement of the tasks and due dates set forth in the Conversion Schedule.

3. If the Executive Officer does not agree that a delay in the Discharger's performance was caused by a force majeure event and the Discharger does not stipulate in writing to the amount of penalties due after missing a milestone under the Conversion Schedule, the Water Board may impose liquidated damages by issuing an administrative civil liability complaint, pursuant to Water Code Sections 13323-13328. This Agreement satisfies the requirement that the Water Board consider the factors in Section 13327. If the Water Board chooses to consider those factors, it may impose liquidated damages in excess of the amounts stated in Section E.1, but nothing in this Agreement waives the Discharger's right to contest amounts in excess of those stated in Section E.1. If the Water Board utilizes the procedures of Sections 13323-13328, the Parties agree that the liquidated damages shall be deemed administrative civil liability. The Water Board may hold administrative civil liability proceedings at any time, but any administrative civil liability order shall include the applicable payment due date and conditions of cancellation and forgiveness set forth in Sections E.1.a and E.1.b. The Discharger may, but shall not be required to, waive the right to a hearing. If the Discharger does not waive the right to a hearing, except as otherwise stated in this paragraph 3, the Discharger agrees not to challenge the daily amount of the liquidated damages as set forth in this Agreement. The issues for hearing shall be limited to whether the Discharger undertook or completed the required task or activity by the completion date(s) in question, the

number of days or months for which liquidated damages apply, and whether the delay, if any, was caused by force majeure. The Discharger agrees not to contest the use of the administrative civil liability process and waives any claim that Water Code Sections 13323-13328 do not apply to administrative enforcement of the stipulated penalty provisions of this Agreement. However, the Discharger reserves the right to petition to the State Board for review of any decision made by the Water Board under this paragraph. Upon the filing of such a petition, the Discharger and the Water Board shall jointly request that the petition be held in abeyance until such time as it is determined, as applicable, that the liquidated damages at issue are not subject to cancellation and forgiveness under Section E.1, such that it can be determined whether any liquidated damages are due and the amount thereof. Following the expiration of the abeyance and either final action by the State Board on the Discharger's petition or the dismissal of the Discharger's petition by the State Board without review, the Discharger may seek judicial review in accordance with California Water Code Section 13330 with respect to the administrative civil liability order. In any such action the Discharger agrees not to challenge the daily amount of the liquidated damages as set forth in this Agreement. Nothing in this paragraph 4 shall relieve the Discharger of any obligation to exhaust applicable administrative remedies prior to seeking judicial review.

4. The requirements of this Agreement with respect to (i) the Conversion Schedule, (ii) the Conversion Period, and (iii) liquidated damages shall be incorporated into the findings adopted by the Water Board in connection with the Modified Discharge and NPDES Permits. In addition to the procedures set forth above for enforcement with respect to failure to meet the Conversion Schedule, the Water Board may use any enforcement action or procedure to remedy any and all violations of the terms of any permit (including the Modified Discharge or NPDES Permits) issued to the Discharger, including, without limitation, any remedy set forth in the California Water Code. Nothing in this Agreement shall limit other remedies available to either Party to enforce the terms and conditions of this Agreement or of any permit or 401 certification issued to the Discharger.

F. MISCELLANEOUS PROVISIONS

1. **No Admission of Liability.** Except as set forth in this Agreement, nothing in this Agreement shall be construed as an admission of liability by any Party, or as a waiver of any future claims or causes of action, or as an agreement on the appropriate standard of review or causes of

action or claims that may be asserted in challenging any permit issued to the Discharger or the requirements thereof.

2. **Signatures.** This Agreement may be signed in counterparts. Signatures transmitted by facsimile shall be deemed to have the same force and effect as original signatures. Photocopies and facsimiles of counterparts shall be binding and admissible as originals.

3. **Representation by Counsel.** The Parties agree and confirm that this Agreement has been freely and voluntarily entered into by the Parties, each of which has been fully represented by counsel at every stage of the proceedings, and that no representations or promises of any kind, other than as contained herein, have been made by any Party to induce any other Party to enter into this Agreement. The language of this Agreement shall be construed in its entirety, according to its fair meaning, and not strictly for or against any of the Parties.

4. **Integrated Agreement.** Except as otherwise set forth in this Agreement, this Agreement contains the entire understanding of the Parties concerning the matters contained herein and constitutes an integrated agreement.

5. **Subsequent Amendment.** This Agreement may not be altered, amended, modified, or otherwise changed except after a public meeting by a writing executed by each of the Parties. The Water Board may, on a case-by-case basis in a public meeting, delegate to the Executive Officer the authority to approve and sign on behalf of the Water Board written amendments to this Agreement.

6. **Effective Date.** This Agreement is effective when signed by all Parties and the effective date shall be date of the last signature.

7. **Notice Requirements.** Any notice provided under this Agreement shall be provided by facsimile and first class mail as follows:

If to the Discharger:

District Manager
Cayucos Sanitary District
200 Ash Avenue
P.O. Box 333
Cayucos, CA 93430
Telephone: (805) 995 3290
Facsimile: (805) 995 3673

If to the Water Board:

Roger W. Briggs, Executive Officer
REGIONAL WATER QUALITY CONTROL BOARD,
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Telephone: 805-549-3147
Facsimile: 805-543-0397

City Manager
City of Morro Bay
595 Harbor
Morro Bay, California 93442
Telephone: (805)772-6200

Lori T. Okun, Esq.
STATE WATER RESOURCES CONTROL BOARD
1001 I Street, P.O. Box 100
Sacramento, CA 95814
Telephone: 916-341-5165
Facsimile: 916-341-5199

Marilyn H. Levin, Esq.
OFFICE OF THE ATTORNEY GENERAL
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1233
Telephone: 213-897-2612
Facsimile: 213-897-2802

8. **Authority.** Each Party to this Agreement warrants that the individual executing this Agreement is duly authorized to do so and that execution is the act and deed of the Party.

9. **Counsel Approval.** Counsel for the represented Parties have negotiated, read, and approved as to form the language of this Agreement, the language of which shall be construed in its entirety according to its fair meaning and not strictly for or against any of the Parties.

10. **Fees and Costs.** The Parties acknowledge and agree that each of them will bear their own attorneys' fees and costs in the negotiation, drafting, and execution of this Agreement or any dispute arising out of this Agreement.

11. **Severability.** In the event that any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

12. **Successors in Interest.** Whenever in this Agreement one of the Parties hereto is named or referenced, the legal representatives, successors, and permitted assigns of such Party shall be included and all covenants and agreements contained in this Agreement by or on behalf of any of the Parties hereto shall bind and inure to the benefit of their respective successors and permitted assigns, whether so expressed or not.

13. **References.** This Agreement is made without respect to number or gender, and as such, any reference to a party hereto by any pronoun shall include the singular, the plural, the masculine, and the feminine.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, CENTRAL
COAST REGION

Dated: _____, 2005

By: _____
Roger W. Briggs, Executive Officer

CITY OF MORRO BAY

Dated: _____, 2005

By: _____
Mayor, Janice Peters

CAYUCOS SANITARY DISTRICT

Dated: _____, 2005

By: _____
President, Robert Eans

APPROVED AS TO FORM

Dated: _____, 2005

By: _____
Lori T. Okun
Senior Staff Counsel

Dated: _____, 2005

By: _____
Rob Schultz, Morro Bay City Attorney

Dated: _____, 2005

By: _____
Timothy J. Carmel
Cayucos Sanitary District Counsel

Exhibit E

The Environmental Impact Report document as referenced as Exhibit E in the Staff Report was handed out separately to Planning Commissioners. Please reference both the Draft and Final EIR document online at:

Draft EIR

<http://www.ceqapost.com/member/morro-bay>

Final EIR

http://www.ceqapost.com/download_file.php?file_id=781&mode=download

Please note that the Final EIR will be in an Adobe PDF format and will need to be opened or saved.

EXHIBIT G

CAYUCOS SANITARY DISTRICT

200 Ash Avenue
P.O. Box 333, Cayucos, California 93430-0333
805-995-3290

GOVERNING BOARD

R. Ems, President
R.H. Dud McHale, Vice-President
H. Fones, Director
S. Lyon, Director
M. Foster, Director

December 14, 2010

City of Morro Bay Planning Commission
955 Shasta Avenue
Morro Bay, CA 93442

Honorable Commissioners

The Cayucos Sanitary District and City of Morro Bay have worked together with the BPA, RWQCB, environmental groups, and the public over the past five years, giving thoughtful consideration to comments and suggestions for the MBCSD Wastewater Treatment Plant Upgrade Project. The District believes that this is the right project for both of our communities as it will improve treatment plant effluent quality and provide a plan for future effluent reclamation when potential end users are identified. Time is of the essence for this project in order to comply with the settlement agreement entered into with the Regional Water Quality Control Board (RWQCB). The District is hopeful that we can move forward as fast as possible for successful project completion by March 2014.

The Cayucos Sanitary District, as co-owners of the Wastewater Treatment Plant, respectfully requests your expedient recommendation for approval of the CDP, CUP, and certification of the EIR for the MBCSD Wastewater Treatment Plant Upgrade. Approval by the City Planning Commission will help to ensure continued forward progress with this project and compliance with the terms of the settlement agreement with the Regional Water Quality Control Board.

Thank you for your thoughtful consideration.

Sincerely,



Robert B. Ems, President
Cayucos Sanitary District

ATTACHMENT 2

AGENDA ITEM: VIII-A

DATE: January 18, 2010

ACTION: _____

CITY OF MORRO BAY PLANNING COMMISSION SYNOPSIS MINUTES

(Complete audio- and videotapes of this meeting are available from the City upon request)

Veteran's Memorial Building
Regular Meeting, 6:00 p.m.

209 Surf Street, Morro Bay
December 20, 2010

Chairperson Vacant

Vice-Chairperson Gerald Luhr
Commissioner Jamie Irons

Commissioner Michael Lucas
Commissioner John Diodati

Rob Livick, Secretary

I. CALL MEETING TO ORDER

Vice-Chairperson Luhr called the meeting to order at 6:00 p.m.

II. PLEDGE OF ALLEGIANCE

Michael Lucas led the pledge.

III. ROLL CALL

Vice-Chairperson Luhr took roll and noted that all Commissioners are present with the exception of former Chairperson Nancy Johnson.

Staff Present: Rob Livick, Kathleen Wold, Bruce Keogh, Dylan Wade, Rob Schultz and Andrea Lueker

IV. ELECTION OF CHAIR AND VICE-CHAIR

MOTION: Luhr moved to nominate Commissioner Diodati as Chair and Lucas seconded the motion. The motion carried unanimously (4-0).

MOTION: Diodati moved to nominate Commissioner Irons as Vice-Chair and Lucas seconded the motion. The motion carried unanimously (4-0).

V. ACCEPTANCE OF AGENDA

Lucas moved to accept the Agenda and Vice-Chairperson Irons seconded the motion. The motion carried unanimously. (4-0).

VI. DIRECTOR'S REPORT/WRITTEN COMMUNICATIONS

Rob Livick briefed the Commission on the status of the following:

- Completion of the North Main project, and
- Cancellation of the City Council meeting of December 27, 2010 noting that the City Council has voted to move future Council meetings to the second and fourth Tuesdays.

Chairperson Diodati inquired whether the Council had discussion regarding the vacant Planning Commissioner seat. Livick clarified that the Council has set January 24th as the date to interview prospective candidates.

VII. PUBLIC COMMENT

Diodati opened the Public Comment period:

- Janice Peters, resident of Morro Bay, gave a brief history of the timeline of the WWTP Upgrade project and encouraged the Commission to certify the Environmental Impact Report (EIR) and forward a favorable recommendation to the City Council in order to move the project forward.

Hearing no further public comment, Diodati closed the Public Comment period.

VIII. CONSENT CALENDAR

- A. Approval of minutes from hearing held on November 1, 2010 as amended and minutes from the December 6, 2010 meeting.

MOTION: Lucas moved the Planning Commission approve the minutes. Irons seconded the motion. The motion carried unanimously (4-0).

IX. PRESENTATIONS – None

X. FUTURE AGENDA ITEMS

- A. Staff presentation on the Affordable Housing Rehabilitation Program and general affordable housing issues.

Commissioners had no discussion.

XI. PUBLIC HEARINGS

- A. **Site Location:** 160 Atascadero Road, Wastewater Treatment Plant

Applicant: City of Morro Bay and Cayucos Sanitary District

Agent: Bruce Keogh, Wastewater Division Manager

Request: The applicant proposes the Morro Bay-Cayucos Wastewater Treatment Plant (WWTP) Upgrade Project to provide full secondary treatment for all effluent discharged through its ocean outfall and to provide tertiary filtration capacity equivalent to a PSDWF of 1.5 mgd. The tertiary filtered effluent would meet Title 22 standards for disinfected secondary-23 recycled water and as such could be used for limited beneficial uses. The project includes construction of facilities including but not limited to buildings, circulation, hardscape and landscaping. Once the upgraded wastewater treatment facilities are complete the existing wastewater treatment facilities will be demolished.

CEQA Determination: Recommend adoption of Environmental Impact Report dated September 20, 2010, to City Council.

Staff Recommendation: Consider request and make recommendation to Council on Conditional Use Permit #307 and Coastal Development Permit #339.

Staff Contact: Kathleen Wold, Planning Manager 805-772-6211.

Livick introduced the Environmental Impact Report, Conditional Use Permit and Coastal Development permit for the WWTP Upgrade project. Livick introduced the consultants from ESA who prepared the Environmental Impact Report (EIR).

Wold presented the staff report and turned it over to Jennifer Jacobus of ESA who gave an overview of the EIR document including chapters 9, 10 and 11.

Commissioners asked staff to clarify the options available to the Commission specifically if the EIR is not certified. Wold responded that CEQA has very specific guidelines for recirculating.

Diodati inquired if the three options are to, either adopt the EIR with no changes, adopt the EIR with changes or deny the EIR. Livick confirmed.

Diodati opened the Public Hearing:

- Dennis Delzeit, Project Manager representing the Applicant, presented an overview of the proposed project asking the Commissioner to certify the EIR and forward a favorable recommendation on to the City Council.

The following persons spoke against the proposed project and encouraged the Planning Commission to deny the project:

- Andrew Christie, of Sierra Club, and Morro Bay residents Jane Heath, Betty Winholtz, Lee Johnson, Bill Martony, Barry Branin, Dorothy Cutter, Steve Hennigh, Ann Reeves, and Jack McCurdy.

Hearing no further comment, Diodati closed the Public Hearing.

Commissioners discussed with staff:

- The shortened time schedule from 14 years to 8 years and whether the alternatives have been adequately studied;
- The original project upgrade of the existing plant and whether this is an upgrade or in fact a new project. Livick responded that this project as identified in the Facilities Master Plan is an upgrade and demolition. The administration and maintenance building will remain;
- The viability of the proposed site location and whether alternate locations would have been preferable. Livick responded that City infrastructure and Cayucos infrastructure points to this location and noted the considerable costs to redirect infrastructure to an alternate site location;
- Whether the public scoping period was of sufficient length;
- Appropriate project alternatives. Livick responded that the project as proposed was selected by the JPA consisting of the City Council and Cayucos Sanitary District. During the course of their review, they chose where and what to build. Livick also noted the alternatives analysis in the EIR does meet CEQA guidelines;
- Wold clarified for Commissioners that the City's General Plan/Local Coastal Plan (LCP) specifically directs this as an industrial piece of property and protects the wastewater facilities as a use, not a building. The zoning allows the use. In addition, CEQA guidelines establish the baseline, so baseline impacts do not reduce to zero. CEQA establishes baseline as existing site conditions, not vacant undeveloped land. With the established WWTP baseline, the LCP delineates the site as protected for WWTP;
- Technical merits of the project including effluent quality discharged through ocean outfall, water reclamation, building height and whether it can be lowered and the visual impacts associated with two-story versus a one-story building;
- The importance of the Household Hazardous Waste Collection facility program to the community. Livick noted that the Integrated Waste Management Authority (IWMA) operates this program and has been contacted regarding the potential for grant opportunities.

Commissioners continued lengthy discussion over whether the proposed project is a new or upgraded project and the resulting site and location analysis. In addition, Commissioners discussed how to define the baseline, whether that would be the existing plant as a baseline for comparison to other sites or whether to use a zero baseline of vacant land when comparing to other sites.

City Attorney Rob Schultz encouraged the Commission to make its conclusion by determining if the CEQA analysis has been prepared correctly, whether the conditions of approval recommended by staff are correct and then certify, or not, the EIR and forward on to the City Council.

Commissioners discussed whether if they determine this project is defined as a new project and not as an upgrade, then that automatically invalidates the EIR and therefore they could send it to City Council with that conclusion.

Commissioners expressed concern at the lack of alternative sites with which to compare to this site and agreed that siting is the number one issue.

Further discussion continued over whether the project WWTP project is consistent with LCP policy, using a baseline of an industrial site, the question of the aesthetic arguments listed in the EIR, and the planning impacts created by the zoning.

MOTION: Irons moved to continue the Planning Commission meeting past 10p.m. Lulhr seconded the motion.

The motion carried unanimously (4-0).

Commissioners then discussed the need to develop criteria that can be used to further an alternatives analysis.

MOTION: Diodati moved that the following nine criteria be used to evaluate in a screening report of properties within and outside of the City limits in a public process with the baseline of a new wastewater project proposal and that a letter be submitted to the Regional Water Quality Control Board asking for a time extension in order to conduct the site analysis:

1. Flood plain impacts
2. Cultural resources
3. Visual resources
4. Greenhouse gases
5. Accommodation of build out
6. Water reclamation
7. Cogeneration opportunities
8. Lifecycle costs
9. Economic benefits

Lulhr seconded the motion.

The motion carried unanimously (4-0).

MOTION: Diodati moved the Planning Commission deny certification of the EIR presented for the MBCSD WWTP Upgrade and deny the Coastal Development Permit CPO-339 and Conditional Use Permit UPO-307 with the applicant: City of Morro Bay and Cayucos Sanitary District. Lucas seconded the motion.

Commissioners discussed amending the motion to include the reason for denial. The four reasons stated were the proposed project constituted a new project; the EIR analysis was insufficient, the aesthetics and insufficient scoping of the project.

Luhr and Lucas accepted these reasons as an amendment to the motion.

The motion carried unanimously (4-0).

XII. OLD BUSINESS

A. Current Planning Processing List/Advanced Work Program

Commissioners reviewed with staff and did not add any new items.

XIII. NEW BUSINESS

A. Consider cancelling the January 3, 2011 Planning Commission Meeting.

MOTION: Lucas moved to cancel the January 3, 2011 Planning Commission meeting. Irons seconded the motion.

The motion carried unanimously (4-0).

XIV. ADJOURNMENT

Diodati adjourned the meeting at 10:20 p.m. to the next regularly scheduled Planning Commission meeting at the Veterans Hall, 209 Surf Street, on Tuesday, January 18th, 2011 at 6:00 p.m.

John Diodati, Chairperson

ATTEST:

Rob Livick, Secretary

ATTACHMENT 3

FINDINGS OF FACT

MBCSD Wastewater Treatment Plant Upgrade Project

The City of Morro Bay has prepared an Environmental Impact Report (EIR) pursuant to the requirements of the California Environmental Quality Act (CEQA) (Public Resource Code Section 21080(d)) and the *State CEQA Guidelines* (14 California Code of Regulations Section 15063) evaluating potential environmental effects that may result from the proposed Wastewater Treatment Plant Upgrade Project (proposed project). These Findings of Fact have been prepared for the project pursuant to *State CEQA Guidelines* Sections 15091 and 15093.

Certification of Final EIR

In accordance with *State CEQA Guidelines* Section 15090, the City of Morro Bay, as Lead Agency for the project, certifies that:

- (a) The Final EIR for the project has been completed and processed in compliance with the requirements of CEQA;
- (b) The Final EIR was presented to the Morro Bay City Council, and as the decision-making body for City, the Morro Bay City Council reviewed and considered the information contained in the Final EIR prior to approving the project;
- (c) The Final EIR reflects the City's independent judgment and analysis.

With the adoption of these findings, the City of Morro Bay has exercised independent judgment in accordance with Public Resource Code (PRC) Section 21082.1(c) while retaining its own environmental consultant, i.e., directing the consultant in preparation of the entire EIR as well as reviewing, analyzing, and revising material prepared by the consultant.

These Findings of Fact have been prepared in accordance with CEQA and *State CEQA Guidelines*. The purpose of these Findings of Fact is to satisfy the requirements of PRC Section 21081 and Sections 15090, 15091, 15092, 15093, 15094, and 15097 of the *State CEQA Guidelines*, in connection with the approval of the Wastewater Treatment Plant Upgrade Project.

Before project approval, a Final EIR must be certified pursuant to Section 15090 of the *State CEQA Guidelines*. Additionally, the City of Morro Bay must make one or more of the following findings in its Findings of Fact, accompanied by a brief explanation of the rationale, pursuant to

Chapter 1, Project Description describes the location, project overview, project objectives, and the required permits and approvals for the project.

Chapter 2, CEQA Review and Public Outreach describes the steps the City has undertaken to comply with the *State CEQA Guidelines* as they relate to public input, review, and participation during the preparation of the Draft and Final EIR.

Chapter 3, Impacts Determined to be Less than Significant provides a summary of those environmental issue areas where no reasonably foreseeable impacts would occur and those impacts determined to be below the threshold of significance without the incorporation of mitigation measures.

Chapter 4, Less-than-Significant Environmental Impacts with Mitigation provides a summary of potentially significant environmental impacts for which implementation of proposed feasible mitigation measures would avoid or substantially reduce the environmental impacts to less-than-significant levels.

Chapter 5, Significant and Unavoidable Environmental Impacts provides a summary of potentially significant and significant environmental impacts for which no feasible mitigation measures are identified, or for which implementation of proposed feasible mitigation measures would not avoid or substantially reduce the environmental effects to less-than-significant levels. This section also provides specific written findings regarding each significant impact associated with the proposed project.

Chapter 6, Project Alternatives provides a summary of the alternatives considered for the proposed project.

Record of Proceedings

The documents and other materials that constitute the record of proceedings upon which the City's project approval is based are located at the City offices: 955 Shasta Avenue, Morro Bay, CA 93442. The City of Morro Bay is the custodian of such documents and other material that constitute the record of proceedings. The record of proceedings is provided in compliance with PRC Section 21081.6(a)(2) and Section 15091(e) of the *State CEQA Guidelines*.

Project Level Analysis

The Final EIR for the proposed project provides an analysis of potential impacts of all construction, operational and routine maintenance actions and activities reasonably foreseeable with implementation of the proposed project. In other words, the following project components are evaluated at a level of detail that is typically provided in a project EIR (*State CEQA Guidelines* Section 15161):

- Construction of a new wastewater treatment plant (WWTP) elements and associated upgrades to treatment facilities;

CHAPTER 1

Project Description

The City of Morro Bay, as the Lead Agency, is adopting the proposed project as described in the Draft EIR and amended in the Final EIR. The following is a brief overview of the project description.

1.1 Project Location

The proposed project would be located at the existing Morro Bay-Cayucos WWTP located at 160 Atascadero Road in the City of Morro Bay in San Luis Obispo County. The City of Morro Bay and the unincorporated community of Cayucos are located on the coast of California along State Route 1 approximately 14 miles northwest of the City of San Luis Obispo.

1.2 Project Overview

The WWTP is owned and operated by the City of Morro Bay and Cayucos Sanitary District (CSD). The proposed project would provide full secondary treatment for all effluent discharged through its ocean outfall and provide tertiary filtration capacity equivalent to the peak season dry weather flow (PSDWF) of 1.5 million gallons per day (mgd). The tertiary filtered effluent would meet Title 22 standards for disinfected secondary-23 recycled water and as such could be used for limited beneficial uses. The proposed project would accommodate future improvements to produce disinfected tertiary recycled water for unrestricted use in accordance with Title 22 standards. The City of Morro Bay and CSD (collectively "MBCSD") anticipate reclaimed water end uses would include, but not be limited to, treatment process applications onsite at the WWTP, landscape irrigation around the perimeter of the WWTP, and offsite municipal and industrial (M&I) applications such as dust control, soil compaction, street cleaning, municipal landscape irrigation, and agricultural irrigation.

The new treatment facilities would be built largely in the footprint of the existing sludge drying beds. As a result, temporary solids handling facilities would be required during construction of the new WWTP. Once the new treatment facilities are complete and brought online, the existing treatment facilities, electrical equipment, and yard piping would be decommissioned and demolished. After demolition of the existing facilities, the vacant area would be graded and finished with a surface treatment of either pavement or rock to create a flood flow pathway. The existing ocean outfall would continue to be used to discharge the treated effluent to Estero Bay.

WWTP to at least full secondary treatment. The proposed project would construct facilities to provide full secondary treatment for all effluent discharged through its ocean outfall and to provide enhanced treatment with tertiary filtration capacity equivalent to the peak season dry weather flow (PSDWF) of 1.5 mgd.

The existing WWTP is located in a 100-year flood zone as designated by the Federal Emergency Management Agency (FEMA). The existing WWTP site is subject to inundation from a 100-year storm event to depths ranging from 3.0 to 4.5 feet (Wallace Group, 2009). The results of a Flood Hazard Analysis prepared for the WWTP Upgrade Project indicate that the flood elevation on neighboring properties would increase if new facilities are built within the existing WWTP footprint (Wallace Group, 2009). The Final WWTP Facility Master Plan recommends a replacement WWTP be built immediately south of the existing facilities on engineered fill to raise the finished grade above the 100-year flood elevation. This would mitigate potential flooding both onsite and offsite.

The objectives of the proposed project are as follows:

- Comply with the secondary treatment standards contained in 40 CFR Part 133;¹
- Phase out the need for a 301(h) modified discharge permit;
- Minimize flooding impacts onsite at the WWTP and adjoining properties; and
- Accommodate future installation of reclamation capability to meet Title 22 requirements for disinfected tertiary recycled water for unrestricted use.

1.4 Discretionary Actions

An EIR is a public document used by a public agency to analyze the potentially significant environmental effects of a proposed project, to identify feasible alternatives, and to disclose possible ways to substantially reduce or avoid such impacts to the physical environment (CCR, Title 14, Section 15121). As an informational document, an EIR does not recommend for or against approval of a project. The main purpose of an EIR is to inform governmental decision makers and the public about the potential environmental impacts of a proposed project. This Final EIR will be used by the City of Morro Bay, as the Lead Agency under CEQA, and Responsible Agencies in making decisions with regard to the construction and operation of the proposed project. Responsible Agencies having discretionary approval over components of the project include the Cayucos Sanitary District (CSD) who may use this EIR for budgetary purposes and/or obtaining grants or financing for CSD operations. If the proposed project is approved on the basis of this analysis, the City would use the analysis contained within this EIR to support acquisition of the following regulatory permits or approvals:

- City of Morro Bay: Conditional Use Permit (CUP); Coastal Development Permit (CDP)
- U.S. Environmental Protection Agency: NPDES Permit

¹ 2002 Code of Federal Regulations (CFR) Title 40, Protection of the Environment, Chapter I, Environmental Protection Agency, Part 133, Secondary Treatment Regulation.

CHAPTER 2

CEQA Review and Public Outreach

The City of Morro Bay has complied with CEQA and the *State CEQA Guidelines* during the preparation of the EIR for the proposed project. In accordance with Section 15082 of the *State CEQA Guidelines*, an initial NOP was circulated to local, state, and federal agencies and to other interested parties in October 2008. A Revised NOP was later circulated on October 2009 to inform the public that the City of Morro Bay has modified the proposed project from that described in the previous NOP. Copies of the NOP and project documents were made available on the City Web Site (www.morro-bay.ca.us); at the Morro Bay Public Library (625 Harbor Street, Morro Bay); at City Hall (595 Harbor Street, Morro Bay); in the Public Services Department (955 Shasta Avenue, Morro Bay); and at the Wastewater Treatment office (160 Atascadero Road, Morro Bay). Copies were also available at the Cayucos Library (248 S. Ocean Avenue, Cayucos); Cayucos Sanitary District (200 Ash Street, Cayucos); and CSD Web Site (www.cayucossd.org). In response to the NOP, comment letters were received from various organizations and interested parties. The NOP, scoping meeting material and reports, and comments received on the NOP are included in Appendix A of the Draft EIR.

The Draft EIR was circulated for public review and comments in October 2010, initiating a 45-day public review period pursuant to CEQA and its implementing guidelines. The document and Notice of Completion (NOC) was distributed to the California Office of Planning and Research, State Clearinghouse. Relevant agencies also received copies of the document. A Notice of Availability (NOA) was distributed to interested parties and adjacent property owners and residents, which informed them of where they could view the document and how to comment. The purpose of the 45-day review period was to provide interested public agencies, groups and individuals the opportunity to comment on the contents and accuracy of the document.

During the public comment period, copies of the Draft EIR were made available for review at the following locations:

- City of Morro Bay Web Site (www.morro-bay.ca.us/water/water.htm);
- Cayucos Sanitary District Web Site (www.cayucossd.org);
- Morro Bay Public Library (625 Harbor Street, Morro Bay);
- Cayucos Library (248 S. Ocean Avenue, Cayucos);
- Morro Bay Public Services Department (955 Shasta Avenue, Morro Bay);
- Wastewater Treatment office (160 Atascadero Road, Morro Bay);
- Cayucos Sanitary District (200 Ash Street, Cayucos);
- ASAP reprographics – for purchase (495 Morro Bay Blvd, Morro Bay)

CHAPTER 3

Impacts Determined to be Less than Significant

The following potential environmental impacts of the project are less than significant and therefore do not require mitigation measures.

3.1 Aesthetics

The proposed project would not substantially degrade the existing visual character or quality of the site and its surroundings. The overall visual character of the general area would not be significantly degraded as seen from surrounding views since these views are predominantly industrial in character. Proposed facilities would be designed to be consistent with the architectural theme compatible with the project site and neighboring properties, which are also characterized by existing visible industrial facilities. Therefore, impacts would be less than significant. (Draft EIR p. 3.1-10)

3.2 Air Quality and Greenhouse Gas Emissions

The proposed project would not expose sensitive receptors to substantial pollutant concentrations. Short-term construction activities of the proposed project and compliance with SLOCAPCD thresholds would result in impacts that are less than significant. The proposed project would not result in a long-term substantial source of carbon monoxide or toxic air contaminants emissions during operation of the proposed project. Therefore, impacts would be less than significant. (Draft EIR p. 3.1-25 – 3.1-26)

The proposed project would not conflict with implementation of state goals for reducing greenhouse gas emissions and would not have a negative effect on Global Climate Change. The project would not conflict with the California Air Resources Board (CARB). Furthermore, none of the CARB early action strategies are applicable to wastewater treatment plants. The proposed project would result in a small increase in local greenhouse gas (GHG) emissions due to the construction of the proposed project and operational truck trips. However, the proposed WWTP upgrade would be considered inherently energy efficient and potential future use of recycled water produced at the new WWTP would reduce the relative amount of GHG emissions produced compared to the use of desalinated water that is known to have the greatest energy requirement of all water supply sources. Impacts associated with greenhouse gas emissions would be less than significant. (Draft EIR p. 3.2-27 – 3.2-30)

on local roadways and would therefore not generate substantial increase in ambient noise along local roadways. Impacts would be less than significant. (Draft EIR p. 3.9-12)

3.8 Public Services and Utilities

The proposed project would not significantly increase the demand for disposal capacity of biosolids. The proposed project would upgrade and construct treatment facilities and includes the discontinuation of onsite composting. Sludge produced at the new facility would be hauled offsite for composting or disposal in accordance with 40 CFR Part 503. The proposed project would comply with federal and local statutes related to solid waste. Therefore, impacts on solid waste facilities and disposal of biosolids would be less than significant. (Draft EIR p. 3-10-8)

The proposed project would not require the construction of new storm water drainage facilities. Runoff would be contained within the property and drained to the proposed Influent Pump Station for treatment at the new WWTP and discharge to the ocean. Runoff would also continue to be moved offsite through existing storm drain facilities, including drains to Morro Creek and the beach, overflow to Atascadero Road, or through in-situ percolation, depending on the surfacing in the flood flow pathway. No new offsite storm water drainage facilities would be needed and impacts would be less than significant. (Draft EIR p. 3.10-9 – 3.10-10)

Operation of the proposed project would increase energy consumption at the WWTP. However, no offsite-improvements would be necessary to provide the additional energy to operate the proposed new facility at full capacity. The facility would be connected to existing grid infrastructure. Impacts associated with energy use would be less than significant. (Draft EIR p. 3.10-10)

Finding: The City of Morro Bay finds that changes or alterations have been required in, or incorporated into, the proposed project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR. Specifically, Mitigation Measure 3.1-2 would reduce the significant impact to a less than significant level.

Mitigation Measure 3.1-2: MBCSD shall ensure that all exterior lighting is shielded and directed downward to minimize impacts to nighttime views. MBCSD shall minimize the use of light poles and consider using light bollards. In addition, highly reflective finishes shall not be used in the design for proposed structures.

Rationale/Supporting Explanation: Operation of the proposed project may result in additional local light sources in the form of new security lighting that would be installed on all new facilities that could potentially contribute to an increase in local ambient light. Mitigation Measure 3.1-2 would ensure new sources of light are shielded that would result in less than significant impacts related to light and glare. (Draft EIR p. 3.1-11)

4.2 Air Quality and Greenhouse Gas Emissions

Impact 3.2-1: The Final EIR concludes in Impact 3.2-1 that the proposed project could violate air quality standards or contribute substantially to an existing or projected air quality violation. (Draft EIR p. 3.2-20)

Finding: The City of Morro Bay finds that changes or alterations have been required in, or incorporated into, the proposed project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR. Specifically, Mitigation Measures 3.2-1a through 3.2-1f would reduce the significant impact to a less than significant level.

Mitigation Measure 3.2-1a: MBCSD shall require the construction contractor to prepare a Construction Activity Management Plan (CAMP) for submission to SLOCAPCD. Prior to initiation of construction, the CAMP shall be approved by SLOCAPCD. The CAMP shall include mitigation measures to minimize ROG and NOx, including but not limited to the following Standard Mitigation Measures recommended by the CAMP Guidelines:

- 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 Regulation;
- 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 fleet 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;

Mitigation Measure 3.2-1c: MBCSD shall evaluate whether naturally-occurring asbestos (NOA) is present within the area of disturbance based on geotechnical information collected at the site. If NOA is present, then the construction contractor must comply with all requirements of CARB's Air Toxics Control Measure (ATCM). Compliance may include preparation and implementation of an Asbestos Dust Mitigation Plan and an Asbestos Health and Safety Program for approval by APCD. If NOA is not found, then the construction contractor shall file an exemption request with SLOCAPCD.

Mitigation Measure 3.2-1d: Prior to demolition activities, MBCSD shall retain a licensed asbestos inspector to determine the presence of asbestos and asbestos-containing materials (ACM) within buildings to be re-used and/or demolished. If asbestos is discovered, the City would comply with asbestos abatement regulations to safely remove all ACM from the site.

Mitigation Measure 3.2-1e: Should hydrocarbon contaminated soil be encountered during construction activities, the SLOCAPCD shall be notified as soon as possible and no later than 48 hours after affected material is discovered to determine if an SLOCAPCD Permit will be required. In addition, the following measures shall be implemented immediately after contaminated soil is discovered:

- a. Covers on storage piles shall be maintained in place at all times in areas not actively involved in soil addition or removal;
- b. Contaminated soil shall be covered with at least six inches of packed uncontaminated soil or other TPH non-permeable barrier such as plastic tarp. No headspace shall be allowed where vapors could accumulate;
- c. Covered piles shall be designed in such a way to eliminate erosion due to wind or water. No openings in the covers are permitted;
- d. The air quality impacts from the excavation and haul trips associated with removing the contaminated soil shall be evaluated and mitigated if total emissions exceed the APCD's construction phase thresholds;
- e. During the soil excavation, odors shall not be evident to such a degree as to cause a public nuisance; and,
- f. Clean soil shall be segregated from contaminated soil.

Mitigation Measure 3.2-1f: Prior to the start of the project, MBCSD shall contact the SLOCAPCD for specific information regarding construction permitting requirements.

Rationale/Supporting Explanation: Construction of the proposed project would generate short-term construction-related emissions that would result in adverse effects on air quality. Emissions generated from construction activities would include fugitive dust sources, combustion emissions from heavy off-road construction equipment, construction worker trips, and evaporative emissions from asphalt paving and architectural coatings. The proposed project would increase operational emissions that would be generated primarily from on-road vehicular traffic during on- and off-site operational activities. Implementation of Mitigation Measures 3.2-1a through 3.2-1f would ensure air quality impacts generated during construction and operation of the proposed project are reduced to a less than significant level. (Draft EIR p. 3.2-20 – 3.2-24)

Finding: The City of Morro Bay finds that changes or alterations have been required in, or incorporated into, the proposed project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR. Specifically, Mitigation Measures 3.7-1 and 3.7-3 would reduce the significant impact to a less than significant level.

Implement Mitigation Measures 3.7-1 and 3.7-3.

Rationale/Supporting Explanation: Construction and operation of the proposed project would not impact the tidewater goby fish species that may potentially occur south of the proposed project area within Morro Bay. The proposed project would be located within the Morro Watershed, which drains to Estero Bay and the Pacific Ocean and does not drain to Morro Bay. The ocean outfall associated with the WWTP is also located offshore within Estero Bay. Therefore, there would be no impact to the tidewater goby. Construction activities may impact steelhead fish species that may occur within the Morro Creek even though there are no recent recordings of existence at this time. Implementation of Mitigation Measures 3.7-1 and 3.7-3 would ensure that MBCSD obtains and complies with the requirements of the dewatering permit prior to the start of construction. Therefore, potential impacts to steelhead due to dewatering discharges and other construction activities would be reduced to a less than significant level. (Draft EIR p. 3.3-6 – 3.3-7)

Impact 3.3-5: The Final EIR concludes in Impact 3.3-5 that the proposed project could have a substantial effect on plant species. (Draft EIR p. 3.3-9)

Finding: The City of Morro Bay finds that changes or alterations have been required in, or incorporated into, the proposed project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR. Specifically, Mitigation Measures 3.7-1 and 3.7-3 would reduce the significant impact to a less than significant level.

Implement Mitigation Measures 3.7-1 and 3.7-3.

Rationale/Supporting Explanation: Storm water discharges generated during construction and operation of the proposed project would indirectly affect riparian habitat within Morro Creek, which may include special-status plant species. Implementation of Mitigation Measures 3.7-1 and 3.7-3 would ensure that the City obtains all required permits and prepares the associated plans that manage storm water runoff during construction. Mitigation would ensure that project operational activities include the implementation of storm water management plans, monitoring and BMPs reduce impacts on special-status plant species in Morro Creek due to storm water quality to a less than significant level. (Draft EIR p. 3.3-9 – 3.3-10)

Impact 3.3-6: The Final EIR concludes in Impact 3.3-6 that the proposed project could have a substantial adverse effect on riparian habitats and natural communities of special concern. (Draft EIR p. 3.3-10)

Finding: The City of Morro Bay finds that changes or alterations have been required in, or incorporated into, the proposed project that avoid or substantially lessen the significant

implement an archaeological monitoring plan. The plan shall include, but not be limited to, provisions for the monitoring of all ground-disturbing activities by a qualified archaeologist, including but not limited to trenching, boring, grading, removal of retired facilities, and use of staging areas and access roads. The duration and timing of monitoring shall be determined by the qualified archaeologist in consultation with the lead agency and based on the grading plans.

In the event that cultural resources are unearthed during ground-disturbing activities, the archaeological monitor shall be empowered to halt or redirect ground-disturbing activities away from the vicinity of the find so that the find can be evaluated. The monitor shall prepare and submit to the City brief weekly monitoring reports as well as one final monitoring report summarizing the results of the monitoring activity and describing any cultural resources recovered in the duration of monitoring.

Due to the sensitivity of the project area for Native American resources, at least one Native American monitor shall also monitor all ground-disturbing activities in the project area. Selection of monitors shall be made by agreement of the City and the Native American groups identified by the Native American Heritage Commission as having affiliation with the project area.

Mitigation Measure 3.4-1b: If cultural resources are encountered, all activity in the vicinity of the find shall cease until it can be evaluated by a qualified archaeologist. If the archaeological monitor determines that the resources may be significant, the qualified archaeologist will notify the lead agency and will develop an appropriate treatment plan for the resources. The archaeologist shall consult with Native American monitors or other appropriate Native American representatives in determining appropriate treatment for unearthed cultural resources if the resources are prehistoric or Native American in nature.

In considering any suggested mitigation proposed by the archaeologist in order to mitigate impacts to cultural resources, the Project proponent will determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) will be instituted. Work may proceed on other parts of the Project site while mitigation for cultural resources is being carried out.

Rationale/Supporting Explanation: The potential staging area for construction equipment and vehicle traffic during the construction phase of the proposed project would be to the north of the WWTP. The potential staging area may have some sensitivity for buried cultural resources or human remains that may be disturbed during grading, excavation or other subsurface activities. Implementation of Mitigation Measures 3.4-1a and 3.4-1b would ensure that potential archaeological resources are managed and handled appropriately during construction, including the unintentional unearthing of resources. Impacts would be reduced to a less than significant level. (Draft EIR p. 3.4-21 – 3.4-22)

Impact 3.4-3: The Final EIR concludes in Impact 3.4-3 that the proposed project could adversely affect paleontological resources. (Draft EIR p. 3.4-22)

Finding: The City of Morro Bay finds that changes or alterations have been required in, or incorporated into, the proposed project that avoid or substantially lessen the significant

Impact 3.4-4: The Final EIR concludes in Impact 3.4-4 that the proposed project could result in the disturbance of human remains. (Draft EIR p. 3.4-24)

Finding: The City of Morro Bay finds that changes or alterations have been required in, or incorporated into, the proposed project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR. Specifically, Mitigation Measures 3.4-1a and 3.4-4 would reduce the significant impact to a less than significant level.

Implement Mitigation Measure 3.4-1a.

Mitigation Measure 3.4-4: Halt Work if Human Skeletal Remains are Identified During Construction. If human skeletal remains are uncovered during Project construction, the Project proponent will immediately halt work, contact the San Luis Obispo County coroner to evaluate the remains, and follow the procedures and protocols set forth in Section 15064.5 (e)(1) of the CEQA Guidelines. If the County coroner determines that the remains are Native American, the coroner will contact the NAHC, in accordance with Health and Safety Code Section 7050.5, subdivision (c), and Public Resources Code 5097.98 (as amended by AB 2641). The NAHC will then identify the person(s) thought to be the Most Likely Descendent (MLD) of the deceased Native American, who will then help determine what course of action should be taken in dealing with the remains.

The archaeologist, City, and MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. If the MLD and the other parties do not agree on the reburial method, the project will follow Section 5097.98(b) of the California Public Resources Code, which states that "the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American burials with appropriate dignity on the property in a location not subject to further subsurface disturbance."

Per Public Resources Code 5097.98, the landowner shall ensure that the immediate vicinity, according to generally accepted cultural or archaeological standards or practices, where the Native American human remains are located, is not damaged or disturbed by further development activity until the landowner has discussed and conferred, as prescribed in this section (PRC 5097.98), with the most likely descendants regarding their recommendations.

Rationale/Supporting Explanation: The high level of historic and prehistoric activity in the project area may suggest that previously unknown human remains could be present as evidenced by large historic and prehistoric sites near the project area and burials present in the nearby sites. Construction and excavation activities may uncover or inadvertently damage human remains, which could be a significant impact. Implementation of Mitigation Measures 3.4-1a and 3.4-4 would ensure that any impacts to encountered human remains would be less than significant and that proper procedures to temporarily halt construction are taken. (Draft EIR p. 3.4-24)

potential effects of liquefaction on the proposed project would be reduced to a less than significant level. (Draft EIR p. 3.5-11 – 3.5-12)

Impact 3.5-3: The Final EIR concludes in Impact 3.5-3 that construction of new facilities and demolition of existing facilities could result in substantial soil erosion. (Draft EIR p. 3.5-12)

Finding: The City of Morro Bay finds that changes or alterations have been required in, or incorporated into, the proposed project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR. Specifically, Mitigation Measure 3.5-3 would reduce the significant impact to a less than significant level.

Mitigation Measure 3.5-3: To control water and wind erosion during construction of the project, MBCSD shall ensure that contractors implement Best Management Practices (BMPs) to control wind and water erosion during and shortly after construction of the project and permanent BMPs to control erosion and sedimentation once construction is complete. The BMPs could include, but would not be limited to, sediment barriers and traps, silt basins, silt fences, and soil stockpile protection measures.

Rationale/Supporting Explanation: Excavation and demolition activities during construction could result in erosion in rain or high wind events. Implementation of Mitigation Measure 3.5-3 would reduce erosion through the management of water and wind erosion during construction activities and the incorporation of both temporary and permanent BMPs once construction is complete. (Draft EIR p. 3.5-12 – 3.5-13)

Impact 3.5-4: The Final EIR concludes in Impact 3.5-4 that the proposed project components would be located on unstable soils that could expose structures to risk of damage due to settlement. (Draft EIR p. 3.5-13)

Finding: The City of Morro Bay finds that changes or alterations have been required in, or incorporated into, the proposed project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR. Specifically, Mitigation Measures 3.5-2 and 3.5-4 would reduce the significant impact to a less than significant level.

Implement Mitigation Measure 3.5-2.

Mitigation Measure 3.5-4: The design-level geotechnical evaluation described in Mitigation Measure 3.5-2 shall include a review of the surface and near-surface soils in the areas where new project components will be constructed and where excavated spoil materials will be stockpiled. The evaluation shall determine if the underlying soils have adequate strength to support the proposed facilities and stockpiles and, if not, shall provide recommendations to avoid this hazard. Recommendations made as a result of these investigations shall be considered during project design and the evaluation report shall become part of the construction documents for the project.

Disposal of all hazardous materials shall be in compliance with applicable California hazardous waste disposal laws. The construction contractor(s) shall contact the local fire agency and the Environmental Health Services Division of the San Luis Obispo County Public Health Department County Department of Public Health, Environmental Health Division, for any site-specific requirements regarding hazardous materials or hazardous waste containment or handling.

Mitigation Measure 3.6-1c: In the event of an accidental release of hazardous materials during construction, containment and clean up shall occur in accordance with applicable regulatory requirements.

Mitigation Measure 3.6-1d: Oil and other solvents used during maintenance of construction equipment shall be recycled or disposed of in accordance with applicable regulatory requirements. All hazardous materials shall be transported, handled, and disposed of in accordance with applicable regulatory requirements.

Mitigation Measure 3.6-1e: The implementing agencies shall require the construction contractor(s) to prepare a Site Safety Plan in accordance with applicable regulatory requirements.

Mitigation Measure 3.6-1f: The implementing agencies shall require the construction contractor(s) to prepare and implement a Safety Program to ensure the health and safety of construction workers and the public during project construction. The Safety Program shall include an injury and illness prevention program, as site-specific safety plan, and information on the appropriate personal protective equipment to be used during construction.

Rationale/Supporting Explanation: Operation of the proposed project would not require additional amounts of existing hazardous materials of sodium hypochlorite and sodium bisulfate. Therefore, potential impacts associated with the risk of accidental upset of hazardous materials would be limited to the construction phase of the project and associated transportation of construction equipment. Implementation of Mitigation Measures 3.6-1a through 3.6-1f would ensure that risks to accidental upset of hazardous materials are reduced to a less than significant level by requiring BMPs during project construction. (Draft EIR p. 3.6-9)

Impact 3.6-3: The Final EIR concludes in Impact 3.6-3 that the proposed project would handle hazardous materials within one-quarter mile of Morro bay High School. (Draft EIR p. 3.6-11)

Finding: The City of Morro Bay finds that changes or alterations have been required in, or incorporated into, the proposed project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR. Specifically, Mitigation Measures 3.6-1a through 3.6-1f and 3.11-1 would reduce the significant impact to a less than significant level.

Implement Mitigation Measures 3.6-1a through 3.6-1f and 3.11-1.

Rationale/Supporting Explanation: Potential impacts associated with the transportation of hazardous materials within schools would be limited to the construction phase of the proposed

Mitigation Measure 3.7-2: MBCSD shall require the construction contractor to file a Notice of Intent to comply with the SWRCB or CCRWQCB Low-Threat General WDRs prior to initiating excavation and dewatering activities and to comply with all requirements and conditions of the General WDRs, including preparation of a discharge monitoring plan (DMP).

Mitigation Measure 3.7-3: MBCSD shall file a Notice of Intent to comply with the NPDES General Industrial Permit requirements upon completion of the proposed project. MBCSD also shall prepare a SWPPP and monitoring plan, as required by the General Industrial Permit, that identify sources of pollutants and the measures to be implemented to manage the sources and reduce storm water pollution. The SWPPP shall include relevant BMPs from the City of Morro Bay's SWMP.

Rationale/Supporting Explanation: Project construction would involve earthmoving activities such as excavation, grading, soil stockpiling, and filling that could degrade water quality. Project operation could impact water quality due to storm water runoff occurring onsite. Implementation of Mitigation Measures 3.7-1 through 3.7-3 would ensure that project operation and construction does not impact water quality or violate waste discharge requirements by requiring adherence to all permits, management plans and associated BMPs. Impacts would be reduced to a less than significant level. (Draft EIR 3.7-16 – 3.7-17)

Impact 3.7-2: The Final EIR concludes in Impact 3.7-2 that construction of the proposed project could result in dewatering of shallow groundwater resources and contamination of surface waters. (Draft EIR p. 3.7-18)

Finding: The City of Morro Bay finds that changes or alterations have been required in, or incorporated into, the proposed project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR. Specifically, Mitigation Measure 3.7-2 would reduce the significant impact to a less than significant level.

Implement Mitigation Measure 3.7-2.

Rationale/Supporting Explanation: Dewatering activities associated with the construction of the proposed project could potentially degrade surface water or groundwater quality due to discharge of typical construction materials such as silt, fuel, grease or other chemicals. Implementation of Mitigation Measure 3.7-2 would require compliance of permits associated with the management of construction dewatering activities. Construction dewatering impacts to surface water or groundwater quality would be reduced to a less than significant level. (Draft EIR p. 3.7-18)

Impact 3.7-3: The Final EIR concludes in Impact 3.7-3 that the proposed project would alter the drainage pattern of the project site and floodplain and could place structures within a 100-year flood hazard area. (Draft EIR p. 3.7-19)

Finding: The City of Morro Bay finds that changes or alterations have been required in, or incorporated into, the proposed project that avoid or substantially lessen the significant

- (2) Implement "quiet" pile-driving technology (such as predrilling piles and the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;
- (3) Use noise control blankets on building structures to reduce noise emissions from the site; and
- (4) Monitor the effectiveness of noise attenuation measures by collecting noise measurements.

Rationale/Supporting Explanation: Construction activities would generate noise at levels that would be substantially greater than existing noise levels at nearby sensitive receptor locations and would exceed the noise standards of 50 dBA. Implementation of Mitigation Measure 3.9-1 and 3.9-2 would ensure that project construction occurs during daytime hours and would further mitigate noise associated with pile driving and other extreme noise-generating construction impacts. Impacts would be reduced to a less than significant level. (Draft EIR p. 3.9-10)

Impact 3.9-3: The Final EIR concludes in Impact 3.9-3 that project operation could result in substantial increases in ambient noise levels in the project vicinity above levels existing without the project. (Draft EIR p. 3.9-12)

Finding: The City of Morro Bay finds that changes or alterations have been required in, or incorporated into, the proposed project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR. Specifically, Mitigation Measures 3.9-2 and 3.9-3 would reduce the significant impact to a less than significant level.

Implement Mitigation Measure 3.9-2

Mitigation Measure 3.9-3: If a vibratory compactor is used within 25 feet of any structure, the construction contractor shall conduct crack surveys before drilling to prevent potential architectural damage to nearby structures. The surveys shall be done by photographs, video tape, or visual inventory, and shall include inside as well as outside locations. All existing cracks in walls, floors, and driveways shall be documented with sufficient detail for comparison after construction to determine whether actual vibration damage occurred. A post-construction survey shall be conducted to document the condition of the surrounding buildings after the construction is complete.

Rationale/Supporting Explanation: Construction activities may require vibratory compaction that has the potential to generate vibration levels that exceed the ground-borne vibration thresholds for building damage within a distance of 25 feet. Vibration impacts would only be experienced for a short period of time, but would still be considered significant during the construction phase of the project. Implementation of Mitigation Measure 3.9-2 and 3.9-3 would require crack surveys before and after drilling activity to buildings within 25 feet from vibratory compaction activity to observe potential and actual vibratory damage. Impacts would be reduced to a less than significant level. (Draft EIR p. 3.9-11)

4.10 Transportation and Traffic

Impact 3.11-1: The Final EIR concludes in Impact 3.11-1 that construction and demolition activities may result in short-term increases in vehicle trips by construction workers and construction vehicles that could potentially cause an increase in traffic on roads within the project vicinity. (Draft EIR p. 3.11-7)

Finding: The City of Morro Bay finds that changes or alterations have been required in, or incorporated into, the proposed project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR. Specifically, Mitigation Measure 3.11-1 would reduce the significant impact to a less than significant level.

Mitigation Measure 3.11-1: MBCSD shall require the construction contractor to prepare and implement a Traffic Control/Traffic Management Plan to minimize impacts during project construction. The Traffic Control/Traffic Management Plan shall include, but not be limited to, the following measures:

- The City of Morro Bay shall maintain access for local land uses including public properties, recreational properties, beachfront access, and commercial properties during construction activities.
- Emergency services access to local land uses will be maintained for the duration of construction activities. Local emergency service providers will be informed of lane closures and detours.
- The City of Morro Bay shall post advanced warning of construction activities to allow motorists to select alternative routes in advance.
- The City of Morro Bay shall arrange for a telephone resource to address public questions and complaints during project construction.
- The City of Morro Bay shall comply with roadside safety protocols, so as to reduce the risk of accident.
- For roadways requiring lane closures, the City of Morro Bay (and the construction contractor) shall develop circulation plans to minimize impacts to local street circulation. This would include the use of signing to guide vehicles around the construction zone.
- Include a plan to coordinate all construction activities with the San Luis Coastal Unified School District at least two months in advance. The San Luis Coastal Unified School District shall be notified of the timing, location, and duration of construction activities. The implementing agencies shall require its contractor to maintain vehicle, pedestrian, and school bus service during construction through inclusion of such provisions in the construction contract. The assignment of temporary crossing guards at designated intersections may be needed to enhance pedestrian safety during project construction. Also, the following provisions shall be met:
 - A minimum of two months prior to project construction, the implementing agencies shall coordinate with the San Luis Coastal Unified School District to identify peak circulation periods at the Morro Bay High School (i.e., the arrival and departure of students), and require their contractor to avoid lane closures during these periods.
 - A minimum of two months prior to project construction, the implementing agencies shall coordinate with the San Luis Coastal Unified School District to identify

CHAPTER 5

Significant Environmental Impacts

The proposed project does not result in significant and unavoidable impacts for the environmental resources analyzed and discussed in the Draft EIR. The Final EIR concludes that any potentially significant environmental effects associated with construction and operation of the proposed project could be mitigated to a level of less-than-significant.

Bioreactor (MBR) Alternative (Alternative 2) would meet all the project objectives and would result in similar impacts to those described in the Final EIR for the proposed project, with exception to air quality and water quality. Alternative 2 would use more energy for the proposed new facilities that would cause an increase in GHG impacts, but would not have a negative effect on Global Climate Change. Alternative 2 would not lessen or avoid impacts to water quality associated with the proposed project. The Chorro Valley Location Alternative (Alternative 3) would construct additional wastewater treatment facilities in a new location separate from the existing WWTP. Alternative 3 would meet all project objectives and have similar impacts to those identified in the Final EIR, but would increase impacts to many resources associated with aesthetics; construction impacts associated with air quality, noise, and traffic; odor; biological resources; hazards and hazardous materials; hydrology and water quality; and land use, agriculture, forestry, and recreation. Overall, Alternative 2 represents a tradeoff between the provision of recycled water and the energy required to produce such recycled water in comparison to the proposed project. Therefore, Alternative 2 and the proposed project would be considered environmentally equivalent alternatives and neither would be more superior to the other. Nonetheless, the JPA voted to proceed with the proposed project as the preferred alternative of upgrading the WWTP to full secondary treatment with tertiary filtration with the intention to potentially provide future improvements that would distribute tertiary recycled water for unrestricted use if decision-makers find it necessary for such use.

6.1 No Project Alternative

Description: According to Section 15126.6(e) of the *State CEQA Guidelines*, discussion of the No Project Alternative must include a description of existing conditions and reasonably-foreseeable future conditions that would exist if the project were not approved. Under the No Project Alternative, existing operations at the WWTP would remain the same and would not result in any upgraded facilities to comply with renewed waste discharge requirements established by the Central Coast RWQCB or allow MBCSD to phase out the 301(h) modified discharge permit. MBCSD has entered into a legal agreement with the Central Coast RWQCB to phase out the need for the 301(h) modified discharge permit by upgrading the WWTP to at least full secondary treatment. The No Project Alternative would violate the terms of the Settlement Agreement made with the RWQCB. (Draft EIR p. 6-3)

Finding: The City finds that the No Project Alternative is infeasible because it fails to meet any Project objectives or provide the benefits of the Project related to wastewater treatment and potential improvement of effluent water quality.

Rationale/Supporting Explanation: Implementation of the No Project Alternative would result in greater impacts to water quality and would only meet one of the four project objectives. The No Project Alternative would not result in the installation of treatment facilities to produce reclaimed water that meets Title 22 standards for beneficial reuse. There would be no recycled water produced or used in the vicinity of the WWTP. The only project objective that the No Project Alternative would meet is to not alter the flood impacts on adjoining properties. No changes would be made to the WWTP and therefore no changes to storm flows or flood

6.4 Alternative 3: Chorro Valley Location

Description: Alternative 3 involves constructing a new facility at a new location inland from the existing plant. This location was identified as a result of a series of feasibility studies conducted to examine fatal flaws in developing a stand-alone treatment plant in a new location. (Draft EIR p. 6-7)

Finding: The City finds that the Alternative 3 is infeasible because it would not satisfy all the project objectives and would not avoid any significant impacts of the proposed project.

Rationale/Supporting Explanation: Moving the treatment plant from its existing location to the Chorro Valley location or any other inland location would not avoid any significant impacts of the proposed project and could potentially create several new significant environmental impacts associated with aesthetics; construction impacts to air quality and GHG emissions, noise, and traffic; odor; land use compatibility; energy use; and water quality. Therefore, Alternative 3 would not be a feasible alternative in comparison to the proposed project. (Draft EIR p. 6-7)

ATTACHMENT 4

MITIGATION MONITORING AND REPORTING PROGRAM

MBCSD Wastewater Treatment Plant Upgrade Final Environmental Impact Report

In accordance with Section 15091(d) and Section 15097 of the CEQA Guidelines, which require a public agency to adopt a program for reporting on or monitoring required changes or conditions of approval to substantially lessen significant environmental effects, the Mitigation Monitoring and Reporting Program is hereby adopted for this project.

This Mitigation Monitoring and Reporting Program (MMRP) summarizes the mitigation commitments identified in the Morro Bay-Cayucos Wastewater Treatment Plant Upgrade Final EIR (State Clearinghouse No. 2008101138). Mitigation measures are presented in the same order as they occur in the Final EIR. The columns in the MMRP table provide the following information:

- **Mitigation Measure(s):** The action(s) that will be taken to reduce the impact to a less-than-significant level.
- **Implementation, Monitoring, and Reporting Action:** The appropriate steps to implement and document compliance with the mitigation measures.
- **Responsibility:** The agency or private entity responsible for ensuring implementation of the mitigation measure. However, until the mitigation measures are completed, the City of Morro Bay, as the CEQA Lead Agency, remains responsible for ensuring that implementation of the mitigation measures occur in accordance with the program (CEQA Guidelines, Section 15097(a)).
- **Monitoring Schedule:** The general schedule for conducting each monitoring task, either prior to construction, during construction, and/or after construction.

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
Aesthetics					
3.1-1: MBCSD shall ensure that new facility designs include non-glare exterior coatings (including walls) that are colored to blend in with the surrounding structures and landscape.	<ul style="list-style-type: none"> Include mitigation measure in project design specifications. Include mitigation measure in construction contractor specifications. 	MBCSD	X		
3.1-2: MBCSD shall ensure that all exterior lighting is shielded and directed downward to minimize impacts to nighttime views. MBCSD shall minimize the use of light poles and consider using light bollards. In addition, highly reflective finishes shall not be used in the design for proposed structures.	<ul style="list-style-type: none"> Include mitigation measure in project design specifications. Include mitigation measure in construction contractor specifications. 	MBCSD	X		
Air Quality and Greenhouse Gas Emissions					
3.2-1a: MBCSD shall require the construction contractor to prepare a Construction Activity Management Plan (CAMP) for submission to SLOCAPCD. Prior to initiation of construction, the CAMP shall be approved by SLOCAPCD. The CAMP shall include mitigation measures to minimize ROG and NOx, including but not limited to the following Standard Mitigation Measures recommended by the CAMP Guidelines:	<ul style="list-style-type: none"> Include mitigation measure in construction contractor specifications. Contact SLOCAPCD prior to preparation of CAMP to discuss potential mitigation measures. Submit CAMP to SLOCAPCD for approval prior to initiation of construction. Retain copy of CAMP in project file Retain a qualified mitigation monitor to implement mitigation monitoring activities during project construction. Conduct routine inspections of construction equipment and operations to ensure compliance with CAMP. Maintain written inspection records in the project file to verify compliance with CAMP. 	MBCSD; construction contractor	X		X
<ol style="list-style-type: none"> Maintain all construction equipment in proper tune according to manufacturer's specifications; Fuel all off-road and portable diesel powered equipment with ARB certified motor vehicle diesel fuel (non-taxed version suitable for use off-road); 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 Regulation; Use on-road heavy-duty trucks that meet the ARB's 2007 or cleaner certification standard for on-road 					

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
<p>heavy-duty diesel engines, and comply with the State On-Road Regulation;</p> <p>e. Construction or trucking companies with fleets that do not have engines in their fleet 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;</p> <p>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;</p> <p>g. Electrify equipment when feasible;</p> <p>h. Substitute gasoline-powered in place of diesel-powered equipment, where feasible; and,</p> <p>i. Use alternatively fueled construction equipment on-site where feasible, such as compressed natural gas (CNG), liquefied natural gas (LNG), propane or biodiesel.</p>	<ul style="list-style-type: none"> All maintenance and operation records shall be retained in the project file. 	MBCSD; construction contractor	X	X	
<p>3.2-1b: To further reduce the impact of fugitive dust, MBCSD shall require the construction contractor to comply with the SLOCAPCD's Rule 402. The construction contractor shall prepare a CAMP that includes dust control mitigation measures to be implemented during construction, particularly demolition and site grading phases. Mitigation measures may include, but not be limited to, the following recommendations from the CAMP Guidelines:</p> <p>a. Reduce the amount of the disturbed area where possible.</p> <p>b. Use of water trucks or sprinkler systems in sufficient quantities to prevent airborne dust from leaving the site. Increased watering frequency</p>	<ul style="list-style-type: none"> Include mitigation measure in construction contractor specifications. Include PM10 mitigation measures on construction drawings and grading plans. Contact SLOCAPCD prior to preparation of CAMP to discuss potential mitigation measures. Submit CAMP to SLOCAPCD for approval prior to initiation of construction. Retain copy of CAMP in project file Retain a qualified mitigation monitor to implement mitigation monitoring 	MBCSD; construction contractor	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
<p>would be required whenever possible.</p> <p>c. All dirt stock pile areas should be sprayed daily as needed.</p> <p>d. Permanent dust control measures identified in the approved project revegetation and landscape plans should be implemented as soon as possible following completion of any soil disturbing activities.</p> <p>e. Exposed ground areas that are planned to be reworked at dates greater than one month after initial grading should be sown with fast germinating native grass seed and watered until vegetation is established.</p> <p>f. All disturbed soil areas not subject to revegetation should be stabilized using approved chemical soil binders, jute netting, or other methods approved in advance by the APCD.</p> <p>g. All roadways, driveways, sidewalks, etc. to be paved should be completed after grading unless seeding or soil binders are used.</p> <p>h. Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site.</p> <p>i. All trucks hauling dirt, sand, soil, or other loose materials are to be covered or should maintain at least two feet of freeboard.</p> <p>j. Install wheel washers where vehicles enter and exit unpaved roads onto streets, or wash off trucks and equipment leaving the site.</p> <p>k. Sweep streets at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water should be used where feasible.</p>	<p>activities during project construction. The name and telephone number of such monitor shall be provided to the SLOCA/PCD.</p> <ul style="list-style-type: none"> • Mitigation monitor shall conduct routine inspections of construction equipment and operations to ensure compliance with CAMP PM10 and dust control measures and determine when increased watering or dust control is required. • Mitigation monitor shall maintain written inspection records in the project file to verify compliance with CAMP. • Maintenance and operation records shall be retained in the project file. 				

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
<p>Mitigation Measures</p> <p>All PM₁₀ mitigation measures required should be shown on grading and building plans. In addition, the contractor or builder should designate a person or persons to monitor the dust control program and to order increased watering, as necessary, 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 prior to land use clearance for map recordation and finished grading of the area.</p>					
<p>3.2-1c: MBCSD shall evaluate whether naturally-occurring asbestos (NOA) is present within the area of disturbance based on geotechnical information collected at the site. If NOA is present, then the construction contractor must comply with all requirements of CARB's Air Toxics Control Measure (ATCM). Compliance may include preparation and implementation of an Asbestos Dust Mitigation Plan and an Asbestos Health and Safety Program for approval by APCD. If NOA is not found, then the construction contractor shall file an exemption request with SLOCAPCD.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. Construction contractor shall determine the presence or absence of NOA within the area of disturbance of the project. • If NOA is present, then retain copies of Asbestos Dust Mitigation Plan, Asbestos Health and Safety Program, or any requirements of CARB's ATCM. Maintain records of compliance with any asbestos control measures or plans in the project file. • If NOA is not present, then file exemption request with SLOCAPCD. Retain copy of exemption from SLOCAPCD in the project file. 	MBCSD; construction contractor	X	X	
<p>3.2-1d: Prior to demolition activities, MBCSD shall retain a licensed asbestos inspector to determine the presence of asbestos and asbestos-containing materials (ACM) within buildings to be re-used and/or demolished. If asbestos is discovered, the City would comply with asbestos abatement regulations to safely remove all ACM from the site.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • Retain licensed inspector to conduct survey to determine presence/absence of ACM prior to demolition activities. • Retain ACM survey report in the project file. 	MBCSD; construction contractor	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
<p>3.2-1e: Should hydrocarbon contaminated soil be encountered during construction activities, the SLOCAPCD shall be notified as soon as possible and no later than 48 hours after affected material is discovered to determine if an SLOCAPCD Permit will be required. In addition, the following measures shall be implemented immediately after contaminated soil is discovered:</p> <ol style="list-style-type: none"> Covers on storage piles shall be maintained in place at all times in areas not actively involved in soil addition or removal; Contaminated soil shall be covered with at least six inches of packed uncontaminated soil or other TPH non-permeable barrier such as plastic tarp. No headspace shall be allowed where vapors could accumulate; Covered piles shall be designed in such a way to eliminate erosion due to wind or water. No openings in the covers are permitted; The air quality impacts from the excavation and haul trips associated with removing the contaminated soil shall be evaluated and mitigated if total emissions exceed the APCD's construction phase thresholds; During the soil excavation, odors shall not be evident to such a degree as to cause a public nuisance; and 	<ul style="list-style-type: none"> If ACM is found, maintain records of construction contractor compliance with asbestos abatement regulations in project file. Include mitigation measure in construction contractor specifications. If hydrocarbon contaminated soils are encountered, maintain records of correspondence with SLOCAPCD and compliance with mitigation measures. 	MBCSD; construction contractor	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
<p>f. Clean soil shall be segregated from contaminated soil.</p>					
<p>3.2-1f: Prior to the start of the project, MBCSD shall contact the SLOCAPCD for specific information regarding construction permitting requirements.</p>	<ul style="list-style-type: none"> Include mitigation measure in construction contractor specifications. 	MBCSD; construction contractor	X		
<p>3.2-2: MBCSD shall revise the Odor Impact Minimization Plan (OIMP) for the WWTP in accordance with Title 14 CCR Section 17863.4, to include the proposed new facilities. MBCSD shall identify new sources of objectionable odors and develop and implement new procedures to minimize odors. MBCSD shall comply with all requirements of the revised OIMP. Once the updated OIMP is completed it shall be submitted to the SLOCAPCD for review.</p>	<ul style="list-style-type: none"> Revise OIMP in accordance with Title 14 CCR. Submit OIMP to SLOCAPCD for review. Retain copy of OIMP onsite at the WWTP and in the project file. 	MBCSD			X
Cultural Resources					
<p>3.4-1a: Prior to issuance of a grading permit, an archaeologist meeting the Secretary of the Interior's Standards for professional archaeology (Appendix A of 36 CFR Part 61) ("qualified archaeologist") shall be retained by the City to develop and implement an archaeological monitoring plan. The plan shall include, but not be limited to, provisions for the monitoring of all ground-disturbing activities by a qualified archaeologist, including but not limited to trenching, boring, grading, removal of retired facilities, and use of staging areas and access roads. The duration and timing of monitoring shall be determined by the qualified archaeologist in consultation with the lead agency and based on the grading plans.</p> <p>In the event that cultural resources are unearthed during ground-disturbing activities, the archaeological monitor shall be empowered to halt or redirect ground-disturbing activities away from the vicinity of the find so that the find can be evaluated. The monitor shall prepare and</p>	<ul style="list-style-type: none"> Include mitigation measure in construction contractor specifications. Retain a qualified archaeologist to develop and implement an Archaeological Monitoring Plan. Maintain weekly monitoring reports for the duration of time specified in the Monitoring Plan. Retain copies of monitoring reports in the project file. Retain a Native American monitor for all ground-disturbing activities at the project site. 	MBCSD	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
<p>submit to the City brief weekly monitoring reports as well as one final monitoring report summarizing the results of the monitoring activity and describing any cultural resources recovered in the duration of monitoring.</p> <p>Due to the sensitivity of the project area for Native American resources, at least one Native American monitor shall also monitor all ground-disturbing activities in the project area. Selection of monitors shall be made by agreement of the City and the Native American groups identified by the Native American Heritage Commission as having affiliation with the project area.</p>					
<p>3.4-1b: If cultural resources are encountered, all activity in the vicinity of the find shall cease until it can be evaluated by a qualified archaeologist. If the archaeological monitor determines that the resources may be significant, the qualified archaeologist will notify the lead agency and will develop an appropriate treatment plan for the resources. The archaeologist shall consult with Native American monitors or other appropriate Native American representatives in determining appropriate treatment for unearthed cultural resources if the resources are prehistoric or Native American in nature.</p> <p>In considering any suggested mitigation proposed by the archaeologist in order to mitigate impacts to cultural resources, the Project proponent will determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) will be instituted. Work may proceed on other parts of the Project site while mitigation for cultural resources is being carried out.</p>	<ul style="list-style-type: none"> include mitigation measure in construction contractor specifications. Retain a qualified archaeological monitoring to implement the archaeological monitoring plan (see Mitigation Measure 3.4-1a). If significant cultural resources are found, the qualified archaeologist shall develop a Treatment Plan, in consultation with Native American representatives, if appropriate. The Treatment Plan shall identify appropriate mitigation measures (either avoidance or data recovery) and areas around the project site where work may proceed in the meantime. Retain copy of Treatment Plan in the project file. Retain records of Treatment Plan implementation in project file. 	MBCSD	X	X	
<p>3.4-3: During all construction activities that involve substantial soil disturbance at a depth of greater than 5 feet below the current ground surface, the following</p>	<ul style="list-style-type: none"> include mitigation measure in construction contractor specifications. Retain a qualified paleontologist to 	MBCSD	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
<p>activities will be conducted:</p> <p>a. A qualified Paleontologist will be retained to supervise monitoring of construction excavations and to produce a monitoring and mitigation plan for the proposed project. Paleontological monitoring will include inspection of exposed rock units and microscopic examination of matrix to determine if fossils are present.</p> <p>b. Artificial fill, active beach and dune sand, and younger Quaternary alluvium have little paleontological sensitivity level, and will be spot-checked on a periodic basis to ensure that older underlying sediments are not being penetrated and fossils are not being exposed. All earth moving in older Quaternary alluvial deposits will be monitored at a schedule developed by the Paleontologist in consultation with the City and based on grading plans.</p> <p>c. The monitor will have authority to temporarily divert grading away from exposed fossils in order to recover the fossil specimens. An emphasis will be placed on thorough fossil locality documentation stratigraphic data collection.</p> <p>d. If microfossils are present, the monitor will collect matrix for processing. In order to expedite removal of fossiliferous matrix, the monitor may request heavy machinery assistance to move large quantities of matrix out of the path of construction to designated stockpile areas. Testing of stockpiles will consist of screen washing small samples (approximately 90 kilograms, or 200 pounds) to determine if significant fossils are present. Productive tests will result in screen washing of additional matrix from the stockpiles to a maximum of 2,700 kg (6,000 lbs) per locality to ensure recovery of a scientifically significant</p>	<p>develop and implement a Monitoring and Mitigation Plan that include requirements of Mitigation Measure 3.4-3.</p> <ul style="list-style-type: none"> Maintain weekly monitoring reports for the duration of monitoring as defined by the Plan. Prepare and file a mitigation report at the completion of the monitoring period as defined by the Plan. Retain copies of weekly and final monitoring reports in the project file. 				

MITIGATION MONITORING AND REPORTING PROGRAM

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
<p>Recovered fossils will be prepared to the point of identification, identified by qualified experts, entered in a database to facilitate inventory, analyzed for significance, and deposited in a designated repository. At each fossil locality, field data forms will be used to record the locality, stratigraphic columns will be measured and appropriate scientific samples submitted for analysis.</p> <p>e. The Paleontologist will prepare brief weekly progress reports to be filed with the client and the lead agencies. The Paleontologist will prepare a final mitigation report to be filed with the client, the lead agencies, and the repository.</p> <p>f. The Paleontologist will prepare brief weekly progress reports to be filed with the client and the lead agencies. The Paleontologist will prepare a final mitigation report to be filed with the client, the lead agencies, and the repository.</p>					
<p>3.4-4: Halt Work if Human Skeletal Remains are Identified During Construction. If human skeletal remains are uncovered during Project construction, the Project proponent will immediately halt work, contact the San Luis Obispo County coroner to evaluate the remains, and follow the procedures and protocols set forth in Section 15064.5 (e)(1) of the CEQA Guidelines. If the County coroner determines that the remains are Native American, the coroner will contact the NAHC, in accordance with Health and Safety Code Section 7050.5, subdivision (c), and Public Resources Code 5097.98 (as amended by AB 2641). The NAHC will then identify the person(s) thought to be the Most Likely Descendant (MLD) of the deceased Native American, who will then help determine what course of action should be taken in dealing with the remains.</p> <p>The archaeologist, City, and MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15064.5(d)). The agreement should take into consideration the appropriate excavation.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • Retain records of all inadvertent discovery evaluations in the project file. 	MBCSD; construction contractor		X	

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
<p>removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. If the MLD and the other parties do not agree on the reburial method, the project will follow Section 5097.98(b) of the California Public Resources Code, which states that "the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American burials with appropriate dignity on the property in a location not subject to further subsurface disturbance."</p> <p>Per Public Resources Code 5097.98, the landowner shall ensure that the immediate vicinity, according to generally accepted cultural or archaeological standards or practices, where the Native American human remains are located, is not damaged or disturbed by further development activity until the landowner has discussed and conferred, as prescribed in this section (PRC 5097.98), with the most likely descendants regarding their recommendations.</p>					
<p>Geology, Soils, Seismicity, and Mineral Resources</p> <p>3.5-1: MBCSD shall ensure construction of the proposed project facilities adhere to the City's seismic standards and to the California Building Code requirements to reduce risks of damage from potential seismic ground shaking.</p>	<ul style="list-style-type: none"> MBCSD to provide seismic standards to the design engineer for incorporation into the project design and construction plans. Verify seismic standards prior to issuance of building permit 	MBCSD	X		
<p>3.5-2: Prior to the acceptance of construction plans for the project by the JPA Board, a design-level geotechnical investigation, including collection of site-specific subsurface data shall be completed by MBCSD. The geotechnical evaluation shall identify density profiles, approximate maximum shallow groundwater levels, characterize the vertical and lateral extent of the saturated sand/silt layers that could undergo liquefaction</p>	<ul style="list-style-type: none"> Retain a qualified engineer to conduct a design-level geotechnical investigation. Require the design engineer to incorporate recommendations into project design. Verify recommendations have been 	MBCSD	X		

MITIGATION MONITORING AND REPORTING PROGRAM

	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
<p>Mitigation Measures</p> <p>during strong ground shaking, and develop site-specific design criteria to mitigate potential risks. Recommendations made as a result of these investigations to protect new structures from seismic hazards shall become part of the proposed project.</p>	<ul style="list-style-type: none"> incorporated into project design prior to issuance of building permit. Retain the geotechnical report in the project file. Include the geotechnical report as part of the construction documents. 				
<p>3.5-3: To control water and wind erosion during construction of the project, MBCSD shall ensure that contractors implement Best Management Practices (BMPs) to control wind and water erosion during and shortly after construction of the project and permanent BMPs to control erosion and sedimentation once construction is complete. The BMPs could include, but would not be limited to, sediment barriers and traps, silt basins, silt fences, and soil stockpile protection measures.</p>	<ul style="list-style-type: none"> Include mitigation measure in construction contractor specifications. Require the design engineer to incorporate post-construction erosion control BMPs into the project design specifications. Retain a qualified construction monitor to conduct routine inspections of BMP implementation during project construction. Prepare weekly construction monitoring reports. Retain construction monitoring reports in project file. 	MBCSD; construction contractor	X	X	
<p>3.5-4: The design-level geotechnical evaluation described in Mitigation Measure 3.5-2 shall include a review of the surface and near-surface soils in the areas where new project components will be constructed and where excavated spoil materials will be stockpiled. The evaluation shall determine if the underlying soils have adequate strength to support the proposed facilities and stockpiles and, if not, shall provide recommendations to avoid this hazard. Recommendations made as a result of these investigations shall be considered during project design and the evaluation report shall become part of the construction documents for the project.</p>	<ul style="list-style-type: none"> Retain a qualified engineer to conduct a design-level geotechnical investigation. Require the design engineer to incorporate recommendations into project design. Verify recommendations have been incorporated into project design prior to issuance of building permit. Retain the geotechnical report in the project file. Include the geotechnical report as part of the construction documents. 	MBCSD	X		

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
<p>Hazards and Hazardous Materials</p> <p>3.6-1a: Construction contractor(s) shall be required to implement best management practices (BMPs) for handling hazardous materials during the project. The use of the construction BMPs shall minimize negative effects on groundwater and soils, workers, and the public, and will include, without limitation, the following:</p> <ul style="list-style-type: none"> Follow manufacturers' recommendations and regulatory requirements for use, storage, and disposal of chemical products and hazardous materials used in construction. Avoid overtopping construction equipment fuel tanks. During routine maintenance of construction equipment, properly contain and remove grease and oils. Properly dispose of discarded containers of fuels and other chemicals. 	<ul style="list-style-type: none"> Include mitigation measure in construction contractor specifications. Retain a qualified construction monitor to conduct routine inspections of mitigation implementation during project construction. Prepare weekly construction monitoring reports. Retain construction monitoring reports in project file. Maintenance and operation records shall be retained in the project file. 	MBCSD; construction contractor	X	X	
<p>3.6-1b: The implementing agencies shall require the construction contractor(s) to implement safety measures in accordance with General Industry Safety Orders for Spill and Overflow Control (CCR Title 8, Sections 5163-5167) to protect the project area from contamination due to accidental release of hazardous materials. The safety measures shall include, but not be limited to, the following:</p> <ul style="list-style-type: none"> Spills and overflows of hazardous materials shall be neutralized and disposed of promptly. Hazardous materials shall be stored in containers that are chemically inert to and appropriate for the type and quantity of the hazardous substance. Containers shall not be stored where they are 	<ul style="list-style-type: none"> Include mitigation measure in construction contractor specifications. Retain a qualified construction monitor to conduct routine inspections of mitigation implementation during project construction. Prepare weekly construction monitoring reports. Retain construction monitoring reports in project file. Maintenance and operation records shall be retained in the project file. 	MBCSD; construction contractor	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
<p>exposed to heat sufficient enough to rupture the containers or cause leakage.</p> <ul style="list-style-type: none"> Specific information shall be provided regarding safe procedures and other precautions before cleaning or subsequent use or disposal of hazardous materials containers. <p>Disposal of all hazardous materials shall be in compliance with applicable California hazardous waste disposal laws. The construction contractor(s) shall contact the local fire agency and the Environmental Health Services Division of the San Luis Obispo County Public Health Department County Department of Public Health, Environmental Health Division, for any site-specific requirements regarding hazardous materials or hazardous waste containment or handling.</p>					
<p>3.6-1c: In the event of an accidental release of hazardous materials during construction, containment and clean up shall occur in accordance with applicable regulatory requirements.</p>	<ul style="list-style-type: none"> Include mitigation measure in construction contractor specifications. 	MBCSD; construction contractor		X	
<p>3.6-1d: Oil and other solvents used during maintenance of construction equipment shall be recycled or disposed of in accordance with applicable regulatory requirements. All hazardous materials shall be transported, handled, and disposed of in accordance with applicable regulatory requirements.</p>	<ul style="list-style-type: none"> Include mitigation measure in construction contractor specifications. Maintenance and operation records shall be retained in the project file. 	MBCSD; construction contractor		X	
<p>3.6-1e: The implementing agencies shall require the construction contractor(s) to prepare a Site Safety Plan in accordance with applicable regulatory requirements.</p>	<ul style="list-style-type: none"> Include mitigation measure in construction contractor specifications. Retain a copy of the Site Safety Plan in the project file. 	MBCSD; construction contractor	X		
<p>3.6-1f: The implementing agencies shall require the construction contractor(s) to prepare and implement a Safety Program to ensure the health and safety of construction workers and the public during project construction. The Safety Program shall include an injury</p>	<ul style="list-style-type: none"> Include mitigation measure in construction contractor specifications. Retain a copy of the Safety Program in the project file. 	MBCSD; construction contractor	X		

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
<p>and illness prevention program, as site-specific safety plan, and information on the appropriate personal protective equipment to be used during construction.</p> <p>Hydrology and Water Quality</p> <p>3.7-1: MBCSD shall require the construction contractor to prepare and implement a SWPPP in accordance with the requirements of the NPDES General Construction Permit. The SWPPP shall include BMPs to control erosion, sedimentation, and hazardous materials release. The SWPPP shall be approved by the City of Morro Bay prior to the start of construction. The BMPs shall be maintained at the site for the duration of construction.</p> <p>The objectives of the BMPs are to identify pollutant sources that may affect the quality of storm water discharges and to implement measures to reduce pollutants in storm water discharges. The BMPs for the proposed project shall include, but not be limited to, the implementation of the following elements in accordance with the City's Storm Water Management Plan (SWMP):</p> <ul style="list-style-type: none"> • Identification of all pollutant sources, including sources of sediment that may affect the quality of storm water • Identification of non-storm water discharges; • Estimate of the construction area and impervious surface area; • Preparation of a site map and maintenance schedule for BMPs installed during construction designed to reduce or eliminate pollutants after construction is completed (post-construction BMPs); • Applicable erosion and sedimentation control measures, waste management practices, and spill 	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • Retain a qualified construction monitor to conduct routine inspections of BMP implementation during project construction. • Prepare weekly construction monitoring reports. • Retain construction monitoring reports in project file. • Maintenance and operation records shall be retained in the project file to demonstrate compliance with BMPs. 	MBCSD; construction contractor	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
<p>prevention and control measures:</p> <ul style="list-style-type: none"> Maintenance and training practices; and, A sampling and analysis strategy and sampling schedule for discharge from construction activities. 					
<p>3.7-2: MBCSD shall require the construction contractor to file a Notice of Intent to comply with the SWRCB or CCRWQCB Low-Threat General WDRs prior to initiating excavation and dewatering activities and to comply with all requirements and conditions of the General WDRs, including preparation of a discharge monitoring plan (DMP). If applicable, MBCSD may apply for the General Waiver of waste discharge requirements. MBCSD shall submit an application to the CCRWQCB for approval that demonstrates that the discharge from dewatering activities would not degrade water quality of groundwater or surface waters.</p>	<ul style="list-style-type: none"> Include mitigation measure in construction contractor specifications. Retain a copy of Notice of Intent or General Waiver in the project file. 	MBCSD; construction contractor	X	X	
<p>3.7-3: MBCSD shall file a Notice of Intent to comply with the NPDES General Industrial Permit requirements upon completion of the proposed project. MBCSD also shall prepare a SWPPP and monitoring plan, as required by the General Industrial Permit, that identify sources of pollutants and the measures to be implemented to manage the sources and reduce storm water pollution and storm water runoff volume. The SWPPP shall include relevant BMPs from the City of Morro Bay's SWMP or LID practices in compliance with the NPDES Phase II Municipal Stormwater Permit. MBCSD shall demonstrate that the BMPs or LID practices meet the hydromodification criteria for redevelopment projects as defined in the City's SWMP and required by the CCRWQCB.</p>	<ul style="list-style-type: none"> Require the design engineer to develop a post-construction SWPPP and incorporate BMPs or LID practices into the project design specifications to meet the requirements of the CCRWQCB for the NPDES General Industrial Permit and the requirements of the City's SWMP. Retain a copy of the post-construction SWPPP in the project file. Verify BMPs for LID practices have been incorporated into project design prior to issuance of building permit. 	MBCSD	X		
<p>3.7-4: To mitigate impacts associated with 100-year flood hazards, MBCSD or the City of Morro Bay shall implement the following measures:</p>	<ul style="list-style-type: none"> Require design engineer to incorporate flood hazard mitigation into the project design specifications. Verify mitigation has been 	MBCSD	X		

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
<ul style="list-style-type: none"> Construct the new WWTP facilities on higher ground. Construction on elevated fill provides the highest level of protection and least amount of operational inconveniences. Construct all or part of the new facilities on City owned land to the south of the current site that is already elevated, modeled in the analysis as MB10 through MB12. Construction at this location will have the least adverse flood impact on neighboring properties. Apply for a Letter of Map Revision (LOMR), including new hydrology and new hydraulic analyses, to document the potential reduction of flood levels relative to the current FIRM. The City floodplain management ordinance and funding agencies require that WWTP improvements be protected from flooding to the level of one foot above the 100-year flood elevation. 	<p>Incorporated into project design prior to issuance of building permit.</p> <ul style="list-style-type: none"> Obtain LOMR prior to issuance of building permit. Retain copy of LOMR in the project file. 				
<p>Noise</p> <p>3.9-1: MBCSD shall require construction contractors to restrict all construction activities to the hours between 7:00 A.M. and 7:00 P.M. Monday through Friday, and between 8:00 A.M. and 7:00 P.M. on Saturday and Sunday.</p> <p>3.9-2: To further mitigate pile driving and other extreme noise-generating construction impacts, a set of site-specific noise attenuation measures shall be implemented under the supervision of a qualified acoustical consultant. These attenuation measures shall include, but not be limited to, the following control strategies:</p> <ol style="list-style-type: none"> Erect temporary plywood noise barriers around the construction site; Implement "quiet" pile-driving technology (such as 	<ul style="list-style-type: none"> Include mitigation measure in construction contractor specifications. Include mitigation measure in construction contractor specifications. During construction, MBCSD shall appoint a qualified acoustical consultant monitor to perform site inspections to verify contractor compliance. Retain inspection records in the project file. 	MBCSD; construction contractor		X	
		MBCSD; construction contractor		X	

MITIGATION MONITORING AND REPORTING PROGRAM

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
<p>predrilling piles and the use of more than one pile driver to shorten the total pile driving duration), where feasible. In consideration of geotechnical and structural requirements and conditions;</p> <p>(3) Use noise control blankets on building structures to reduce noise emissions from the site; and</p> <p>(4) Monitor the effectiveness of noise attenuation measures by collecting noise measurements.</p>					
<p>3.9-3: If a vibratory compactor is used within 25 feet of any structure, the construction contractor shall conduct crack surveys before drilling to prevent potential architectural damage to nearby structures. The surveys shall be done by photographs, video tape, or visual inventory, and shall include inside as well as outside locations. All existing cracks in walls, floors, and driveways shall be documented with sufficient detail for comparison after construction to determine whether actual vibration damage occurred. A post-construction survey shall be conducted to document the condition of the surrounding buildings after the construction is complete.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • Retain results of survey reports in the project file. 	MBCSD; construction contractor	X		X
Public Services and Utilities					
<p>3.10-1: Project facility design and construction methods that produce less waste, or that produce waste that could more readily be recycled or reused shall be encouraged.</p>	<ul style="list-style-type: none"> • Require design engineer to incorporate design features in accordance with the mitigation measure. • Include mitigation measure in construction contractor specifications. 	MBCSD; construction contractor	X		X
<p>3.10-2: MBCSD shall require the construction contractor to describe plans for recovering, reusing, and recycling wastes produced through construction, demolition, and excavation activities. Submittal of these plans shall be required in construction specifications.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • Retain copies of plans in the project file. 	MBCSD; construction contractor			X
<p>3.10-3: MBCSD shall require the construction contractor to contact a regional notification center (e.g., Underground Services Alert or Dig Alert) at least two</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. 	MBCSD; construction contractor	X		X

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
<p>days prior to initiating any construction activities.</p> <p>Transportation and Traffic</p> <p>3.11-1: MBCSD shall require the construction contractor to prepare and implement a Traffic Control/Traffic Management Plan to minimize impacts during project construction. The Traffic Control/Traffic Management Plan shall include, but not be limited to, the following measures:</p> <ul style="list-style-type: none"> The City of Morro Bay shall maintain access for local land uses including public properties, recreational properties, beachfront access, and commercial properties during construction activities. Emergency services access to local land uses will be maintained for the duration of construction activities. Local emergency service providers will be informed of lane closures and detours. The City of Morro Bay shall post advanced warning of construction activities to allow motorists to select alternative routes in advance. The City of Morro Bay shall arrange for a telephone resource to address public questions and complaints during project construction. The City of Morro Bay shall comply with roadside safety protocols, so as to reduce the risk of accident. For roadways requiring lane closures, the City of Morro Bay (and the construction contractor) shall develop circulation plans to minimize impacts to local street circulation. This would include the use of signing to guide vehicles around the construction zone. 	<ul style="list-style-type: none"> Retain records of correspondence in the project file. Include mitigation measure in construction contractor specifications. Retain copies of the Traffic Control/Traffic Management Plan in the project file. Retain records of correspondence with San Luis Coastal Unified School District in the project file. 	MBCSD; construction contractor	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
<ul style="list-style-type: none"> Include a plan to coordinate all construction activities with the San Luis Coastal Unified School District at least two months in advance. The San Luis Coastal Unified School District shall be notified of the timing, location, and duration of construction activities. The implementing agencies shall require its contractor to maintain vehicle, pedestrian, and school bus service during construction through inclusion of such provisions in the construction contract. The assignment of temporary crossing guards at designated intersections may be needed to enhance pedestrian safety during project construction. Also, the following provisions shall be met. <ul style="list-style-type: none"> - A minimum of two months prior to project construction, the implementing agencies shall coordinate with the San Luis Coastal Unified School District to identify peak circulation periods at the Morro Bay High School (i.e., the arrival and departure of students), and require their contractor to avoid lane closures during these periods. - A minimum of two months prior to project construction, the implementing agencies shall coordinate with the San Luis Coastal Unified School District to identify alternatives to their safe routes to school program, alternatives for the school bussing routes and stop locations, and other circulation provisions, as part of the Traffic Control/ Traffic Management Plan. 					
<p>Cumulative Impacts</p> <ul style="list-style-type: none"> 4-1: MBCSD shall communicate and coordinate project construction activities with other City agencies. Phasing of project construction shall be coordinated to minimize cumulative impacts to traffic and circulation. 	<ul style="list-style-type: none"> Include mitigation measure in construction contractor specifications. Retain records of correspondence with City agencies in the project file. 	MBCSD; construction contractor	X	X	



FILE COPY

ATTACHMENT 5

RECEIVED

CITY OF MORRO BAY
PUBLIC SERVICES DEPARTMENT
APPEAL FORM

DEC 22 2010

City of Morro Bay
Public Services Department

APPEAL FROM THE DECISION OR ACTION OF (GOVERNING BODY OR CITY OFFICER):

Planning Commission

APPEAL OF SPECIFIC DECISION OR ACTION:

Denial of CPO-339 and UPO-307 and Failure to recommend EIR Certification

PERMIT TYPE BEING APPEALED (IE. COASTAL PERMIT, USE PERMIT, TENTATIVE SUBDIVISION):

DATE DECISION OR ACTION RENDERED:

December 20, 2010

APPELLANT (PLEASE PRINT):

Bruce Keogh, Wastewater Treatment Division Manager

SIGNATURE:

Bruce Keogh

ADDRESS:

160 Atascadero Road, Morro Bay

TELEPHONE NUMBER:

805-772-6261

GROUND(S) FOR THE APPEAL (ATTACH SHEETS AS NECESSARY):

Action of the planning Commission in not recommending certification of the Final EIR and approval of the Coastal and Use Permits was without merit.

REQUESTED RELIEF OR ACTION:

Certification of the Final EIR and approval of the Use Permit UPO-307 and Coastal Development Permit CPO-339

FOR OFFICE USE ONLY

DATE APPEAL FILED:

ACCEPTED BY:

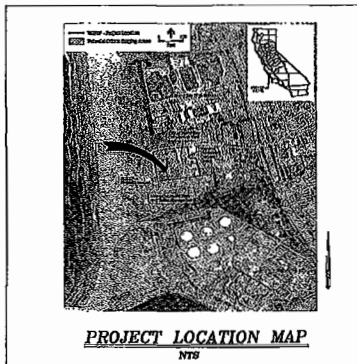
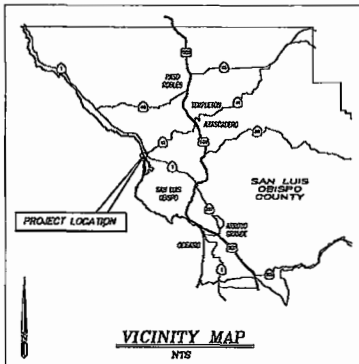
APPEAL BODY:

DATE OF APPEAL HEARING:

ATTACHMENT 6

FOR UNIMPROVED PLANS
GRAPHICAL SCALE IS BY RECORDS

MORRO BAY/CAYUCOS WASTEWATER TREATMENT PLAN UPGRADE



OWNER

CITY OF MORRO BAY/
CAYUCOS SANITARY DISTRICT
955 SHASTA
MORRO BAY, CA 93422
PHONE: 805-772-8272
APN: 066-381-032,033,034

PROJECT DATA

LAND USE: GENERAL (LIGHT) INDUSTRIAL
WITHIN INTERIM OPEN SPACE (I) OVERLAY
ZONING: LIGHT INDUSTRIAL (M-1/PD)

SITE ADDRESS:
180 ATASCADERO ROAD
MORRO BAY, CA 93422

PROJECT DESCRIPTION:
MORRO BAY/CAYUCOS WASTEWATER
TREATMENT PLANT UPGRADE
SETBACK STANDARDS FOR M-1 ZONING
MAX. BUILDING HEIGHT - 30 FT.
MIN. FRONT YARD SETBACK - 25 FT.
MIN. SIDE YARD SETBACK - 10 FT.
MIN. REAR YARD SETBACK - 0 FT.

Design
Data
Provided by
MWH

PROJECT MANAGER:
R. DENNIS DELZEIT, P.E. 22340
974 CAMINO CABALLO
NIPOMO, CA 93444
PH: 805-441-1893
EMAIL: delzeit@charter.net
FAX: 805-928-2028

ENGINEER:
STEVE HYLAND
VICE PRESIDENT, MWH AMERICAS, INC.
2121 N. CALIFORNIA BVD.
WALNUT CREEK, CA 94598
PH: 925-827-4500
PH: 925-827-4711
FAX: 925-827-4501
EMAIL: steve.hyland@mwhglobal.com

ARCHITECT:
PAT BLOTE
RRM DESIGN GROUP
3765 S. FIGUERA ST., SUITE 102
SAN LUIS OBISPO, CA 93401
PH: 805-543-1794
FAX: 805-543-4809
EMAIL: PLBlote@rrmdesign.com

MORRO PROPOSED WASTEWATER TREATMENT PLANT UPGRADE PROJECT					
FACILITY	ESTIMATED AREA	ESTIMATED LENGTH	ESTIMATED WIDTH	ESTIMATED DIAMETER	ESTIMATED HEIGHT (ft)
	S.F.	FT.	FT.	FT.	FT.
Subsided Pump Station	400				1
Soft Pads Facility	3000	36	30		20
Collection Chamber 1	12,800	300	30		14
Collection Chamber 2	12,800	300	30		14
Secondary Clarifier 1	2000			52	6
Secondary Clarifier 2	2000			52	6
Denitrification Pump Station	1500	10	30		6
Secondary Pump Station	250	10	30		6
Transfer Station	400	14	30		14
Transfer Chamber 1	400	14	30		14
Collection Chamber 3	1000	30	30		4
Collection Chamber 4	1000	30	30		4
Chemical Storage Building	1000	30	30		1
Chemical Storage	600	14	30		6
Utility Water Pump Station	200	30	30		6
Sanitary Water Pump Station	100	14	30		6
Sanitary Power	500	10	30		10
Maintenance Building	2000	10	30		24
Operations Building (1000)	2000	24	30		30
Transfer Chamber 2	400	14	30		14

SHEET DIRECTORY

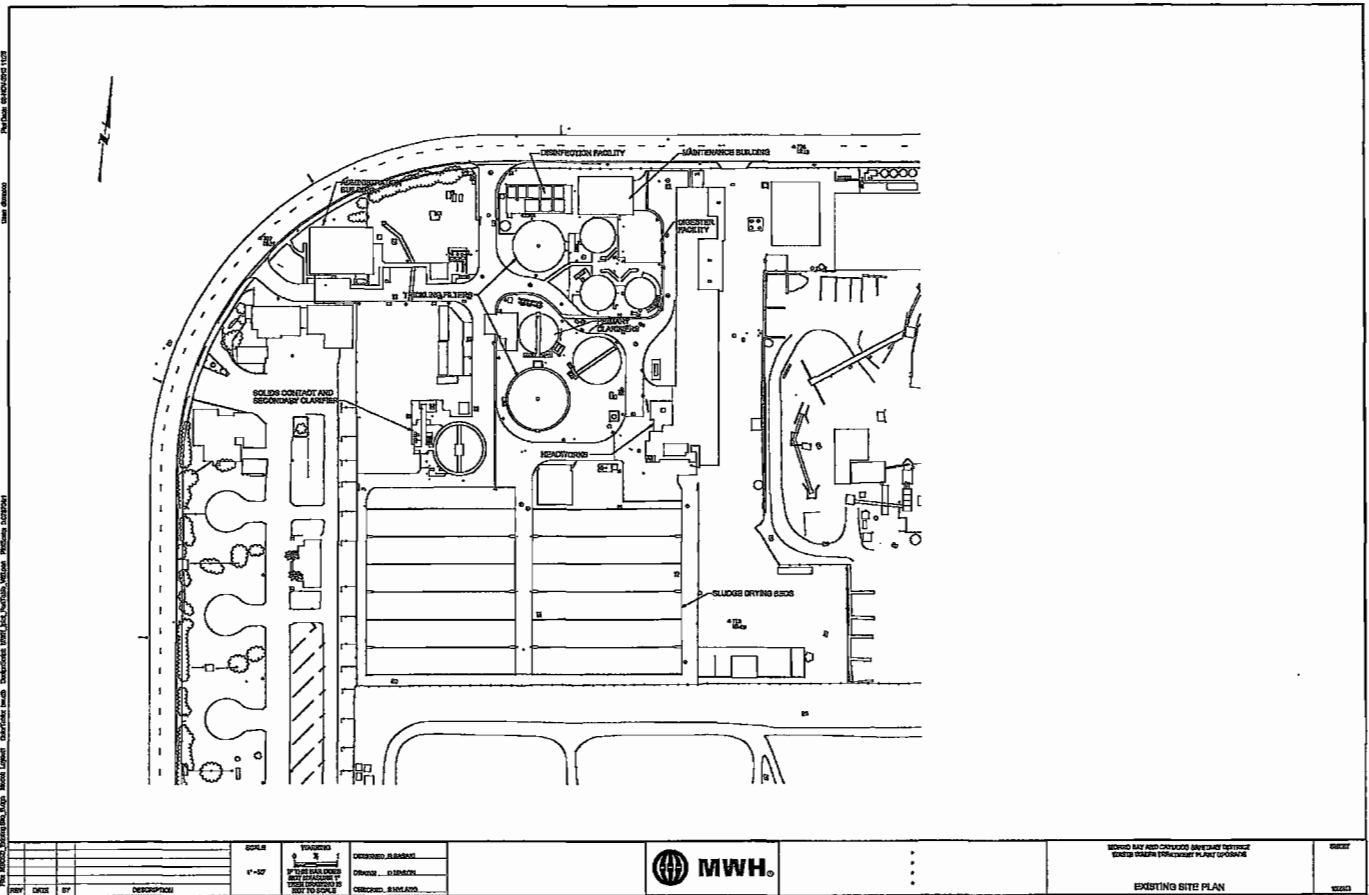
1. TITLE SHEET
2. EXISTING SITE PLAN
3. NEW SITE PLAN
4. DEMOLITION PLAN
5. MAINTENANCE BLDG. FLOOR PLAN
6. OPERATIONS BLDG. FLOOR PLAN

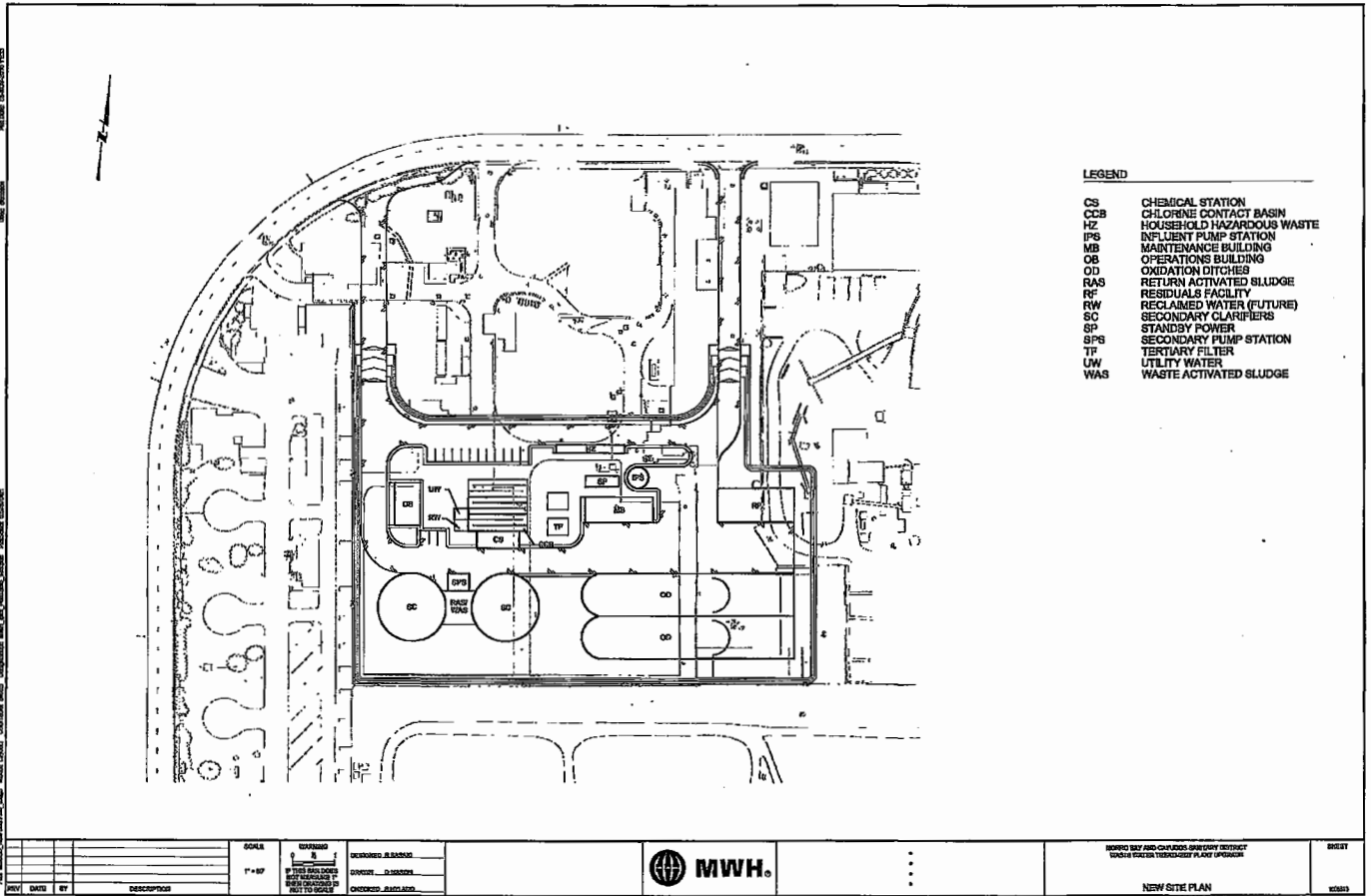
NOV 10 2010

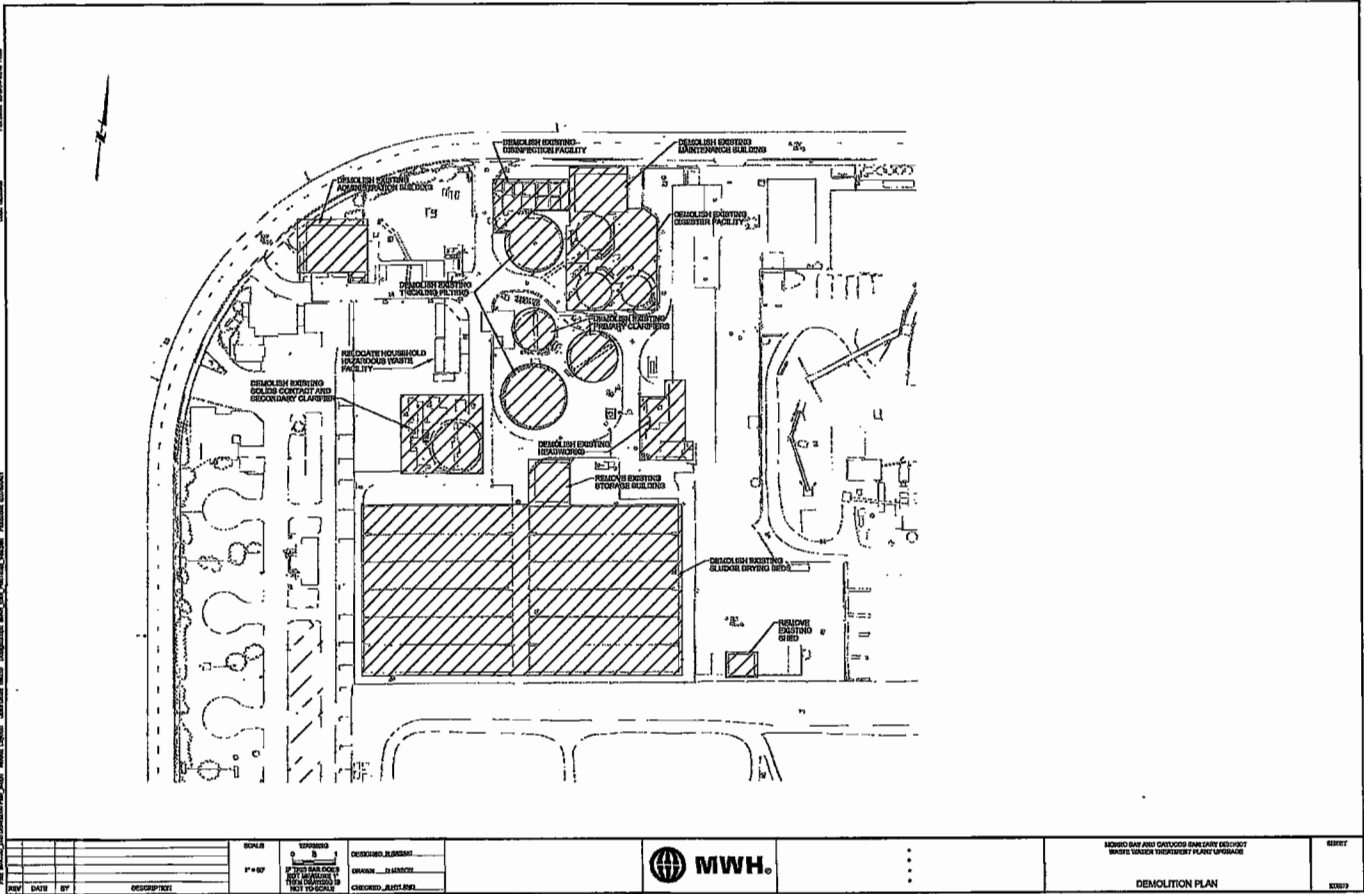
NO.	DATE	BY	DESCRIPTION

MORRO BAY/CAYUCOS SANITARY DISTRICT
WASTEWATER TREATMENT PLANT UPGRADE
TITLE SHEET

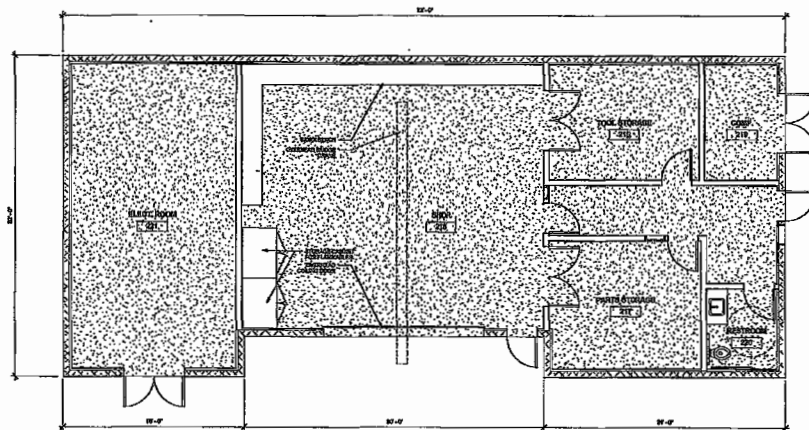
1
1 OF 8 SHEETS







NO. 1 DATE BY DESCRIPTION		DRAWN CHECKED	DESIGNED CHECKED		MWH AND JACO ENGINEERS AND ARCHITECTS 1000 WEST 10TH AVENUE, SUITE 1000 DENVER, CO 80202	SHEET DEMOLITION PLAN 0001
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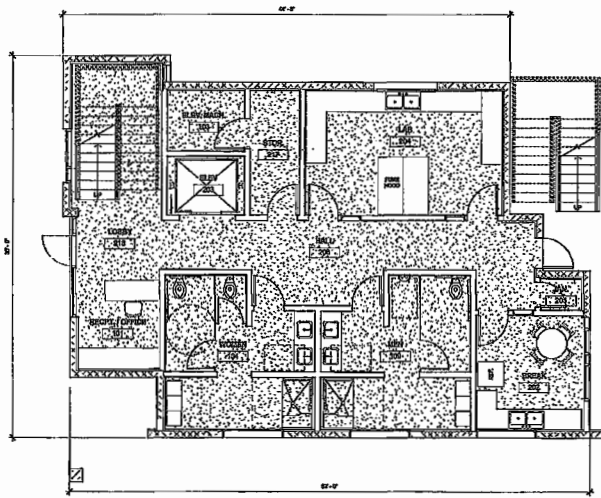
1 GROUND FLOOR PLAN

2,000 SQUARE FEET



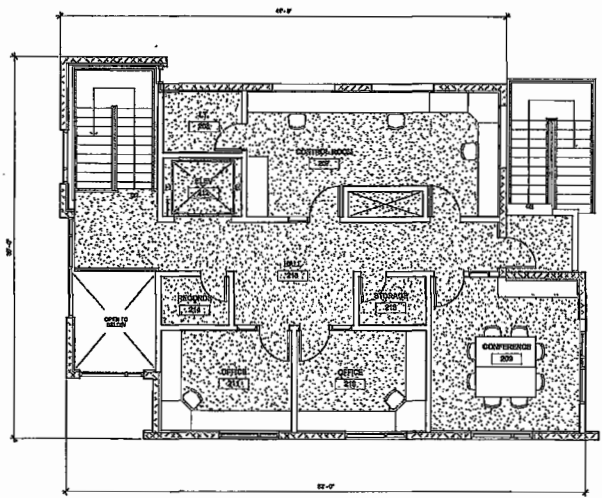
2009543 - MBWWTP - MAINTENANCE BUILDING

FLOOR PLAN
A2.3
 10/18/2010



1 GROUND FLOOR PLAN

LESS SQUARE FEET



2 SECOND FLOOR PLAN

LESS SQUARE FEET



2009543 - MBWWTP - OPERATIONS BUILDING

FLOOR PLANS **A2.1**

11/04/2010

CALIFORNIA COASTAL COMMISSION

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

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

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

SECTION I. Appellant(s)

Name: California Coastal Commission, Commissioners Mary Shallenberger and Mark Stone

Mailing Address: 725 Front Street, Suite 3000

City: San Francisco, CA

Zip Code: 94105

Phone: (415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Morro Bay

2. Brief description of development being appealed:

Construct a replacement Morro Bay-Cayucos Wastewater Treatment Plant (and demolish the existing plant) and associated development.

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

160 Atascadero Road, Morro Bay (San Luis Obispo County) APN's: 066-331-032, -033 and -034

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

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

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JAN 8 1 2011

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.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MRB-11-001

DATE FILED: January 31, 2011

DISTRICT: Central

Exhibit C
 A-3-MRB-11-001 (MRB WWTP)
 Page 1 of 88

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: January 11, 2011

7. Local government's file number (if any): CDP-339 and UPO-307

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:

City of Morro Bay
595 Harbor Avenue
Morro Bay, CA 93443

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) Linda Stedjee, 2848 Birch Avenue, Morro Bay, CA 93442
Sierra Club, Santa Lucia Chapter, P.O. box 15755, San Luis Obispo, CA 9340
Alex Beattie, 564 Acacia Street, Morro Bay, CA 93442
Barry & Vivian Branin, P. O. Box 540, Morro Bay, CA 93442

(2) Lee U. Johnson, 117 Mindora Street, Morro Bay, CA 93422
Surfrider Foundation San Luis Obispo Chapter, P.O. Box 1322, San Luis Obispo, CA 93406
Betty Winholtz, 405 Acacia, Morro Bay, CA 93442
Anne Reeves, 198 Main Street, Morro Bay, Ca 93442

(3) Roger Ewing, P.O. Box 1323, Morro Bay, CA 93443
Michael Lucas, 2637 Koa Avenue, Morro Bay, CA 93442

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

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: Mary K Schallenberger
Appellant or Agent

Date: 1/28/11

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

Signed: _____

Date: _____

(Document2)

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

SECTION V. Certification

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

Matthew Stone
Signature of Appellant(s) or Authorized Agent

Date: 1/28/11

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date: _____

Attachment A: Appeal Reasons

The City of Morro Bay approved a coastal development permit for the demolition and reconstruction of a new Morro Bay-Cayucos Wastewater Treatment Plant (WWTP) on the existing WWTP site at 160 Atascadero Road in the City of Morro Bay. The approved project includes the demolition of the existing WWTP and the construction of new pump stations, oxidation ditches, clarifiers and other treatment facilities, in addition to the construction of new buildings and roads and the installation of fencing and landscaping. The new WWTP would provide secondary treatment for all effluent discharged through its existing ocean outfall and some tertiary filtration capacity for a peak-season dry weather flow of 1.5 mgd. The project approval is inconsistent with the City's Local Coastal Program (LCP) policies related to coastal hazard avoidance, public viewshed protection, maximizing and optimizing public access and recreational opportunities, protection of archaeological resources, and sustainable public infrastructure requirements.

First, the project site is located in a 100-year flood plain and a tsunami inundation zone directly adjacent to an eroding shoreline where the sea level is rising and in an area subject to seismic hazards. The certified LCP requires new development to be sited and designed to avoid such hazards and LCP Policy 9.03 prohibits all development, including construction, excavation and grading, in the 100-year floodplain. In conflict with these requirements, the approved WWTP would locate new, major public works infrastructure in a highly hazardous area.

Second, the LCP requires the scenic and visual qualities of the coast to be protected and requires development to be sited and designed to protect views to and along the ocean and other coastal areas. The project involves constructing a new WWTP immediately adjacent to multiple significant public recreational access and public viewshed areas at and along the coast. The WWTP site is located on Atascadero Road, which is shown in LCP Figure 30 as a street providing scenic views. Views from the dunes looking inland across the site include mountain ridgelines, and views from the road looking towards the coast across the site include Morro Rock. The site is also visible from Highway One, the major north-south access corridor through this section of coastline. The approved development would obstruct and degrade these important public views and does not incorporate adequate landscaping and other measures to adequately screen the new development. Therefore, the project appears to be inconsistent with the LCP policies protecting visual resources.

Third, the project site is directly adjacent to the beach, beach and shoreline access areas, and a visitor-serving recreational vehicle (RV) park. The public access and recreation policies of the LCP and the Coastal Act require public recreational access opportunities to be maximized and oceanfront land to be protected for recreational use. The project would reduce the availability of scarce oceanfront land for potential public recreational purposes, and it could cause adverse impacts to existing public recreational access opportunities due to both construction activities and operation of the new WWTP (e.g., through additional truck traffic and objectionable odors). Therefore, it is not clear that the City-approved project is consistent with the public access and recreation policies of the LCP and the Coastal Act.

Fourth, the project site is located in close proximity to numerous documented archaeological sites and is located within a burial ground of the Salinan Tribe. The LCP requires that such significant archaeological and historic resources be preserved to the greatest extent possible, and requires all available measures, including tax relief and purchase of development rights, in order to avoid development on significant archaeological sites. Therefore, a new WWTP that requires significant ground disturbance and excavation at this location appears to be inconsistent with the LCP in this respect.

Finally, the project includes a plan for only a small amount of wastewater reclamation. The tertiary treated wastewater produced at the new plant would meet Title 22 standards for disinfected secondary-23 recycled water and could therefore be used for industrial use on-site and for limited off-site purposes such as soil compaction, concrete mixing and dust control. This water could only be used off-site if it is transported using trucks that would utilize the new truck filling station. In addition to these limited uses, the project includes a plan for the future production of .4 mgd of disinfected tertiary recycled water, the highest standard of recycled water, which could be put to a wide range of uses, including agricultural irrigation, groundwater replenishment and residential landscaping. However, as approved, the only way to transport this .4 mgd of higher quality water off-site would be using trucks. No additional infrastructure is included as part of the project and the project does not include any provisions or planning to accommodate future infrastructure that could be used to transport the water, except for through the use of trucks.

The LCP requires the City to pursue water reclamation as part of this WWTP project. Specifically, LCP Policy 3.08(5) says: "Even with delivery of State Water, use of reclaimed water is the City's second highest priority and remains a productive source of potential conservation for both large and small scale projects, respectively, and as a result, should be pursued when funded by a potential user, required as part of a wastewater plant upgrade or permit condition, or when it is shown as cost effective for City use..." Furthermore, maximum reuse of reclaimed water (both levels of disinfected tertiary treated recycled water) would help the City meet its water supply needs and ensure water supply is available for priority uses as required by the LCP, especially if/when State Water is restricted or unavailable. Such reclaimed water could be used for many purposes, including agricultural irrigation inside and/or outside of the district's service area, injection wells to maintain and enhance the water quality and biological resources associated with the Chorro and Morro groundwater basins (including as required by LCP Policy 11.17), and for residential and municipal landscaping, among other uses. In fact, LCP Policy 11.17 states: "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..." A more comprehensive water reclamation program could help the City carry out this policy by reducing the quantity of water pumped from these basins due to reduced demand, and by potentially allowing for injection wells that would recharge groundwater. More recycled water used in this way correspondingly reduces the need for ocean discharge, promoting other Coastal Act and LCP priorities related to the shoreline area and the area offshore. Therefore, the LCP requires that the new WWTP provide for a meaningful reclaimed water component because the LCP requires: (1) water reclamation to be a part of the WWTP upgrade; (2) water supply to be protected for priority uses; and (3) the quantity of water in the Morro and Chorro groundwater

basins to be enhanced where feasible. As approved, the WWTP does not adequately account for such requirements, and therefore, the approval appears inconsistent with the LCP regarding ensuring sustainable public utilities and infrastructure.

In summary, the approved project appears to be inconsistent with numerous policies of the City's LCP, including policies related to coastal hazards, public access and recreation, public works, and visual and archaeological resources. The City-approved WWTP raises significant LCP conformance questions, including whether a WWTP can be sited at this location at all consistent with the LCP, and it does not appear that the City's approval has adequately addressed the LCP in this respect, including in terms of evaluation of alternatives (including alternative sites) that could avoid LCP inconsistencies and more holistically address Coastal Act and LCP objectives and requirements for such major public utility infrastructure.

CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: LINDA STEDJEE

Mailing Address: 2848 BIRCH AVENUE

City: MORRO BAY

Zip Code: 93442

Phone: (805) 771-9254

SECTION II. Decision Being Appealed

1. Name of local/port government:

CITY OF MORRO BAY

2. Brief description of development being appealed:

EIR FOR WASTEWATER TREATMENT PLANT REPLACEMENT

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

160 ATASCADERO ROAD, MORRO BAY, CA

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

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

RECEIVED

JAN 21 2011

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.

TO BE COMPLETED BY COMMISSION:	
APPEAL NO:	A-3-MRB-11-001
DATE FILED:	January 31, 2011
DISTRICT:	Central Coast

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

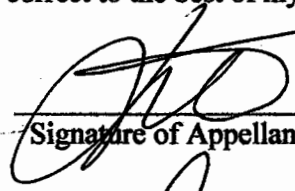
- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal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

SEE ATTACHED

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

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: January 21, 2011

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date: _____

RECEIVED

JAN 26 2011

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Reasons Supporting This Appeal

The Morro Bay Planning Commission unanimously denied the Draft EIR for this project, citing numerous problems including failure by the City to investigate alternate sites. As the Commissioners questioned the City staff regarding problems with the DEIR and with the project in general, it appeared to many that the City Attorney was trying to stop the questioning because it was raising numerous issues embarrassing to the staff and others involved in the project. The Commissioners declined to stop the questioning, and were later falsely accused of being disrespectful to the staff.

Shortly after the Planning Commission soundly rejected the DEIR, the California Coastal Commission Planner in charge of the case issued a 12-page document identifying numerous serious problems with the DEIR and the project, including the issues raised by the Commission, and the failure of the DEIR and the project to conform to the City's own Local Coastal Plan. Among the major issues noted were many that citizens had been raising for years. These included the fact that the site is located in a tsunami zone, in a flood plain, directly over significant Native American archaeological and burial sites, and in a visitor-serving area. The CCC review noted, as had the Planning Commission, that the City had failed to appropriately investigate alternate sites, and that water reclamation had not been appropriately addressed.

Contrary to what City staff say, the City's water supply is in peril. I have attached a local news article, "Morro Bay's Precarious Water Supply". That article details the water shortage issues, many of which can be confirmed by contacting Charles Rich, of the California SWRCB Water Rights Division. Mr. Rich is closely involved in monitoring the City's use of its Chorro Valley wells.

In addition, the CCC review pointed out the fact that the project is a replacement, not an upgrade. The City staff continue to insist that demolishing the entire plant and building a new one is merely an upgrade of existing facilities. This position has been used as an excuse to avoid addressing issues and requirements related to the construction of new facilities.

Staff and others appear adamant that the plant must be designed by MWH, using outmoded technology, and that it must remain in its current location on the beach, dumping effluent into the ocean. They fought "tooth and nail" to drive away a firm (PERC Water) that offered to build a plant for millions of dollars less than MWH and to deliver effluent of the highest quality, ready for reclamation through uses such as irrigation.

Now, the Council has voted to ignore the concerns of residents, the Planning Commission and the CCC staff, and move forward with the existing project. A fascinating development is the sudden insistence of the Council majority and staff that they are merely doing this because they are so concerned about cost and its impact on ratepayers. Residents have pointed out that this appears to be a sham, as the same people have failed to show any concern for costs before, as evidenced by the following:

1. They awarded the plant design contact to MWH, the highest bidder among five qualified well-qualified applicants, in violation of our own Municipal Code.
2. They ignored well-documented issues with MWH overbilling and other malfeasance in Los Osos, New Orleans, and Cape Coral.
3. They fought to avoid giving a hearing to PERC Water, a firm that said it could build us a better plant for much less.
4. They refused to sign non-disclosure agreements to provide basic protection for PERC's intellectual property rights – something standard in industry. This action, along with the fact that

the DEIR did not address the PERC option, kept the firm from continuing in its bid to get the contract to build the plant.

5. They allowed design of the plant to go forward before the DEIR was even submitted to the CCC for review, causing a tremendous amount of money to be wasted on preparation of a seriously-flawed and essentially-worthless DEIR. This cost ratepayers over \$300,000.

6. They hired and have continued to pay Dennis Delzeit and Wallace Associates to manage the project, despite resident concerns, expressed in writing, that standard project management methods and rules were not being followed.

7. They evidently ignored the input of the Coastal Commission staff (received in 2008) regarding information required for the DEIR, and failed to put that information into the document.

At the Council meeting at which the EIR was approved, staff were throwing out numbers to make it appear that costs of moving the plant would be prohibitive. Residents believe that these numbers were manufactured and have little-to-no connection to reality. In fact, even one staff member, Dylan Wade, admitted that it was difficult to assign any numbers since no studies had been done. Yet this did not stop the staff from claiming that it would be cheaper to keep the plant at the current site. It must be noted that some City staff members have previously been accused of producing "studies" full of invalid information in an effort to support their positions on various issues.

The bottom line, clearly, is that no sensible, reliable cost studies of alternate locations have been done, and no studies have been done of the potential cost benefits of putting the current site to visitor-serving uses. Some residents have asserted that those benefits could be substantial.

Why do they insist that the project must be designed by MWH using outdated technology, and must be at the current site? It has been suggested that one reason is the likelihood that there is considerable illegal infrastructure under the ground at the currently-proposed site, and they do not want it discovered.

It has also been suggested that there is some connection with a very large and as-yet-unrevealed development plan for the entire area, and that the WWTP is somehow part of that plan. While this may sound a bit far-fetched, there is considerable evidence to indicate that something significant is going on behind the scenes.

I have attached a map showing an area that the staff targeted for redevelopment in 2009, and a story from a local news magazine, "Mystery in Morro Bay", for your consideration. As you review it, please keep in mind that the WWTP is located in very close proximity to the power plant property, which appears likely to be the "hub" of a major development plan. Perhaps you may be able to decipher some of the clues and find the solution that has thus far eluded concerned residents.

An associated issue is the fact that this is not the first time that the City of Morro Bay has defied the CCC in regards to land in this area. In 2006, the CCC ordered that the Embarcadero Road Extension, which runs along the west side of the power plant property, not be more than 22 feet wide. Three months after this order was given, the City not only widened the road to 42 feet, destroying a considerable amount of ESH, but paved the road with "red rock" and placed an unpermitted storage yard at the end, also in ESH. This violation has been reported to CCC staff, but it appears that no action has been taken to restore the destroyed ESH.

Whatever the reasons that City staff and politicians are so desperate that they will openly defy the CCC in an effort to keep their WWTP project "as-is", this simply cannot be allowed. Please take all actions

necessary to force the City of Morro Bay to abandon its current ill-advised project approach and to build an environmentally-sound and cost-effective WWTP in a more appropriate location.

If there is any possibility that the CCC can take control of the project, I strongly urge you to do so. Many residents believe that it is very clear that those currently in charge do not have the interests of our residents, our visitors, and the environment in mind.

Morro Bay's Precarious Water Supply

by Kari Olsen

The recently-announced state water cutbacks came as a wakeup call to Morro Bay residents, many of whom had probably never suspected that their water supply was at risk. City government had not fully informed residents about the risk of cutbacks, the potential for loss of State water as a result of natural or manmade disaster, and the full scope of problems with the City's wells.

Morro Bay receives up to 90% of its drinking water from the state. The city's dependence on state water has been growing in recent years, despite warnings from concerned residents that overreliance on state water could put the city in a vulnerable position. The reality of the situation hit home in late 2009, during the annual state water shutdown, and a water emergency was declared by Morro Bay City government.

The emergency constitutes ample evidence that the city badly needs backup water sources to be used when the state is unable to deliver the water that the city has contracted for. Many residents have long believed that City wells were that backup source, but there are serious problems with both the quality and quantity of water available from the wells.

Morro Bay has several sources of drinking water - State water, the city's Ashurst and Romero well fields in Chorro Valley, the Morro Basin well field, and the City's desalination plant. However, there are significant problems that restrict the use of the well fields, and the desalination plant, which can supply up to half of the city's needs when running at full capacity, is expensive to operate.

At the time of the state water shutdown last November, the quality of the water in the Morro Bay's Ashurst and Morro Basin wells had been deteriorating for many years. Those wells produced water so contaminated that it required cleaning in the desalination plant before it could be distributed to the City's water customers.

This left well 11A, in the Romero well field near Canet Road, as the only well that could supply water usable without special desalination plant processing to remove contaminants. However, the City could not legally use that well at the time due to State Water Resource Control Board restrictions on use of Chorro Valley wells.

Morro Bay's path to dependence on state water appears to have begun before state water delivery started in 1997. Prior to that year, the Ashurst and Romero well fields in the Chorro Valley supplied most of the Morro Bay's needs, supplemented by the Morro Basin wells located near Morro Bay High School. In 1995, things began to change. A number of farmers and environmental groups complained to the SWRCB that Morro Bay was over-pumping and depleting the aquifers. Farmers, whose riparian rights supersede those of the City, complained their wells were not producing. Environmental groups and the California Department of Fish and Game cited damage to wildlife and the estuary.

The SWRCB responded to the complaints by issuing Decision 1633, which supplemented existing restrictions on the total amount of water that Morro Bay's City wells could draw from the ground annually. The decision stated that the wells in the Chorro Valley could not be used when Chorro Creek surface flow, downstream of the wells, was less than 1.4 cubic feet per second. The city was ordered to install stream flow monitoring gauges downstream of the Romero and Ashurst well fields to help ensure that the restrictions were adhered to. The devices were to be installed no later than Jan. 1, 1997.

Meanwhile, more restrictions on the city's ability to use its wells were developing in the form of growing contamination problems in both the Ashurst and Morro Basin well fields. City well test results for the years 1997 through 2009, obtained from the California Department of Public Health, show that nitrate levels in the two well fields were exceeding the maximum contaminant level of 45.0 long before the problem was reported to residents. Excessive nitrates in drinking water have been identified as causing "blue baby syndrome", also known as methemoglobinemia. In addition, studies have provided some evidence that nitrosamine intake may cause cancer in test animals. Conclusive evidence of similar effects in humans has not yet been produced.

In October, 2002, the nitrate level in Morro Basin well 03 was measured at 47.0. A little over a year later, the reported figure was 87.0, and readings over the maximum contaminant level continued through the years. Nearby well 04 showed a similar pattern. The nitrate level in water from well 9, in the Ashurst well field, registered 88.0 in September, 2003, and nitrate levels considerably over the limit were reported frequently in subsequent years. Nitrate levels in nearby well 10 followed a similar pattern. The only well that was consistently clean was 11A, about two miles upstream from the Ashurst wells.

At the same time, coliform bacteria were also detected frequently in the Morro Basin and Ashurst well fields. The extent of the problem is difficult to determine, as it was only the presence or absence of the bacteria that was reported between 1997 and 2008. However, reports for 2009 specified total coliform readings numerically, making it possible to identify the wells with the highest bacteria levels. Well 9 was by far the worst, with a total coliform count over 200 reported three times during the year. This reading has been confirmed by the California Department of Health to be "very high". The long-standing coliform contamination problem does not appear to have ever been reported to residents.

The presence of coliforms in drinking water suggests that there may be disease-causing agents in the water. Chlorine will kill the coliforms, but may not eliminate all of the other disease-causing pathogens present. The pathogens causing illness such as cholera, typhoid fever, and dysentery are most easily killed with chlorine treatment. Cyst-forming protozoa which cause amoebic dysentery and giardiasis are most resistant to chlorine.

Nitrate contamination was finally reported in 2006, when nitrate levels over the maximum contaminant level were found in water delivered to Morro Bay water customers. For several years prior to 2006, the fact that nitrate readings for some of the wells were significantly exceeding the legal limit was not reported in the City's Consumer Confidence Reports, annual

City reports to residents on the quality of water they are supplied. Under the heading, "Well Water", the reports specify the low- and high-end figures for nitrates detected in the wells. In 2003, the figure reported for the high end of the range was 25. However, in that year, the highest well water nitrate figure reported to the California Department of Public Health was 88, the level detected in well 09 in September of that year. In 2004, the Reports indicated that the highest well water nitrate reading was 34, while the highest reading reported to the CDPH was 98. In 2005, the Reports showed a high of 32, while the CDPH data shows a high of 57. Residents pointed out the discrepancies, and subsequent Consumer Confidence Reports have included correct figures for the highest nitrate levels found in the wells.

The issue of contaminated well water again came to light in late 2008. Chorro Valley customers of the Morro Bay Water Department learned that, when Chorro Valley wells were pumping, those customers were receiving well water instead of the blended water that was delivered to other City water customers. Morro Bay had been following that procedure because there is just one water line between the Chorro Valley wells and the tank. When well water is flowing toward the tank, blended water from the tank cannot travel in the opposite direction to the Chorro Valley customers.

Some of the customers, aware of the contamination in the Ashurst well field, contacted the California Department of Public Health for assistance. The Department immediately ordered Morro Bay to shut down the well field. A CDPH letter, dated Dec. 2, 2008, stated, "Unfortunately, the Department was unaware the City was potentially delivering non-potable water to approximately eleven connections..." The letter also included the statement that, "The Department is requiring the City to cease the use of the Ashurst wells 9, 9A, 10, 10a and 16." One of the conditions specified for well re-activation was a chlorination plan for the Ashurst wells.

Some of Morro Bay's Chorro Valley water customers have stated that when they complained about the quality of the water they had been receiving, the city's first reaction was a threat to take away their water service. Morro Bay officials have denied that water customers were threatened. However, a city staff proposal to cut off their service is still under consideration. City officials cite the expense of continued service as a major issue. Customers note that without water service, many of their properties would be completely without value, and state that they have documentation that constitutes legal contracts giving them the right to city water. They also state that a return to private wells is not an option until the bacteria and nitrate contamination in the aquifer, evidenced by the results of tests on nearby city wells, is cleaned up.

The source of the well contamination has been a hotly contested issue. Morro Bay has commissioned nitrate studies on the Morro Basin and Ashurst well fields, and those studies cite agriculture as the cause. However, some local water activists allege that the studies are flawed. Richard Sadowski and Marla Jo Bruton point out that the nitrate problems in the Morro Basin wells began very suddenly in 2002, with dramatic increases in nitrate levels occurring only in November when the wells were heavily used. They state that the city-commissioned nitrate study presents no possible cause for the suddenness and scope of the increases. They allege that sewage from the Morro Bay's dilapidated sewer lines is the source of the nitrates

and coliforms in the Morro Basin wells, and state that isotope studies appear to point to sewage, rather than fertilizer as the nitrate source. Others suggest that in the Chorro Valley, the primary source of well contamination is sewage from a local commune. The nitrate study for the Ashurst wells notes that there is an indication that at least one well has been affected by sewage, but holds to the premise that agriculture is the primary culprit.

Well water contamination issues are not the only water-related issues impacting the city at the present time. Morro Bay is being investigated for violating SWRCB Decision 1633, and using the Chorro Valley wells when it was not authorized to do so. The situation was brought to the attention of the SWRCB's Water Rights Division after residents noticed something they believed was odd about the city's July, 2009, stream interference test at the Ashurst well field.

Although the city was not permitted to use the wells when the surface flow of Chorro Creek was under 1.4 cubic feet per second, several persons living near the well field noted that, at the time of the test, the stream around the Ashurst wells was completely dry. Morro Bay water production reports obtained by a resident show that during the test, over 2 million gallons of water were pumped from wells. The water was disposed of in a nearby field. That resident complained to the City Council, and reports that after that, the test was immediately stopped.

The resident reports that inquiries to the city as to how a stream interference test could be done on a dry stream have gone unanswered. In early 2010, the same resident requested a copy of the consultant's final report on the test and information on its cost. Information provided by Morro Bay indicated that no report existed, and that the total spent on consultants' fees and equipment rental was about \$30,000.

John Jones, a Chorro Valley rancher who resides near well 11A, was concerned about the violation of the farmers' riparian rights and filed a complaint with the SWRCB shortly after the July test. An investigation by the SWRCB's Water Rights enforcement agents determined that Morro Bay had never installed the flow monitoring devices ordered in Decision 1633, and had been in violation of the decision since it was issued in 1995.

As the investigation proceeded, persons living near well 11A noted that Morro Bay had not ceased its use of that well, despite the fact that its ongoing violation of the SWRCB decision had been brought to light. The reason soon became clear.

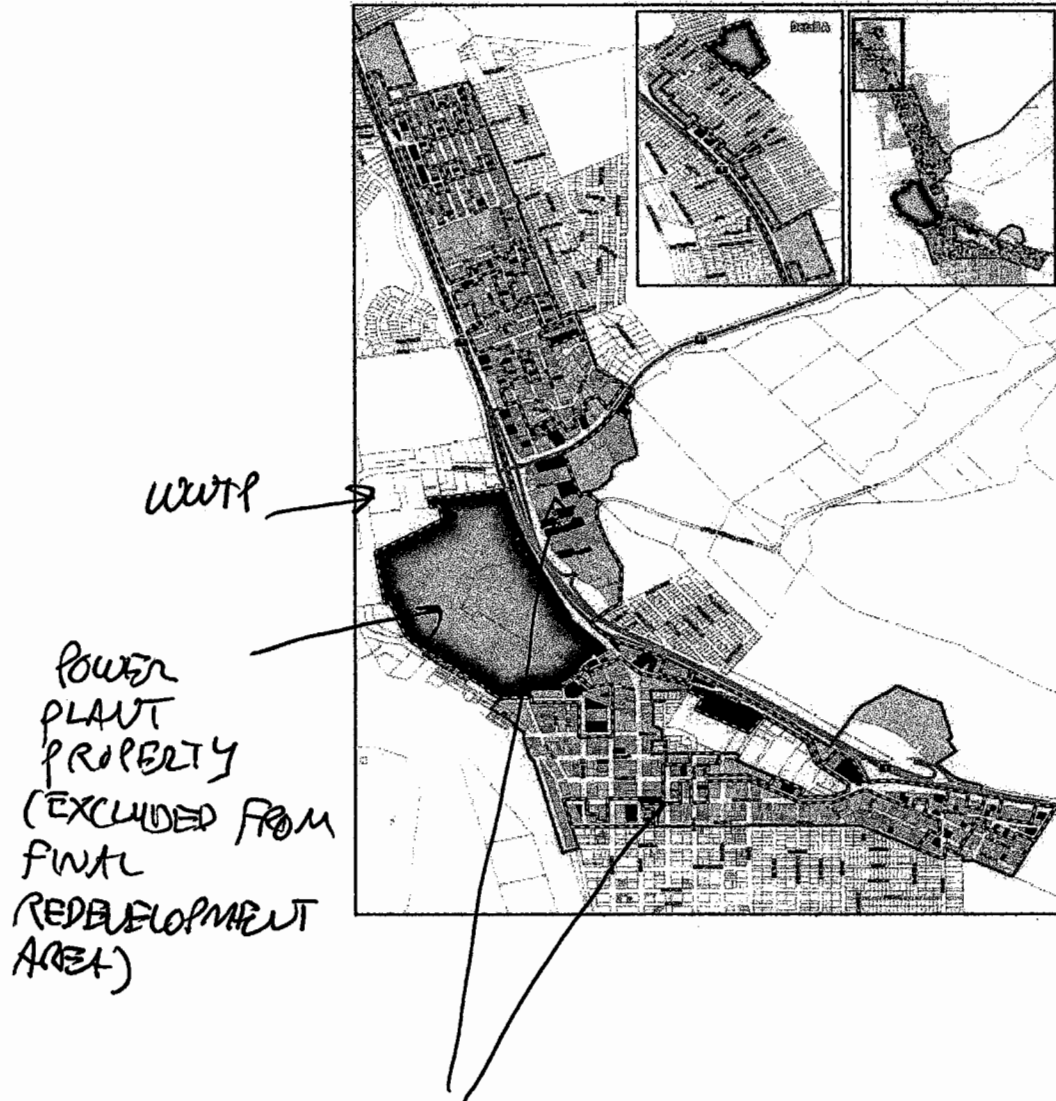
The city had hired the Sacramento law firm of Ellison, Schneider & Harris, L.L.P. to help Morro Bay deal with the SWRCB. On Nov. 17, 2009, during the annual State water shutdown, the law firm filed a "Petition for Temporary Urgency Change, permit 20867 (application 24245) Held by the City of Morro Bay". Attachments to the petition included these statements, "These actions are necessary to prevent an emergency because the Romero well is the City's only source of water supply during the scheduled SWP shutdown." and, "The City requires the ability to pump water from the Romero well in order to meet the municipal water demand. The City simply cannot cease diversions at its Romero well without great risk to the health and safety of its citizens."

Further explanation included in the petition attachments clearly shows the seriousness of the

situation: "Until recently the City has relied on desalinated water and diversions from the Morro Creek subterranean stream to meet water demands during the annual SWP shutdown. Unfortunately, since 2006, the City has faced restrictions on its ability to utilize groundwater from both the Morro Creek system and parts of the Chorro Creek system due to nitrate contamination issues. Since 2006, the City has been forced to treat water from the Morro Creek system at its Desalination Facility to deal with nitrate contamination. Unfortunately, this facility has limited capacity and cannot treat enough water to meet the City's water demands. It is also extremely expensive to use the Desalination Facility as a water treatment plant. In 2008, the City approved a project to allow simultaneous groundwater and sea water treatment at the Desalination Facility, but that project is not yet completely operational."

After state water service was restored, Morro Bay withdrew its emergency petition. Then, just a few days after the city stated that the emergency was over, the state water cutback announcement was made, and Morro Bay was forced to return to the Water Rights staff to ask for another waiver to use well 11A.

Local water activists have advised Morro Bay officials that state water is not guaranteed, and could be reduced at any time by the State Water Project. It could be cut off completely due to natural or manmade disaster. The activists warn that by "putting their eggs in one basket", city officials have greatly increased the risk that one day, Morro Bay residents could turn on their taps and find that nothing comes out. Some say this is an exaggeration, but most seem to agree that having reliable backup water sources is absolutely essential, and that at the present time, the city's water problems are cause for very serious concern.



RESIDENTIAL NEIGHBORHOODS LABELED "BLIGHTED" (THEY ARE NOT). NOTE HOW TARGETED AREAS EXTEND OUT FROM POWER PLANT PROPERTY - TARGET SITE OF "GREEN UNIVERSITY", WHICH IS BELIEVED TO BEA "TROSAN HORSE."

Mystery in Morro Bay - - - We're Just Wondering

Commentary by Kari Olsen

Unanswered questions have arisen in connection with a proposed project that would completely change the face of Morro Bay. Some residents allege that there are clear indications that something very big is going on behind the scenes. Is it simply coincidence, or is there a connection between a group of situations and events that appear, to some, to be connected? Is a small group of people secretly working to make major changes in the town—changes that may not be welcomed by many of those who live there?

Major Development Proposed

When a small firm, Westpac Energy Group, suddenly appeared on the scene in June, 2009 with well-developed plans and designs for a "green university," residents were surprised. None recalled being asked if they wanted a huge project that would completely change the face of the town and significantly increase its population. Yet the elaborate presentation, made by Westpac Energy Group president Tom Fee, included detailed designs for a large complex to be built on the Dynegy power plant property. As reported in a July 8, 2009 New Times article by Patrick Howe, the facility would eventually have 2000 students and 1000 employees, and would include a new hotel, retail offices, a sporting club, a new marina, a convention center, and a new city hall.

Westpac Connections

Some wondered if Fee's company was affiliated with a San Luis Obispo firm, Westpac Development. According to an August 19, 2006 story in the Aspen Post ". . . a search of the Securities and Exchange Commission's EDGAR system revealed that "Westpac, one of Australia and New Zealand's largest commercial and institutional banks, owns Westpac Investments LLC, which is based in San Luis Obispo."

According to Howe's New Times story, "In response to requests for more information by a planning commissioner, Fee said his company has 'no affiliation to' the Westpac Development Corporation that has built and promoted several development projects in San Luis Obispo or any others that share the name.

"Despite the assertion, the companies appear to have numerous ties. For one thing, when a New Times writer called Fee, the office phone had been forwarded to a cell phone of Kari Hamilton, an accountant for Westpac Investments, which is affiliated with Westpac Development Corporation. Asked about the connection, Hamilton repeated that there is 'no affiliation' between the companies but allowed that Fee formerly worked for Westpac Development. She also said a former partner in the energy group did work with the other Westpac companies."

Westpac's California operations are conducted under the umbrella of Westpac Companies whose mission is, according to the firm's website, "Developing exceptional investment opportunities with a long term objective of optimizing yields while safe-guarding capital." It is noted on the site that the firm employs a total of about 350 people. A list of key officials of the firm names Hamish Marshall, a native

of Australia and Vice-President of WestPac Investments, Inc, as "one of the principle partners for WestPac Development Corporation," and states that Marshall "oversees acquisition and financing of properties for development in California, as well as his native country of Australia."

LNG Offloading Suspicions

The connection to the Australian Westpac, a conglomerate that, according to its website, serves ten million customers around the world, was of interest to a group of Morro Bay residents who suspected that recent events could indicate a clandestine attempt to bring LNG offloading back to Morro Bay. The group found that the Australian firm had close ties to BHP Billeton, another Australian conglomerate. That firm is reported to be the largest mining company in the world and also has a sizeable oil exploration and drilling operation. The group learned that BHP Billeton was behind several recent failed attempts to establish LNG offloading facilities in California. Further research revealed that several high-level Westpac employees appeared on the list of BHP Billeton corporate officers and directors.

Residents told the City Council of their suspicions that plans for a Morro Bay LNG offloading facility were in progress and made note of the connection between Westpac and BHP Billeton. Shortly thereafter, Fee announced that the name of the firm working on the Green University Project was now Ecobaun.

Among the concerns fueling suspicions that a liquid natural gas (LNG) offloading scheme was in the works was a phone survey of Morro Bay residents to determine how they would feel about LNG offloading coming to Morro Bay. The survey had been conducted about a year prior to the presentation of the Westpac Energy Group/Ecobaun green university plans. In addition, the group of residents had learned that in addition to operating power plants Dynegy, which had reportedly agreed to provide land for the green university project, was also in the business of marketing and exporting "natural gas liquids."

Another reported cause for concern was an attempt to convince the City Council to allow 100-foot industrial tugboats south of Tidelands Park area, an environmentally sensitive area. Local businessman Frank Loving attempted to gain approval to restore the old cannery wharf and use it as a place to berth his industrial tugs. Residents noted that there was no current use for large industrial tugs in the area and speculated that there might be plans to use them in LNG offloading operations. One resident reported being told by a ship fitter that he was working on a project to rig a locally-owned tug for offshore oil operations.

Many residents asserted that Morro Bay's General Plan and Local Coastal Plan clearly indicate that the area south of Tidelands Park is for small recreational boats only. An investigation request was filed with the California Coastal Commission by concerned residents. The residents challenged the City Council's approval of a motion to allow commercial operations in the Bay south of Tidelands Park, alleging that the intent of the motion was clearly to allow berthing of the tugs.

The investigation request alleged that the motion constituted a change to the City's General Plan and Local Coastal Plan, and therefore must be filed with, reviewed and approved by the Coastal Commission. The request stated, in part, "The approved motion is seriously flawed, as it ignores a critical fact: Land and water in the subject area are separately zoned, and are treated differently in the GP/LCP. While the GP/LCP clearly allows commercial uses on the land in the area, it just as clearly disallows commercial uses in the adjacent, separately zoned harbor. 1. The LAND in Area B is zoned R-1/PD and WF/PD above and below the bluff, respectively. These areas allow for clearly-defined, appropriate commercial uses. Conditions a. through e. above apply to the land. However, 2. The

WATER below the tideline – the Bay, is zoned Harbor. With regard to harbor uses, the GP/LCP requires that commercial fishing boats, non-recreational vessels and larger boats be kept north of Beach Street, whereas, the area south of Beach Street is specifically designated for recreational boating and fishing. The approved motion lumps the two together, implying that the fact that commercial development is allowed on the land means that large commercial boats are allowed in the harbor below. This constitutes a change to the GP/LCP."

The issue has not yet been resolved by the Coastal Commission. However, the recent announcement of plans to demolish the cannery wharf appears to indicate a reduced risk that industrial tugs could be berthed in the location originally targeted.

Possible Redevelopment Connection

Some Morro Bay residents believe that plans exist for something even bigger than the green university project. They cite the fact that residential areas extending outward from the Dynegy property were targeted in the city's 2009 Redevelopment Feasibility Study. As noted in a May, 2010 story in the Journal, the study was at odds with the recommendations of a financial consulting firm, Management Partners, that was hired to recommend ways to improve Morro Bay's financial health. The consultants recommended redevelopment of the power plant property, Chevron property, and City-owned harbor properties. Yet, the final study excluded all of those properties, and included only the residential areas. According to statements in the consultants' proposal and in the final study, City staff provided the consultants with an area of interest that included the large tracts of residential properties. Some residents have alleged that the targeting of the adjacent residential areas could be part of a plan for extending the green university development far beyond the boundaries indicated in the Westpac/Ecobaun presentations.

Also of concern to some residents are the type of "blight factors" identified in the study, and the general approach to analyzing them. An August, 2010 Journal story reported that, "Morro Bay residents have questioned whether an area can reasonably be considered "blighted" when the alleged "blight indicators" most frequently cited are unpaved or deteriorated walks and driveways, paint-related issues, and inoperable vehicles. In addition, residents allege that the system used by the consultants made it easy to inappropriately categorize a property as exhibiting significant blight problems. For example, the system allows a property cited as having "poor site layout," overgrown shrubs, and chalking paint to be classified as "blighted."

Roadway Widening

In May, 2010, the Journal reported that the Embarcadero Road extension had been widened in violation of an order given by the California Coastal Commission. The story noted that, "In March, 2006, the CCC approved a permit, with special conditions, for the Harborwalk. Conditions included restriction of the Embarcadero Road extension to a maximum width of 22 feet." and, " In June, 2006, three months after the CCC decision was issued, a resident observed heavy equipment on the Embarcadero Road extension and learned that the roadway was being widened and paved with 'red rock'. The resident took photographs of the work in progress. At present, the width of the roadway is approximately 42 feet."

This roadway lies to the west of, and adjacent to the Dynegy power plant property. Some residents have asked if there is a connection between the major widening of a road where one seldom sees more than one car at a time, and the plans for developing the Dynegy property.

Wastewater Treatment Plant Site

Some residents have also questioned whether an alleged Morro Bay City staff preference for the current wastewater treatment plant (WWTP) site has any connection to area development plans. The plant site is located in very close proximity to the power plant property where the green university would be built.

The City's Planning Commission recently criticized the Draft Environmental Impact Report for the project because the document did not include appropriate discussion of alternate plant sites. The current site is in a 100-year flood plain, a tsunami zone, and an area containing many Native American artifacts and burials.

Ecobaun's Big Plans for Morro Bay

Material on its website appears to indicate that Ecobaun still has very big plans for Morro Bay. The site describes the planned development as "A new kind of research facility," and discusses the potential for establishing a means to sponsor productive relationships between "like minded institutions."

The site includes a discussion of the harsh competition that traditional power production plants, related industries, and renewable energies are facing. It is noted that the fact that Morro Bay has a close link to the regional energy business that is essential to the project.

Along with its vision for Morro Bay, the Ecobaun site presents information on the project team that has been assembled. With a clear vision, project plans and facility designs, and a project team already assembled, Ecobaun appears ready to begin work.

On one page of the site is the phrase, "Reimagination of Morro Bay." Troubling to some Morro Bay residents is the fact that so much work has been done to "reimagine" their community without any effort to determine the preferences of residents. Also troubling is the suspicion that the work would not have been done unless Ecobaun had received considerable encouragement from people who potentially have the power to make the vision a reality.

The proposed sale of the Dynegy property to the Blackstone Group appears to present a new challenge for the Ecobaun project. After the sale, the property would be turned over to NRG Energy. No public announcements have been made of any discussions with the potential new owners regarding the green university plans.

Can Morro Bay Residents Solve the Mystery?

Have plans for a complete redesign of Morro Bay been in progress for years, with the participation of an unknown group of locals? Are the issues and events described here simply a set of coincidences, or do some or all of them have a direct connection to the green university project? Is the project even bigger than the one that has been publicly communicated on the Ecobaun website? Why have things gone so far without anyone taking the trouble to ask Morro Bay residents if they want this project? Will the sale of the Dynegy property end the project, or have there been behind-the-scenes discussions with the potential new owners? What can and should residents do now? Whodunit fans are invited to weigh in on this fascinating puzzle.

CALIFORNIA COASTAL COMMISSION

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

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

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

SECTION I. Appellant(s)

Name: Santa Lucia Chapter of the Sierra Club

Mailing Address: PO Box 15755

City: San Luis Obispo

Zip Code: 93406

Phone: (805) 543-8717

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Morro Bay

2. Brief description of development being appealed:

Morro Bay/Cayucos Wastewater Treatment Plant replacement

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

160 Atascadero Road
 Morro Bay, CA

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 CENTRAL COAST AREA

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

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MRB-11-001

DATE FILED: January 31, 2011

DISTRICT: Central Coast

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

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COASTAL COMMISSION
CENTRAL COAST AREA

6. Date of local government's decision: 1-11-11

7. Local government's file number (if any): CP0-339

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:

City of Morro Bay, Public Services Department
955 Shasta Avenue
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) Jack McCurdy
P.O. Box 526
Morro Bay, CA 93443

(2) Betty Winholtz
405 Acacia
Morro Bay, CA 93442

(3)

(4)

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

Due to deficiencies of the EIR -- which evaluates only one alternative site and lacks a co-equal evaluation of alternative sites -- the Commission does not have sufficient information to issue a CDP.

The lack of necessary information includes an evaluation of the potential for water reclamation and failure to fully address the project's hazard issues, including shoreline erosion and sea level rise, impacts on water quality, biological and archaeological resources, public viewsheds, recreation and visitor-serving access via an evaluation of alternative sites and technologies. Proposed studies of liquefaction damage are deferred to a future date.

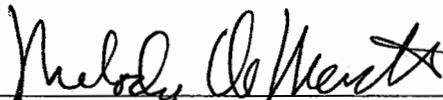
The City has misapplied LCP Policy 5.03 (protection of the facility) as "securing the WWTP's right" to continue at its current location as "coastal dependent" development. By erroneously maintaining that the proposed construction of a new WWTP is merely an upgrade of the existing plant and does not constitute new development, the permit appears to be inconsistent with LCP Policy 9.01 (tsunami threat) and 9.03 (new development in the flood plain), maintains an industrial site in an area better suited to visitor-serving recreation, lacks sufficient discussion of the visibility of the plant from public access points and potential mitigations of such visual resource impacts, and provides no details of the proposed landscaping plan. In providing no plans for water reclamation infrastructure, the project does not conform with LCP Policy 3.08(5) on the priority of reclaimed water and the County's Estero Area Plan (Cayucos), and thereby also fails to evaluate the benefits of potential elimination of the ocean outfall and project alternatives that would increase water reclamation opportunities.

Having failed to heed the identification of these issues in the DEIR when pointed out by Coastal staff and the recommendation that the DEIR be revised and recirculated in order to provide the necessary information on potential impacts and mitigation measures, the City has failed to provide the information needed to evaluate consistency with the LCP and the Coastal Act. For these reasons, the Coastal Commission should assume jurisdiction and deny the CDP.

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

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: 1/21/11

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date: _____

CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: *Alex Beattie*
Mailing Address: *564 Acacia St*
City: *Morro Bay, CA* Zip Code: *93442* Phone: *(805) 772-5694*

SECTION II. Decision Being Appealed

- 1. Name of local/port government:
CITY OF MORRO BAY/CAYUCOS SANITARY DIST.
- 2. Brief description of development being appealed:
*NEW 1.5 MGD WASTE WATER TREATMENT PLANT
CPO # 339
LPO # 307*
- 3. Development's location (street address, assessor's parcel no., cross street, etc.):
*160 ATASCADERO RD.
MORRO BAY, CA*

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COASTAL COMMISSION
CENTRAL COAST AREA

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

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: *A-3-MRB-11-001*
DATE FILED: *January 31, 2011*
DISTRICT: *Central Coast*

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 *JPA*

6. Date of local government's decision: _____

7. Local government's file number (if any): _____

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:

*CITY OF MORRO BAY
595 HARBOR ST.
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) *Alex Beattie
564 Acacia St
Morro Bay, CA
93442*
- (2) *Bill Weatherford
799 Luisita
Morro Bay, CA*
- (3) *Neli Mongin
291 Palm St.
Morro Bay, CA*
- (4) *Bob Mellon
400 Acacia St
Morro Bay, CA*

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

A. Consideration of Alternatives
Final EIR does not consider a broad range of alternative sites - only one. Building all new facilities presents a unique opportunity to consider other sites. This opportunity may not come along for another 50 years. The city's and the County's LCP places a high priority on reclamation. The only alternate site was not evaluated on a comparative basis.

The scoping meetings did not include the fact that all new facilities would be built and hence led to poor citizen response and a very limited scope.

B. Analysis and Location of Plant.
1. FEIR did not consider buildout - proposed plant will not accommodate the some 50% of dwellings that are second homes. If existing homes are occupied at a rate existing in nearby communities of Los Osos and Cambria, ~~then~~ and occupancy/home increases (as it has been doing the last 2 years) then dry weather flow will probably exceed 2.5 MGD.
2. Plant site on prime visito serving/recreation land. LCP section 3 gives priority to this use. No study of economic impact of freeing existing site for commercial uses.

3. Hazards due to tsunamis & rise in sea level ignored
4. Located on Indian Burial Ground - LCP says avoid

C. Visual Impacts
No visuals presented - site is near downtown & major beach area. Visuals of proposed site should have been shown. Admin. bldg projects 30' above surroundings

D. Increased heavy truck traffic in front of school.

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

SECTION V. Certification

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

Alex D. Beattie
Signature of Appellant(s) or Authorized Agent

Date: 1/18/2011

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date: _____

CALIFORNIA COASTAL COMMISSION

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

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

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

SECTION I. Appellant(s)

Name: Barry and Vivian Branin

Mailing Address: P.O. Box 540

City: Morro Bay

Zip Code: 93442

Phone: 805.771.9310

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Morro Bay City Council

2. Brief description of development being appealed:

Environmental Impact Report for the construction of a new Waste Water Treatment Plant.

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

160 Atascadero Road, Morro Bay, CA 93442

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

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MRB-11-001
 DATE FILED: January 31, 2011
 DISTRICT: Central Coast

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 CENTRAL COAST AREA

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: January 11, 2011

7. Local government's file number (if any): SCH #2008101138

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:

Rob Livick, Public Works Director
City of Morro Bay
955 Shasta Street
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)

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

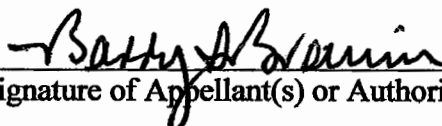
See attached 12 page addendum

SEE ATTACHED -

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

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: January 24, 2011

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date: _____

Appeal of the Certification of the EIR for the Morro Bay WWTP - SCH #2008101138

California Coastal Commission
Central Coast District Office
715 Front Street, Suite 300
Santa Cruz, CA 95060

January 24, 2011

**Subject: Morro Bay-Cayucos Waste Water Treatment Plant
Environmental Impact Report Certification by the MB City Council**

Dear Mr. Peter Douglas and Staff

This is the attachment to my Appeal from Coastal Permit Decision of Local Government.

The primary purpose of my comments are to highlight that the DEIR did not adequately apply the California Environmental Quality Act (CEQA) "rule of reason" by providing an analysis of feasible project alternatives at any stand-alone location(s) when considering the impacts of constructing a new Waste Water Treatment Plant (WWTP).

The DEIR sets to accomplish four primary project objectives, which are 1) Comply with secondary treatment standards, 2) Phase out the need for a 301(h) discharge permit, 3) Minimize the flooding impacts at the WWTP and surrounding properties and 4) Accommodate future installations for water reclamation at the Title 22 level.

Simultaneously, the DEIR must comply with section 15126.6(f) of the CEQA Guidelines, which requires a range of feasible alternatives that attain these four project objectives be reviewed in the environmental impact report.

The body of evidence outlined in this letter supports the assertion that a stand-alone site location for the new WWTP is not only feasible, but a stand-alone site location can meet or exceed all four project objectives. A new location can comply with secondary treatment standards. A new location can assist in phasing out the need for a 301(h) discharge permit and can expedite the end of the ocean outfall line. A new location will not only minimize, it will eliminate the flooding impacts at the proposed new WWTP and surrounding area because it will be located elsewhere. A new location sited near agriculture will accommodate future water reclamation sooner and more economically than the proposed project.

A stand-alone WWTP can also avoid or substantially lessen many of the significant environmental impacts of the proposed project outlined in the DEIR. In failing to review such a reasonable and feasible alternative, the DEIR is in conflict with section 15126.6(f) of the CEQA Guidelines.

In summary I believe that the EIR for this project fails to accomplish the following:

1. Insufficient Alternatives Analysis
2. Impacts to Visitor-Serving Resources
3. Conflicts with Coastal Act Policies
4. Project is not a Coastal-Dependant Use
5. Project does not meet the Estero Area Plan
6. Project has Zoning issues
7. Visual Impacts & Scenic Corridors
8. Tsunamis not analyzed

9. Sea Water rise not analyzed
10. Water Reclamation not analyzed
11. Elimination of Composting
12. Odor
13. Cultural Resources
14. Drainage and Flooding
15. Inconsistencies with General Plan

The details of each of these points follow. Please reject this EIR and return it to the applicant requesting one that will properly analyze this very important infrastructure project.

Sincerely,



Barry F. Branin

Insufficient Alternatives Analysis (Chapter 6)

Quoting the executive summary of the DEIR, "an EIR must describe a range of reasonable alternatives to the proposed project or *alternative project locations* that could feasibly attain most of the basic project objectives and would avoid or substantially lessen any of the significant environmental impacts to the proposed project" (emphasis added).

The DEIR clearly falls short in analyzing alternative project locations. In fact, no stand-alone project location was analyzed. (Proposed Alternative 3 requires two plant locations and is still dependent on the existing WWTP). The DEIR provides no citations to any recent reports that reviewed project locations east of Highway One, in the community of Cayucos, between Cayucos and Morro Bay, non-City owned properties or properties in the Highway 41 corridor (Morro Valley).

For example, a reasonable and feasible alternative project location would be the Chevron Facility at Toro Creek. This site, conveniently located between the two communities sharing the WWTP, would meet or exceed all four of the primary project objectives, especially the flooding impacts at the current WWTP location. Likewise, no sites along Highway 41 in the Morro Valley were analyzed, which again, is a reasonable and feasible location for a WWTP. A WWTP sited in this region could have fewer impacts than the proposed site and would also meet or exceed all four of the primary project objectives.

Proposed Alternative 3 falls short in this analysis since it would require the city to construct "additional wastewater facilities" (pg 6-7) and not a new, stand alone facility. Therefore the impacts at the new location would be additive to impacts at the proposed location. Additionally, diversion would only be 49 to 92 percent of wastewater flows, so all existing impacts at the existing site would remain. It is reasonable to assume a *new plant* could be constructed at a *new project location* and be completely independent of the existing WWTP (although the ocean outfall infrastructure may still be utilized) and end all existing impacts at the existing location. Until an analysis of reasonable and feasible alternative project locations is conducted and included in the DEIR, the DEIR should be considered incomplete and unacceptable for finalization.

Impacts to Visitor-Serving Resources

Chapter IV, Section F (2) of the Local Coastal Plan (LCP) discusses resources by planning area and offers ways to improve visitor-serving resources in these specific areas. For the area of the proposed new WWTP, Section F (2) offers the following:

“The intersection west of State Highway One and State Highway 41 also offers the potential for increased visitor-serving uses. This area contains vacant acreage which could be developed into visitor services, particularly motels. When Embarcadero Road is connected to State Highway 41 this will become a secondary entrance to the City. Visitor services currently exist in this area” (emphasis added).

Clearly the LCP envisioned visitor-serving enhancements to this area, and understood that when Embarcadero Road is extended to Highway 41, this will become a very important planning area for the community. Siting a new WWTP in the secondary entrance to the City is poor planning and every effort should be made to avoid this irreversible mistake.

The proposed siting of the new WWTP is also in conflict with LCP Policy 2.01. Policy 2.01 provides that lower-cost visitor and recreational facilities for persons or families of low or moderate income shall be protected, encouraged and where feasible, provided. The siting of a new WWTP closer to the Morro Dunes RV Park, which serves as a lower-cost visitor and recreational facility, does not serve to protect this resource because increased visual and odor impacts will have a significant impact on the long term viability and success of this coastal business. The president of the Morro Bay Dunes RV Park submitted letters of concern on both the Notice of Preparation and Revised Notice of Preparation regarding impacts caused by odors and monetary losses incurred by their coastal business.

It is reasonable to assume that siting a new stand-alone plant at a new location would avoid these impacts to visitor-serving enterprises and not be in conflict with LCP Policy 2.01 or Chapter IV Section F (2).

Conflicts with Coastal Act Policies

Section 30221: Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

The proposed project site is suitable for recreational use and these uses are not adequately provided for in the area. Relocating the new facilities to a new stand-alone location and demolishing the existing facilities would provide for enhanced recreational uses in Morro Bay, especially at a prime and scarce oceanfront parcel.

Section 30250 (b): Where feasible, new hazardous industrial development shall be located away from existing developed areas.

The DEIR does not analyze a site located away from existing developed areas, therefore a feasibility determination cannot be made.

Section 30251: The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to

and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Constructing a new WWTP in an area of scenic and visual importance is in conflict with protecting the area as a resource of public importance. A two-story WWTP facility with an altered elevation above the floodplain will not protect views along the ocean and/or scenic coastal areas. Additionally, as outlined in the DEIR, the proposed project significantly alters natural landforms.

Section 30253 (b): Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geological instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

By constructing a new WWTP in a known floodplain, the proposed project simultaneously creates and contributes significantly to erosion and requires construction of protective devices that substantially alters natural landforms.

Section 30260: Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Sections 30261 and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.

The DEIR fails to address if alternative locations are infeasible or more environmentally damaging, fails to justify that an alternative location would adversely affect the public welfare, and fails to demonstrate that adverse environmental effects are mitigated to the maximum extent feasible.

It is reasonable to assume that a stand-alone WWTP site could be constructed and not be in conflict with any of these Coastal Act policies. Until an alternative site analysis is conducted, the proposed project does not comply with these Coastal Act Policies.

Coastal-Dependent Use (Chapter 3.8)

The DEIR asserts that “the General Plan Program LU-39.3 and Coastal Land Use Plan Policy 5.03 protects the wastewater facilities at the present location stating that “the Morro Bay Wastewater Treatment facilities shall be *protected in their present location* since an important operational element, the outfall line, is coastal-dependent” (emphasis added).

It is clear this provision, by expressly stating “*protected in their present location*” protects existing facilities in their existing location. The City of Morro Bay is proposing new facilities, in a new location, which means the siting of new facilities are not protected as ocean-dependent facilities because they will no longer be in their present location. In fact, the proposed projects call for the demolition of all facilities currently in their existing, present location.

The DEIR enjoys the benefit of comingling the treatment facilities and ocean outfall line while not acknowledging that there is a clear delineation between treatment facilities and an ocean outfall line. The ocean outfall line can be considered protected under the LCP, especially since it is not proposed for demolition. However, the new treatment facilities proposed at the new location are not protected under the LCP. Inaccurately interpreting this land-use provision as a means to avoid alternative project location analysis falls short of CEQA guidelines.

Furthermore, the definition of "Coastal Dependent Development or Use" as found in the City of Morro Bay's zoning ordinance section 17.12.175 is "any development or use which requires a site on, or adjacent to, the sea *to be able to function at all*" (emphasis added). Clearly wastewater treatment plants are not ocean dependent. If this were the case, wastewater treatment plants in non-coastal areas would not be able to function at all. However, we know wastewater treatment plants function perfectly fine in all fifty states, most of which do not have an ocean outfall.

Additionally, the coastal community of Los Osos, a few miles to the south and located adjacent to the Morro Bay estuary, received a Coastal Development Permit from the California Coastal Commission in 2010 for the construction of a new wastewater treatment facility that did not require ocean outfall or any other ocean dependent facilities. Additionally, communities such as Scott's Valley in Santa Cruz County, operate wastewater treatment facilities while utilizing an ocean outfall line over six miles away from the treatment plant site. The example of Scott's Valley demonstrates that a wastewater treatment plant with an ocean outfall line is a use which does not require a site on, or adjacent to, the sea to be able to function at all.

The DEIR declares throughout the document that the existing facilities are protected in their present location and it is implied that additional site analysis is not necessary because of this provision. However, as outlined above, a site adjacent to the coast is not required in order to have functioning new WWTP facilities. Additionally, locating away from the coast and closer to beneficial reuse options would expedite the implementation of water reclamation and ultimately the end of the ocean outfall infrastructure.

Estero Area Plan

The County of San Luis Obispo's Estero Area Plan, revised in 2009, discusses the implementation of programs related to the WWTP facilities. None of the following programs are being considered with the development of a new WWTP, even though implementation date for all programs is targeted for 2010 (Table 3-11).

Chapter III, Section B (1) states:

Wastewater Recycling. Sewage disposal agencies should work with the County Public Works and Health Departments and the Regional Water Quality Control Board to develop a program to find alternative uses for treated wastewater, such as irrigation (e.g. on agricultural lands and the Morro Bay Golf Course), groundwater recharge, and environmental enhancement.

Chapter III, Section A (9) states:

Agricultural Water Supplies. Maintain the quantity and quality of ground water resources currently consumed by production agriculture. Where sources of adequate wastewater quality are available, develop a program with appropriate agencies to use treated wastewater for irrigation.

Chapter III, Section A (10) states:

Water Management – Chorro & Morro Basins. The county and city of Morro Bay should jointly develop a groundwater management program that results in cooperative planning among affected agencies. The program should encourage better recharge through use of percolation basins and consider drilling of new wells and changing the frequency of well pumping.

Since Cayucos is an unincorporated community within the County of San Luis Obispo, the standard of review for this project includes the Estero Area Plan. The implementation of these programs must be considered in this DEIR.

Cumulatively, these programs clearly suggest the intent of developing wastewater reuse facilities in 2010. The development of a new WWTP presents the most convenient opportunity ever to implement these programs. The city of Morro Bay and Cayucos have provided no discussion in the DEIR on how this project accomplishes these programs. Additionally the city of Morro Bay and Cayucos have provided no discussion on determining if the proposed project is the most practical project to implement these programs.

Alternatively, the siting of the new WWTP facilities, in or adjacent to agricultural production, and outside of the city limits of Morro Bay, but within the unincorporated area of the County of San Luis Obispo, is a feasible alternative and will accomplish all three Estero Area Plan programs in a timelier, more efficient and more economical manner. However, since the DEIR does not consider the programs and policies within the framework of the Estero Area Plan, including a sufficient alternatives analysis of sites within the Estero Area, the DEIR is incomplete and cannot be certified.

Zoning Issues (Chapter 3.8)

The proposed location for the new WWTP is zoned Light Industrial (M-1), with Planned Development (PD) and Interim Use (I) overlays. Section 17.24.140 and Table 17.24.140 of the City's zoning ordinance describe allowable uses in the M-1 district. The M-1 district provides that "manufacturing and other industries can locate and operate, while maintaining an environment minimizing offensive or objectionable noise, dust, odor or other nuisances, all well designed and properly landscaped." Since odor is clearly not minimized at a WWTP, and Table 17.24.140 of the zoning ordinance does not list a WWTP as an allowable use, I fail to understand how the City of Morro Bay believes a WWTP can be sited in the M-1 district.

However, section 17.24.150 of the City's zoning ordinance defines the M-2 district as Coastal-Dependent Industrial. Table 17.24.150 provides that wastewater treatment facilities are an allowable use in this district. I am unclear as to how the City of Morro Bay can both claim this is a coastal-dependent use, yet propose to site the facility in a non-coastal dependent zoning district. If the City adamantly maintains that these facilities are Coastal Dependent, then the City is required to analyze and provide CEQA review of a site located in an M-2 zoning district.

Additionally, the County of San Luis Obispo's Estero Area Plan allows for the siting of new WWTP facilities on agricultural land. This would allow the siting of the new WWTP facilities on agricultural land in the Morro Valley or at the Chevron site, which will convert to agricultural land once the in-progress site remediation is completed.

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Visual Impacts & Scenic Corridors(Chapter 3.1)

Policy 12.01 – This policy states that scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted developed shall be sited and designed to protect views to and along the ocean and scenic coastal areas and minimize the alteration of natural land forms.

The proposed project, which sites new WWTP facilities in a coastal area, does not protect the scenic or visual qualities of this coastal area. Siting new WWTP facilities in this coastal area, which requires major alteration of the existing natural land forms, is in clear conflict with this policy.

Policy 12.11 – This policy states that industrial development shall be sited and designed in areas specifically designated in the Land Use Plan to protect views to and along the ocean and scenic coastal areas and to minimize land alterations. Due to the floodplain issues at the project location, the project will require significant land alterations. Additionally, since the new, proposed WWTP facilities are not protected (only the existing facilities are), the project cannot be sited along the ocean in a scenic coastal area because it does not protect views.

Policy VR-1 of the Visual Resources and Scenic Highway Element states that the city will establish a system of scenic roadways and a set of mechanisms to protect their scenic views. The objective of this policy is to enhance, protect and preserve the existing visual resources of Morro Bay.

The siting of new WWTP facilities along a designated street that provides a view (Figure VR-1) does not serve to enhance the visual resources of Morro Bay. Figure VR-1 reveals that the proposed WWTP facilities are near two designated “excellent views” and one “good view”. These views are impacted by the existing WWTP facilities and would be enhanced and protected if the new WWTP facilities were located elsewhere.

Tsunamis (Chapter 3.7)

The DEIR fails to discuss impacts that may arise from tsunamis, and with the proposed project located within the county’s tsunami inundation area, further analysis is needed to either discuss the impacts of locating a new WWTP within a tsunami inundation area or to explore WWTP locations outside of this area. It is reasonable to assume a WWTP location east of Highway One could be outside of the tsunami inundation area or additionally protected by the physical barrier of Highway One. Until this analysis is conducted, the siting of a new WWTP in the current proposed location is in conflict with Local Coastal Plan Section X C. 2 (c) 2 “Hazard Issues – Tsunamis”. The project is inconsistent with policies of this section, most noticeably the need to comply with the City’s Seismic Safety & Safety Elements. The proposed project fails to address policies 2 and 3, which are:

2.0 Ensure that new development within the City’s jurisdiction is designed to withstand natural and man-made hazards to acceptable levels of risk.

3.0 Regulate land use in areas of significant potential hazards.

Additionally, the DEIR incorrectly represents the nature of the work. In Chapter 3.7-20, the DEIR states “the proposed project is an upgrade to the existing wastewater treatment plant that already is at risk of inundation by tsunami. The proposed project would not affect or change this existing condition”. However, the project is described in the Executive Summary (ES.4) to “replace the

existing WWTP with new upgraded facilities and would demolish existing facilities (emphasis added).

In fact, as shown in Figure 2.2 of the DEIR, the site layout of the proposed treatment works is located to the south of the existing treatment works. Figure 2.2 clearly shows that the proposed project is not “an upgrade to the existing wastewater treatment plant”, since the new facilities are being located south of the existing facilities and the existing facilities are being demolished. The City acknowledges it is not simply upgrading existing facilities throughout the DEIR by consistently referring to the project as “new treatment facilities” and not “upgraded treatment facilities”. The project is the construction of a new WWTP and the demolition of an existing treatment plant. Once we understand the true scope of the proposed project, and combined with the misinterpretation of General Plan Program LU-39.3 and Coastal Land Use Plan Policy 5.03, which do not protect the new treatment works, it is obvious the DEIR should have analyzed a stand-alone new WWTP in a new location.

Sea Water Rise (Not Analyzed)

The DEIR does not address impacts associated from seawater rise. This is extremely problematic since the proposed site is located approximately 800 feet from the ocean and at an elevation of roughly 20 feet. Seawater rise is an unfortunate global phenomenon that is being addressed by communities throughout the world. It is appropriate to understand the impacts of seawater rise and how they would impact the siting of the proposed new WWTP facilities. This analysis needs to be evaluated in the DEIR.

It is also important to note that a recent and similar wastewater project developed near the proposed project, which is the Los Osos Wastewater Project, sited their wastewater treatment plant a significant distance from the coast and at a higher elevation. Additionally, collection system pipes near the shore of Morro Bay were conditioned to be sealed as to prevent seawater from infiltrating the system that may result from seawater rise.

It is reasonable to assume a new plant, located at either a higher elevation, east of the Highway One physical barrier, or further from the coast would not be as impacted by seawater rise. However, this analysis was never conducted.

Water Reclamation (Not Analyzed)

In their Notice of Preparation letter, dated December 8, 2008, the California Coastal Commission requested that the EIR should “identify a suite of potential beneficial uses for this treated water along with any additional infrastructure and processes that would be needed to reclaim this potential source of water relative to various alternative beneficial uses”.

However, the DEIR falls short in providing this analysis. It is unfortunate the DEIR ignores the request of the Coastal Commission, because the Coastal Commission recently set a new standard for coastal wastewater treatment facilities when it unanimously approved the Coastal Development Permit for the Los Osos Wastewater Project (LOWWP). The LOWWP provides Title 22 tertiary water, 100% beneficial reuse and no ocean outfall. The protection and enhancement of coastal water resources is an important issue, and the proposed project falls short of addressing these issues.

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The City's Water Management Plan, adopted and made part of the Local Coastal Plan, states the following regarding reclaimed water:

- Even with the delivery of State Water, use of reclaimed water is the City's second highest priority and remains a productive source of potential conservation for both large and small scale projects
- Required as part of a wastewater plant upgrade or permit condition or when it is shown as cost effective for City use (Chapter V page 92)

It is extremely problematic that the DEIR does not address these requirements of the LCP. First, the LCP has determined that reclaimed water is the City's second highest priority. However, with this proposed project, the opportunity arises to develop potential beneficial reuse infrastructure and processes. Unfortunately, they are not considered in the DEIR. Additionally, it is reasonable to assume that a new stand-alone facility sited closer to beneficial reuse opportunities in and around Cayucos and Morro Bay would facilitate development of water reclamation infrastructure and opportunities. Such opportunities include, but are not limited to agricultural reuse, urban irrigation, residential re-use (purple pipes), constructed wetlands, disburbed leach fields and spray fields within the water basin (especially the Highway 41 corridor).

Secondly, and more importantly, the LCP is clear that reclaimed water will be required as part of a permit condition of a plant upgrade. The DEIR does not incorporate this into the project, so therefore the proposed project is deficient and cannot be permitted.

A 1999 study by Carollo Engineers, entitled *Cayucos/Morro Bay Comprehensive Recycled Water Study*, (Study) states that "In conclusion, the viable reuse projects developed in this report are implementable and do not have any identifiable fatal flaws." (page ES-4) It is important to note that the Study determined, and put the city on notice, that beneficial reuse could have been implemented since 1999. However the DEIR does not consider implementation of these viable reuse options. The City has known since 1999 that viable reuse projects exist, yet appear to be developing a project in conflict with these findings and in conflict with Chapter Five of the City's Local Coastal Plan.

It is also important to note that the Study did not consider agricultural users in the Morro Valley. The Study, which is 11 years old, only considered reuse around the existing WWTP facilities. With the proposed project demolishing the existing WWTP facilities reviewed in the Study, the reader of the DEIR cannot conclude if new facilities, built at a new location closer to the agricultural users, would provide additional reuse opportunities.

The DEIR cannot be certified until the 1999 Recycled Water Study is updated and analyzes the potential benefits of siting a WWTP facility in a new location which would enhance beneficial reuse more than the proposed WWTP site.

Composting (Chapters 3.10 & 3.11)

The existing composting facilities are not proposed as part of the new WWTP. This is mainly due to size constraints of the new WWTP location, which cannot accommodate the facilities. Under the new proposal, 100% of the biosolids will be hauled to Kern County.

Chapter 3.10 states that the loss of on-site composting will result in an increase from approximately 165 – 226 dry metric tons of biosolids to approximately 2,800 – 3,500 wet tons of unclassified

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sludge. This is over a 1,000% increase in sludge production that will now be hauled to landfills. The DEIR incorrectly states that this is a less than significant impact. The DEIR does not discuss how these new biosolids will be stored, what safeguards will be in place to prevent spills or what impacts they may have to the existing area, especially the school and visitor serving uses. It is reasonable to assume an alternative stand-alone site without the limited site restrictions of the proposed location, could allow for the continued use of on-site composting and not impact landfills as much as the proposed project.

Chapter 3.11 reveals that the loss of on-site composting will result in up to 18 truck trips per week in order to provide for offsite disposal. No baseline for current truck trips is provided to determine what level of impact this presents. No greenhouse gas analysis is provided to determine what level of impact this presents.

The DEIR states that there would be a significant impact if the project "substantially increases hazards due to a design feature or incompatible uses". The DEIR concludes that the new, proposed WWTP site is impacted by size other restrictions. Thus this flaw in size has resulted in a design feature that has caused composting to be eliminated. The significant impacts associated with this change need to be fully evaluated in the DEIR.

Odor (Section 3.2)

The existing location of the WWTP has a long history of odor impacts at and around the surrounding plant location. The existing location is surrounding by commercial/visitor-servicing land use zones and school land use zones. The odor arising from the existing WWTP has had significant impacts to the Morro Bay High School (see letter in Appendix A-1 from San Luis Coastal Unified School District), to the Morro Dunes RV Park (see letter in Appendix A-1 from Morro Dunes), and at Lila Keiser Sports Park, which is the official field for Morro Bay Little League, Estero Bay Youth Soccer, Girl's Softball and organized recreational softball. These are the only baseball/softball facilities in Morro Bay and they are highly utilized.

Even though the new WWTP facilities are being proposed *closer* to Lila Keiser Park and Morro Dunes RV Park, the DEIR concludes that the odor impact (Impact 3.2-4) will be mitigated to less than significant by revising the Odor Impact Minimization Plan (OIMP). The DEIR does not indicate what revisions to the OIMP will assist in making the new WWTP odors less offensive, and leaves the reader wondering if said revisions will be successful.

The only known mitigation measure for odors is to site the new WWTP away from existing development, especially schools and commercial/visitor-serving. However, the DEIR does not analyze this alternative even though it is reasonable to assume such a location would have less impacts than the proposed site.

Cultural Resources (Chapter 3.4)

Policy 4.01 of the LCP states that "where necessary significant archeological and historic resources shall be preserved to the greatest extent possible both on public and privately held lands". The DEIR reveals that nine prehistoric archeological sites have been recorded within 0.5 miles of the project area. Numerous sites contained human remains and one is believed to be "an extensive village site along Morro Creek" (pg 3.4-13).

It is clear the area located at, and around, the proposed project site contain significant archeological resources. The LCP requires that these resources shall be preserved to the greatest extent possible, which ideally is to not disturb the resources at all. The only way to not disturb these resources would be to construct the new WWTP facilities at a location that did not contain significant archeological resources. However, the DEIR did not analyze such a site. In order to be in compliance with this LCP policy, the DEIR needs to provide this level of review.

Drainage and Flooding (Chapter 3.7)

By not evaluating a stand-alone WWTP, the proposed project is inconsistent with numerous LCP policies relating to drainage and flooding.

Policy 9.02 – This policy requires that new development shall ensure structural stability while not creating or contributing to erosion or geologic instability or destruction to the surrounding area. Impact 3.7.3 acknowledges that the proposed project will alter the drainage pattern of the project site and floodplain. The mitigation measures do not address impacts to the surrounding area and what adaptive monitoring measures will be in place to adequately mitigate this impact. It is reasonable to assume a new stand-alone treatment plant location would not be inconsistent with Policy 9.02 or even have floodplain issues at all.

Policy 9.03 – This policy prohibits development within the 100-year floodplain unless off-setting improvements in accordance with the HUD regulations are implemented. Additionally, development shall include finished floor elevations two feet above the 100 year flood elevation. Mitigation measure 3.7-4 is inconsistent with Policy 9.03 because it proposes to build structures at least one foot above the base flood elevation. The Policy requires the elevations to be two feet above. This elevation requirement needs to be analyzed in the DEIR to ensure the new WWTP facility can be built without impacting visual resources.

Policy 9.05 – This policy states “Plans for development shall minimize cut and fill operations. Plans showing excessive cutting and filling shall be modified or denied if it is determined that the development could be carried out with less alteration of the natural terrain.” Section 2.5.3 of the DEIR discusses the significant amount of excavation and fill required at the proposed site in order to construct new WWTP facilities. Policy 9.05 demands that projects *shall* be modified or denied if the development could be implemented elsewhere with less impacts. Without the benefit of a stand-alone WWTP location being analyzed, especially a site with less or no floodplain issues, the DEIR does not provide adequate review in order to determine if the proposed project is consistent with Policy 9.05.

Policy 9.06 – Requires that “all development shall be designed to fit the site...so that grading and other site preparation is kept to an absolute minimum”. Due to the known issues at the proposed site, extensive grading and site elevation is required. It is reasonable to assume that a stand-alone WWTP could keep grading and other site preparation at an absolute minimum, however the DEIR never conducts this analysis.

Policy 9.06 also states that “areas of the site which are not suited to development because of known soil, geologic, flood, erosion or other hazards shall remain in project open space”. The entire project site is not suited for development because of known hazards to soil, geologic, flood, erosion and other hazards (tsunamis and sea water rise), yet the City insists on siting the new WWTP facilities at this location. It is reasonable to assume a stand-alone WWTP could be constructed which is consistent with policy 9.06.

Inconsistencies with General Plan

The City of Morro Bay's General Plan lists potential development for Planning Area 5, the proposed site of the new WWTP. The potential development includes increased commercial fishing, increased energy development-related uses, increases or changes in recreational uses, and some potential for increase in commercial visitor-serving. Extension of the State Highway 41 and Embarcadero Road is possible, and would be enhanced with the implementation of the Waterfront Master Plan, adopted in 1996, which envisioned a redevelopment of this area with an extension of Embarcadero Road and bridge over Morro Creek. This bridge and road extension would enhance the recreational and commercial visitor-serving uses of this area. Siting of a new WWTP is not listed as a desired potential development use in the General Plan.

Conclusion

Individually, the inconsistencies, omissions and misinterpretations of the various planning documents warrant further analysis and review. However, when taken cumulatively, these inconsistencies, omissions and misinterpretations are extremely alarming. It is clear the project scope changed when the project morphed from an upgrade to construction of new WWTP facilities. However, the standard of review by the city of Morro Bay and Cayucos did not.

When constructing new WWTP facilities, the city of Morro Bay and Cayucos cannot pick and choose the policies they wish to abide by. The city of Morro Bay and Cayucos must take into account all relevant policies, many of which were omitted from the DEIR. When considered cumulatively, as outlined in this letter, it is clear the policies in existence are guiding the city of Morro Bay and Cayucos to construct a new WWTP away from the coast and appropriately sited near beneficial reuse of which should be implemented upon project initiation.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060-4508
VOICE (831) 427-4869 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: Lee U. Johnson

Mailing Address: 117 Mindoro Street

City: Morro Bay

Zip Code: 93442

Phone: 805-305-3492

SECTION II. Decision Being Appealed

RECEIVED

JAN 27 2011

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

1. Name of local/port government:

City of Morro Bay City Council

2. Brief description of development being appealed:

Coastal Development Permit No. CPO-339 issued by the City of Morro Bay for the construction of a new Wastewater Treatment Plant.

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

160 Atascadero Road, Morro Bay, CA 93442
Cross Street Embarcadero

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

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MRB-11-001

DATE FILED: January 31, 2011

DISTRICT: Central Coast

A-3-MRB-11-001 (MRB WWTP)
Page 50 of 88

Exhibit C

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: January 11, 2011

7. Local government's file number (if any): SCH #2008101138

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:

Rob Livick, Public Works Director
City of Morro Bay
955 Shasta Street
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)

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

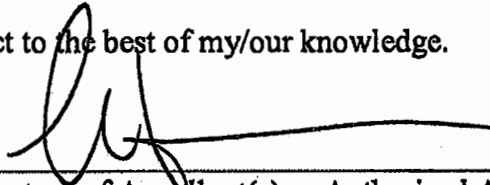
- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal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

See Attachment A

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

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: January 26, 2011

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date: _____

Attachment A

This attachment provides the basis for my appeal of Coastal Development Permit No. CPO-339. The City of Morro Bay's approval of CPO-339 is in conflict with numerous Coastal Act and Local Coastal Programs (LCP), as outlined below.

I have requested at multiple public meetings before the Planning Commission and City Council that an alternative site study be conducted to determine if the proposed site is the most environmentally superior site to construct a new wastewater treatment plant (WWTP). I do not believe the siting of a new WWTP at this oceanfront location is the best use of the City's economic, environmental or coastal resources. The LCP provides significant protection of the City's coastal resources, and when the new WWTP is held to these guidelines, it is clear the City of Morro Bay has failed to evaluate alternative site locations which may have less environmental impacts than the proposed site.

I urge the Coastal Commission to find substantial issue with the proposed project and require the City of Morro Bay conduct an alternatives analysis to determine if a more feasible site exists either within city limits or the unincorporated area around the community of Cayucos.

Conflicts with Morro Bay LCP

LCP Policy 2.01 - Provides that lower-cost visitor and recreational facilities for persons or families of low or moderate income shall be protected, encouraged and where feasible, provided. The siting of a new WWTP closer to a highly utilized RV Park, which is a lower-cost visitor and recreational facility, does not serve to protect this resource. Enjoyment of the beach is free, and the siting of a new plant along the oceanfront also impacts these visitors and recreational users.

LCP Policy 4.01 - States "where necessary significant archeological and historic resources shall be preserved to the greatest extent possible both on public and privately held lands". It has been confirmed that nine prehistoric archeological sites are within 0.5 miles of the proposed project. The City has not met the expectation of this Policy because they have not evaluated alternative sites which may allow for the City to avoid impacts to cultural resources.

Chapter IV, Section F (2) - States "the intersection west of State Highway One and State Highway 41 also offers the potential for increased visitor-serving uses. This area contains vacant acreage which could be developed into visitor services, particularly motels. When Embarcadero Road is connected to State Highway 41 this will become a secondary entrance to the City. Visitor services currently exist in this area". The LCP anticipated visitor-serving enhancements to the area of the proposed WWTP, and provided guidance for when Embarcadero Road is extended to Highway 41. This area remains an important planning area for the community which is in transition. The siting of a new WWTP is in conflict with the goal of this section which is to improve and increase visitor-serving uses.

LCP Policy 5.03 - States "the Morro Bay Wastewater Treatment facilities shall be protected in their present location since an important operational element, the outfall line, is coastal-dependent". Had the City simply been proposing an upgrade to existing facilities in their present location, this Policy may have been applicable. However, the City is proposing new WWTP facilities in a new location with complete demolition of the existing facilities in their present location, therefore making the existing facilities in their present location no longer subject to this policy. The City has not proposed to move their outfall line, and in fact, the outfall line can remain operational even if the WWTP facilities are located at another location.

LCP Chapter V, Page 92 - The LCP incorporated the City's Water Management Plan with the following guidance for reclaimed water:

Attachment A

- Even with the delivery of State Water, use of reclaimed water is the City's second highest priority and remains a productive source of potential conservation for both large and small scale projects
- Required as part of a wastewater plant upgrade or permit condition or when it is shown as cost effective for City use

The City's proposed project is in conflict with the LCP because the project has not made reclaimed water a requirement of the project. The proposed project does provide limited reuse on-site, but the expectation of the LCP is that reclaimed water will become the second priority of the City. Clearly the proposed project does not meet the expectations outlined in the LCP. Additionally, during City Council and Planning Commission deliberations, it was apparent that the proposed site may not be able to accommodate reclamation facilities. The City should be required to demonstrate how the proposed site can meet the expectations of the LCP without further impacted coastal resources. A larger site, closer to reclamation end-users located in Cayucos and Morro Bay, may help meet these expectations in a more efficient, environmentally friendly and economical manner.

LCP Policy 9.05 – States "plans for development shall minimize cut and fill operations. Plans showing excessive cutting and filling shall be modified or denied if it is determined that the development could be carried out with less alteration of the natural terrain." The City has not adequately reviewed alternative sites and determined if the proposed development could be carried out at an alternative site with less alteration of the natural terrain. Due to the significant site constraints of the proposed project, an alternative site may meet the expectations of this policy in a more efficient, environmentally friendly and economical manner.

Policy VR-1 (Visual Resources and Scenic Highway Element) – Requires the City to establish a system of scenic roadways and a set of mechanisms to protect their scenic views. This policy helps enhance, protect and preserve the existing visual resources of Morro Bay. The proposed WWTP facilities are located next to two designated "excellent views" and one "good view" roadways. The siting of a new WWTP at this location does not preserve or enhance the existing visual resources of Morro Bay. This section of coastline is in transition (see Chapter IV, Section F (2)) and the enhancement of this area by relocating the proposed treatment plant is consistent with LCP policies.

LCP Section X C. 2 (c) 2 Hazard Issues Tsunamis - The City's proposed project does not meet Policy 2.0 and 3.0:

2.0 Ensure that new development within the City's jurisdiction is designed to withstand natural and man-made hazards to acceptable levels of risk.

3.0 Regulate land use in areas of significant potential hazards.

Policy 12.01 – Requires scenic and visual qualities of coastal areas be considered and protected as a resource of public importance. Permitted developed shall be sited and designed to protect views to and along the ocean and scenic coastal areas and minimize the alteration of natural land forms. The proposed project, specifically the two-story cinderblock operational building and large cement oxidation ditches on raised foundations, present impacts to scenic and visual resources within the area and are in conflict with this Policy. These impacts could be avoided at an alternative location.

Conflicts with Coastal Act Policies

Section 30250 (b): Where feasible, new hazardous industrial development shall be located away from existing developed areas. The City did not analyze any sites located away from existing developed areas, therefore a feasibility determination cannot be made.

Attachment A

Section 30251: The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting. The proposed project requires a two-story WWTP facility on an elevated footprint above the floodplain. The existing WWTP facility is one-story. A two-story WWTP facility is unnecessary from an operational standpoint, and is only being proposed due to extreme site restrictions, which will impair views to and along the ocean and scenic coastal areas.

Section 30253 (b): Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geological instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The proposed WWTP is located in a floodplain and the required elevated pads to remove the facilities from the floodplain creates and contributes significantly to erosion and requires construction of protective devices that substantially alters natural landforms. It was never determined if a superior site exists that would not require such severe site re-engineering.

Insufficient Standard of Review - Estero Area Plan

The unincorporated community of Cayucos is serviced by the proposed WWTP. Cayucos is under the jurisdiction of San Luis Obispo County's Estero Area Plan (EAP). The following programs are highlighted in the EAP and relevant to the proposed WWTP. The implementation of these programs should be a component of the proposed WWTP.

Chapter III, Section B (1) Wastewater Recycling. Sewage disposal agencies should work with the County Public Works and Health Departments and the Regional Water Quality Control Board to develop a program to find alternative uses for treated wastewater, such as irrigation (e.g. on agricultural lands and the Morro Bay Golf Course), groundwater recharge, and environmental enhancement.

Chapter III, Section A (9) Agricultural Water Supplies. Maintain the quantity and quality of ground water resources currently consumed by production agriculture. Where sources of adequate wastewater quality are available, develop a program with appropriate agencies to use treated wastewater for irrigation.

Chapter III, Section A (10) Water Management - Chorro & Morro Basins. The county and city of Morro Bay should jointly develop a groundwater management program that results in cooperative planning among affected agencies. The program should encourage better recharge through use of percolation basins and consider drilling of new wells and changing the frequency of well pumping.

CALIFORNIA COASTAL COMMISSION

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

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

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

SECTION I. Appellant(s)

Name: Surfrider Foundation San Luis Obispo Chapter (Jeff Pienack, Chair)

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

City: San Luis Obispo, CA

Zip Code: 93406

Phone: 805-709-1905

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Morro Bay

2. Brief description of development being appealed:

Morro Bay - Cayucos Wastewater Treatment Plant Upgrade, SCH No. 2008101138

The proposed project would provide full secondary treatment for all effluent discharged through its ocean outfall and provide tertiary filtration capacity. The WWTP is located in the coastal zone and is adjacent to Morro Dunes R.V. Park and Trailer Storage, Morro Bay High School, Morro Creek, the City of Morro Bay Corporation Yard, and Hanson Heidelberg Cement Group (cement plant).

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

The proposed project would be located at 160 Atascadero Road in the City of Morro Bay in San Luis Obispo County.

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

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MRB-11-001

DATE FILED: January 31, 2011

DISTRICT: Central Coast

RECEIVED

JAN 27 2011

CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST AREA

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: January 11, 2011

7. Local government's file number (if any): Coastal Development Permit CP0-339

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:

City of Morro Bay, 595 Harbor St. 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) Sierra Club Santa Lucia Chapter (attn: Andrew Christie) P.O. Box 15755 San Luis Obispo, CA 93406

(2) Barry Branin P.O. Box 540 Morro Bay, CA 93442

(3) Linde Owen 1935 10th St B Los Osos, CA 93402

- (4) Betty Winholtz 405 Acacia St Morro Bay, CA 93442
- (5) Jack McCurdy 989 Balboa St. Morro Bay, CA 93442
- (6) Steve Hennigh 136 Ocean Front Ave. Cayucos, CA 93430
- (7) Richard Sadowski 490 Java St. Morro Bay, CA 93442
- (8) Dana Putnam P.O. Box 181 Morro Bay, CA 93442
- (9) Julie Tacker 1251 6th St. Los Osos, CA 93402

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

The project as proposed does not comply with the City of Morro Bay's certified LCP or relevant Coastal Act Policies. Of particular concern are the inconsistencies with the California Coastal Act and City of Morro Bay Local Coastal Plan policies pertaining to siting of development in the coastal zone. These laws and policies address steps necessary to avoid hazards such as tsunami, wave runup and coastal erosion (i.e. LCP Policies 9.01, 9.02, 9.03, and 9.06; Coastal Act § 30253(1), (2), and (5)).

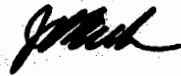
Arguably, because of failure to comply with the aforementioned policies, the project is also inconsistent with Coastal Act § 30230, 30231 and 30240(b), which protect marine resources, water quality and recreational land uses. These coastal resources would be jeopardized if the wastewater treatment plant were to experience failure/spills due to exposure to coastal hazards and improper plant siting.

The LCP and Coastal Act also require that development in the coastal zone prioritize coastal dependent uses (Coastal Act § 30255 and LCP Policy 0.1 which adopts Coastal Act § 30255 as guiding policy). Although the ocean outfall could be considered coastal dependent (however, with maximization of wastewater reuse it is arguable whether the ocean outfall is even needed), the treatment facilities are not. The outfall pipe could be routed to connect with a wastewater treatment plant located inland.

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

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: 1/28/2011

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

Section VI. Agent Authorization

I/We hereby
authorize

_____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE

728 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060-4508

VOICE (831) 427-4883 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: Betty Winholtz, Anne Reeves, Roger Ewing

Mailing Address: 405 Acacia

City: Morro Bay

Zip Code: 93442

Phone: 805-772-5912

SECTION II. Decision Being Appealed

RECEIVED

1. Name of local/port government:

JAN 28 2011

City of Morro Bay

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

2. Brief description of development being appealed:

Conditional Use Permit and Coastal Development Permit for the Morro Bay-Cayucos new wastewater treatment plant

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

Atascadero Road western deadend.

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

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

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

TO BE COMPLETED BY COMMISSION:	
APPEAL NO:	□□□□ <u>A-3-MRB-11-001</u>
DATE FILED:	□□□□ <u>January 31, 2011</u>
DISTRICT:	□□□□ <u>Central Coast</u>

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: January 11, 2011

7. Local government's file number (if any): CPO-339 and UPO-307

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:

City of Morro Bay, 595 Harbor Street, Morro Bay, CA 93443

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) Dana Putnam

2252 Emerald Circle
 Morro Bay, CA 93442

(2) Joey Racano

Los Osos, CA 93402

(3) Robert Stallard

(4) Robert Doerr
 340 Arcadia
 Morro Bay, CA 93442

(continued)

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.

5. Alex Beattie, 564 Acacia, Morro Bay, CA 93442
6. Barry Branin, Morro Bay, CA 93442
7. Andrew Christie, 1710 Stuart, Cambria, CA
8. Piper Reilly, Los Osos, CA 93402
9. Dorothy Cutter, 290 Cypress, Morro Bay, CA 93442
10. Barbara Doerr, 340 Arcadia, Morro Bay, CA 93442
11. Linde Owen, Los Osos, CA 93402
12. Jack McCurdy, 901 Morro Bay Blvd. Morro Bay, CA 93442
13. Julie Tacker, Los Osos, CA 93402
14. Steve Hennigh, 137 N. Ocean Ave., Cayucos, CA
15. Bill Weatherford, 799 Luisita, Morro Bay, CA 93442
16. Jan Romanazzi, Cayucos, CA 93430
17. Lee Johnson,
18. Richard Margetson, Cayucos, CA 93430
19. Richard Sadaowski, 490 Java, Morro Bay, CA 93442
20. Barbara Jo Osborne, 336 Main, Morro Bay, CA 93442
21. Nancy Bast, 450 Fairview, Morro Bay, CA 93442
22. John Barta, 1240 Scott, Morro Bay, CA 93442
23. James Hayes, %City of Morro Bay, 595 Harbor Ave, Morro Bay, CA 93443

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

1. **HAZARDS.** In LCP chapter X, Figure 22 (100 Year Floodplain Map), Figure 23 (Ground Shaking Map), and Figure 24 (Liquefaction Potential Map) identify the site of the proposed project located in three hazard areas. There are no maps for tsunamis or sea level rise. The project as proposed is to bring in fill for a 5-acre, new from the ground-up, wastewater treatment plant to raise the natural grade to address the flood plain issue raised by FEMA. This may address flooding, but not the other 4 natural hazards. It has not yet been revealed to the public whether FEMA accepts the fill proposal. The project as proposed does not mitigate the other natural hazards nor offers serious evaluations of other sites without these constraints. Therefore, the project as proposed is inconsistent with the following LCP policies:

Policy 9.01. All new development located within areas subject to natural hazards from geologic, flood and fire conditions, shall be located so as to minimize risks to life and property.

Policy 9.02. All new development shall ensure structural stability while not creating nor contributing to erosion or geological instability or destruction of the site or surrounding area.

Policy 9.03. All development, including construction, excavation and grading, except for flood control projects and agricultural uses shall be prohibited in the 100-year floodplain areas unless off-setting improvements in accordance with the HUD regulations are required. Development within the floodplain shall not cause further stream channelization, alignment modifications or loss of riparian habitat value consistent with Section 30236 of the Coastal Act....The heights of permitted development shall be compatible with the character of the surrounding area and not conflict with scenic and visual qualities.

Policy 9.05. Plans for development shall minimize cut and fill operations. Plans showing excess cutting and filling shall be modified or denied if it is determined that the development could be carried out with less alteration of the natural terrain.

Policy 9.06. All development shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. To accomplish this, structures shall be built to existing natural grade whenever possible.

Policy 9.18. Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1)necessary water supply projects, (2)flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or

(3)development where the primary function is the improvement of fish and wildlife habitat.

I agree with the City's planning commission that this project is new development. The submitted proposal says it is not. Whichever way the CCC decides on this issue, the policies identified above address both kinds of development, making the project inconsistent with the LCP.

2. COASTAL-DEPENDENT? The second critical question that must be decided by the CCC is whether this project is coastal dependent or not. I agree with numerous Public Comments that offer ample information regarding state-of-the-art technologies (i.e. undergrounding) and alternative locations (i.e. power plant, Little Morro Creek). However, analysis of alternative technology and alternative siting is deficient, so it is inconclusive whether the WWTP can be coastal-independent. If it can be, then the following policies no longer apply:

LCP VII, Policy 5.03. The Morro Bay Wastewater Treatment facilities shall be protected in their present location since an important operational element, the outfall line, is coastal-dependent.

LCP XI, Policy 10.09. Construction of shoreline structures that would substantially alter existing landforms shall be limited to projects necessary for (c) other coastal-dependent uses.

There is an ESH across the street, visitor serving RV parks adjacent and across the street, and a significant archeological resource in close proximity. If the proposed project moved or used other technologies, impacts to these resources could require less or no mitigation of the following policies:

LCP VI, Policy 4.01. Where necessary significant archeological and historic resources shall be preserved to the greatest extent possible on both public and privately held lands.

LCP XII, Policy 11.05. Prior to issuance of a coastal development permit, ... or projects on parcels within 250 feet of all designated areas (except wetlands where projects on parcels within 1000 feet is the criterion), or projects having the potential to affect an environmentally sensitive habitat area must be found to be in conformity with the applicable habitat protection policies of the LCP....

Policy 11.19. ...New development adjacent to wetlands shall not result in adverse impacts due to addition sediment, runoff, noise, and other disturbances.

Figure 9 (Recreational Activity Inventory) Designated pleasure walking and jogging across the street from the proposed site would be enhanced.

LCP III, Policy 1.02. No unrelated development shall be permitted in public-owned recreational areas except energy conduits and pipelines and other necessary ancillary equipment and related fixtures to serve coastal dependent industrial uses when no alternative route or location is feasible.

LCP IV, Policy 2.01. Lower-cost visitor and recreation facilities for persons and families of low or moderate income shall be protected, encouraged, and where feasible, provided. Developments providing public recreational opportunities are preferred.

3. VISUAL RESOURCES. LCP Chapter XIII Figure 30 (Scenic Views) marks the street in front of the proposed site as a street providing views, and pages 200-201 list the criteria for assessing natural and urban views. Due to the proposed location (on the beach) and proposed maximum height (30) of 28

Exhibit C
A-5-MRB-09-010-REV 08

fill (5'-7'), the project as proposed will literally stick out as a sore thumb. There are no other structures over one-story within thousands of feet. Therefore, the project as proposed is inconsistent with the following LCP policies:

Policy 12.01. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic and coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of the surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designate on Figure 31, shall be subordinate to the character of its setting.

Policy 12.11. Industrial development shall be sited and designed in areas specifically designated in the Land Use Plan to protect views to and along the ocean and scenic coastal areas, to minimize land alternation, to be visibly compatible with the character of the surrounding areas, and where feasible, shall include measures to restore and enhance visually degraded areas. In addition, industrial development shall be subordinate to the character of the setting.

4. THREE OTHER CONTROVERSIAL ISSUES.

(1) Whether the correct flow has been ascertained, LCP V, Policy 3.06 states: The City will continue a program of providing wastewater treatment facilities to accommodate the build-out population of 12, 195, determined to be the build-out figure in Coastal Development Permit No. 406-01 which permitted further expansion of the wastewater treatment facilities to 2.4 mgd.

(2) Whether reclamation should be required, the following two policies show precedence: Policy 3.08: Should the City be relieved of its mandate to participate in State Water by a subsequent vote of the people, then the following programs would be pursued:

Upgrade a portion of the wastewater effluent (100-200AF) to tertiary treatment and build pipelines to distribute to schools, parks, and or farms for irrigation. All available options should be investigated as possible sources for water reclamation.

Policy 6.06. The City shall participate in the efforts of the Coastal Conservancy or other private or public agencies to implement agricultural enhancement programs. These programs may include but are not limited to... (4) assistance programs (water subsidies, recycling methods, fencing and other buffers, and low-cost agricultural loans.)

(3) Whether this is the highest and best use of Public Trust Lands, LCP III, Figure 7, shows the proposed site is on Tidelands Grant Lands.

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

SECTION V. Certification

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

Roger Ewing
ROGER EWING
Jan. 28, 2011

Betty Winkholtz

Signature of Appellant(s) or Authorized Agent

Date: *January 28, 2011*

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

Section VI. ~~Agent Authorization~~

*Anne S. Reeves - 198 Main St.
Morro Bay, Ca 93441*

I/We hereby authorize

Anne S. Reeves 1/28/11

to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date:

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 800
SANTA CRUZ, CA 95060-4500
VOICE (831) 427-4883 FAX (831) 427-1877



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Michael Lucas

Mailing Address: 2637 Koa Avenue

City: Morro Bay

Zip Code: 93442

Phone: [805] 756-1790

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Morro Bay

2. Brief description of development being appealed:

Morro Bay- Cayucos Sanitary District Waste Water Treatment Plant Upgrade

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

160 Atascadero Road, Morro Bay

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

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MRB-11-001

DATE FILED: January 31, 2011

DISTRICT: Central Coast

RECEIVED

JAN 31 2011

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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: January 11, 2011

7. Local government's file number (if any): SCH No. 2008101138

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:

Rob Livick, PE/PLS
Public Services Director/City Engineer
City of Morro Bay
955 Shasta Avenue
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) Nancy Bast, 450 Fairview, Morro Bay, CA 93442

(2) Alex Beattie, 564 Acacia, Morro Bay, CA 93442

(3) Andrew Christie, 1710 Stuart, Cambria, CA

(4) Dorothy Cutter, 290 Cypress, Morro Bay, CA 93442

(5) Barbara and Rob Doerr, 340 Arcadia, Morro Bay, CA 93442

(6) Roger Ewing, P.O. Box 1323, Morro Bay, CA 93443

- (7) Steve Hennigh, 137 N. Ocean Ave., Cayucos, CA 93430
- (8) Gerald Luhr, 2335 Nutmeg Avenue, Morro Bay, CA 93442
- (9) Jack McCurdy, 901 Morro Bay Blvd. Morro Bay, CA 93442
- (10) Barbara Jo Osborne, 336 Main, Morro Bay, CA 93442
- (11) Dana Putnam, 2252 Emerald Circle, Morro Bay, CA 93442
- (12) Anne Reeves, 198 Main, Morro Bay, CA 93442
- (13) Richard Sadaowski, 490 Java, Morro Bay, CA 93442
- (14) Bill Weatherford, 799 Luisita, Morro Bay, CA 93442
- (15) Betty Winholtz, 405 Acacia, Morro Bay, CA 93442

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**SECTION IV. Reasons Supporting This Appeal****PLEASE NOTE:**

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

Please see attached six page letter dated Januray 30, 2011 with specific LCP and Coastal Act references.

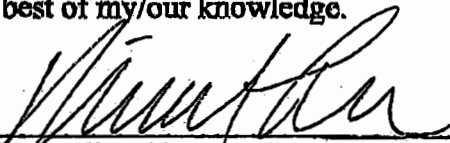
As a summary I offer the following: the City Council action was based upon numerous instances where EIR information may be incorrect, in conflict with multiple LCP and Coastal Act provisions, and/or based on flawed arguments. In particular:

1. The requisite alternatives for an EIR never explore the conceptual ideas that an ocean outfall is unnecessary, that a stand alone technology on an alternative inland site differently and successfully mitigates flood, liquefaction, and tsunami hazards, and that an alternative site might free up the current beach block site for other uses that are City goals articulated in the LCP and Coastal Act: low cost and low impact visitor-serving accommodation, active or passive recreation or open space.
2. The project as approved does not successfully mitigate the potential hazards of flood and spills or back-up due to operational and access issues of the project being an island in a broader flood zone, impacting emergency access.
3. The project as approved does not adequately anticipate or document the visual impacts of the work on existing neighboring uses: a high school, several rv parks, the beach, or future access routes planned from the Embarcadero area for walkers and bikers. The EIR rationalizes unnecessary bulk and height via underlaying industrial zoning vs visual imapct on a highly visible beach bluff in proximity to several ESHA designations.
4. The project as approved may have serious flaws with capacity due to use of historic flow vs. issues of demographic change and current occupant capacity of existing housing stock.
5. The current plan does not articulate subsequent expansion, additional technologies for potential expansion of water reclamation, or adequately anticipate future use needs, all of which are exacerbated by the limited site size due to chosen method of flood plain mitigation.
6. The current plan does not address issues of degraded aquafers important to future City water needs and has no concurent plan for tertiary treated water use.

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

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: JULY 30, 2011

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date: _____

Michael Lucas, RA (Maryland)
2637 Koa Avenue
Morro Bay, California 93442
805.772.4028
michael_a_lucas@abcglobel.net

California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

January 30, 2011

**Attachment to Appeal of Coastal Development Permit
Morro Bay-Cayucos Joint Sanitary District Wastewater Treatment Plant Upgrade**

Dear Commission-

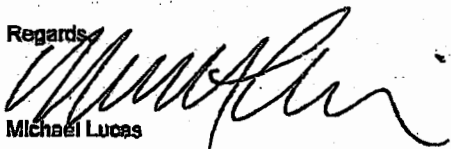
I am a resident of Morro Bay since 2001, a registered architect in the state of Maryland since 1984, Professor of Architecture at California Polytechnic State University, San Luis Obispo, and former Morro Bay Planning Commissioner, 2007-2010. I was a member of the Morro Bay Planning Commission when the Draft Environmental Impact Report and Final Environmental Impact Report for the Morro Bay- Cayucos WWTP were discussed. I was part of the 4-0 unanimous Morro Bay Planning Commission vote recommending that the Morro Bay City Council *not* approve the project as currently configured and sited without additional study. I am appealing the Morro Bay City Council decision to grant the coastal permit to you as a result of what I feel are flaws in the EIR and in the concept plan that are not in concert with our Local Coastal Plan, and California Coastal Act as outlined below.

I begin by saying my concerns for the oceanfront / creek side site and plant emerged when the site was discovered, after four years of engineering study, to be in the 100 year flood plain. I testified at that time in September, 2009 to the Morro Bay Cayucos Joint Sanitary Commission, along with over twenty other citizens, that the site was inappropriate, due to evidence of two previous primary dune breaches that offer a glimpse of the natural hazard exposure of this site. The first, in the 1910's, was related to me by a local historian whose family resided in the area, Roger Castle, was of a storm that redirected Morro Creek from its terminus into a lagoon at the north end of Morro Bay to the current ocean outfall, and further, that the down shore sand spit that separates Morro Bay from Estero Bay and the ocean had been breached by a storm in the 1954. The early breach is evidenced with the original condition of Morro Creek as noted in several topographic surveys from the late 1800s. The evidence of the second breach is in numerous photographs from that era. The LCP also documents other troubling flooding instances in the city history.

My subsequent comments and questions concerning the concept project described in the draft EIR are documented in the final EIR as eight pages of my letter to Mr. Rob Livick (comment no. 13; unnumbered in section nine) and twenty-seven pages of response [pages 10-60 to 10-87]. I also note many of my concerns noted there mirror those of the subsequent Coastal Commission staff letter in regard to major new infrastructure placed in jeopardy of natural disaster and other issues.

I look forward to your decision on whether these issues rise to level of being 'substantial'.

Regards,



Michael Lucas

Below are what in my opinion are variances from the letter and intent of our Local Coastal Plan in their order within the LCP document.

Chapter 1. Introduction

Area Description- Area 5/Morro Rock [p. 14]

Waste treatment Plant is noted as existing use; under 'Potential Development' is noted as 'increases...in recreational uses and some potential for increase in commercial visitor-serving uses, and 'Major Coastal Issues' are among others, shoreline access.

Chapter III, Shoreline Access

B.1.(b). '...new development does not include:

(3) Improvements to any structure which do not change the intensity of its use, which do not increase the height, or bulk of the structure by more than 10%, which do not block or impeded public access, and which do not result in a seaward encroachment by the structure,

Discussion: Clearly the proposed new construction is higher than existing, utilizes the full breadth of the site in it's connectional plans, expands and encroaches on current other uses to the east, and in fact in the proposed plan, moves the new above ground footprint and mass of treatment tanks closer to the ocean. As noting except the incoming flow piping, and outfall piping is retained, and the entire facility is new construction, it is 'new'.

Chapter III, B.1. references California Coastal Act Section 30213. [also referenced in Chapter IV, B.J

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Discussion: By assigning an intense infrastructure use to the site without due diligence on alternatives, the alternative uses for the site, their potentially lesser environmental impacts and benefits to the City are not weighed in the deliberations. In this case, the adjacent use and several nearby uses are recreational vehicle parks, which offer expanded coastal and affordable access. These suggest the viability of the site for such use, without necessarily involving wholesale demolition of constructions, deep excavations disturbing cultural resources, or permanent habitable structures that require mounds and fill altering the visual character of the area. In fact, such lower intensity development could be seen as enhancing the visual character of the site.

Chapter III, B.1. references California Coastal Act Section 30220. [also referenced in Chapter IV, B.]
Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Discussion: The lack of non-ocean outfall/ stand alone plant/ alternative site analysis alternative[s] precluded recognizing the benefit of the current WWTP site being placed into use as a recreation supporting, visitor serving, or other coastal dependent uses to be measured against the environmental impacts and possible additional environmental benefits of a relocated plant.

Chapter III, B.1. references California Coastal Act Section 30240. [also referenced in Chapter V, B, and Chapter XII]

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) 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 those areas, and shall be compatible with the continuance of those habitat and recreation areas.

F.5.a. State Highway 41 Terminus: The terminus... abuts a large sandy beach... and provides access to the scenic dunes that flank the road.

Chapter III, G. 2. Area 5- Morro Rock Specific Policies

Policy 1.15 The area located west of the Embarcadero alignment projected north shall be designated as open space/recreation.

Policy 1.18 The dunes area north of Atascadero Road and west of the High School shall be designated as environmentally sensitive habitat.

Portions of that area suitable for passive recreational use shall be designated open space/recreation.

Policy 1.19 ...the City shall undertake construction of a pedestrian and bicycle bridge over Morro Creek mouth as a means of enhancing lateral shoreline access and recreational opportunities.

Discussion: The sections reference the western context of the site as environmentally sensitive habitat, scenic dunescape, and active and passive recreational areas. The access is at the terminus of Highway 41, a major highway from the Central Valley, and one of the few in the City with beach access that does not traverse a residential neighborhood. The long-term vision is to intensify this access aspect with a bridge connection over Morro Creek for walkers and bikers to extend access from the south. Clearly these passages suggest that there is a City vision for this area apart from the 'industrial' setting that continually characterizes the EIR judgments.

Chapter III, C.1 Physical Characteristics. '...One of the primary intentions of the LUP is policies pertaining to access and recreation is ... to maximize access in new development, consistent with the provisions of the Coastal Act

and

Chapter III, Figure 8: Existing Shoreline Access

The map specifically identifies the end of Atascadero Road as 'Highway 41 Terminus'

and

Chapter III, Figure 9: Recreational Activity Inventory

The map specifically identifies uses around the existing WWTP site as 'swimming and diving', 'pleasure walking and jogging', and 'outdoor sports'.

and

Chapter III, F. Specific Resources, Issues, and Constraints by Planning Area.

and

Chapter IV, C. Visitor-Serving Resources, Issues and Concerns

'...The City's major industry is tourism and as a result, emphasis is placed on the provision of those services required by tourists of all income categories.'

..and

Chapter IV, G. Visitor Serving Policies

Policy 2.01. Lower-cost visitor and recreational facilities ... shall be protected, encouraged and where feasible, provided.

Discussion: These sections indicate again that the site is not purely 'industrial', but impacted by and surrounded by multiple public recreational activities impacted by the new construction of the WWTP. The descriptions highlight the acknowledged sensitive visual context of the WWTP site and how it could be compromised by insensitive design on the site. The site proximity to recreation and expansion of lower cost RV park or other low impact visitor serving commercial is never addressed in the EIR due to no alternative stand-alone scenario. The lack of stand alone, non-outfall dependant alternatives precludes the comparative benefit of the existing site used for tourist or recreational uses.

Chapter V, B. references California Coastal Act Section 30254

New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway Route 1 in rural areas of the coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal-dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

Discussion: The first clause speaks to WWTP capacity. The scoping document uses figures attributed to historic use. While these figures may be accurate [there has been public testimony contained in the EIR that suggests these numbers may be flawed], and certainly the era of water saving plumbing fixtures has resulted in a per use/per fixture savings of water and reduction in effluent, there remains the issues of changing demographic relative to existing housing stock and line capacity and flow due to line degradation. In the first instance, Morro Bay has seen a shift from families and maintaining two local elementary schools, to closing one, and the community increasingly represented in the retirement age group. This shift has meant the average household has far less water use without taking into account fixture type. This shift, as it plays out over time, suggests a turnover of houses to possibly 'empty nesters', possibly weekend or seasonal users, but also possibly a re-establishment of families as a larger component of the town. This possibility/scenario is discounted by the use of current figures. A second issue is that with the degradation of vitreous sewer line, there is a loss of effluent due to leakage. As the lines are systematically replaced, there could also be a leap in flow due to loss of leaks. This does not seem anticipated in the EIR language at all. Discussions on how peak wet season flow and peak holiday use may coincide have inhibit C

disclosed as much as 8 mgd flows, and that level of flow is difficult to imagine in this configuration. Obviously the new construction on the reconfigured site precludes other coastal dependent or additional coastal access on that part of the site. The EIR and concept plan suggest nothing of public benefit for the three abandoned beach block acres of the demolished WWTP, rendered problematic for any development due to the flood plain issues caused by the new landform for the new WWTP construction.

Chapter V, B. references California Coastal Act Section 30231. [also referenced in Chapter XII, Environmentally Sensitive Habitat Areas]
The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, *restored through*, among other means, *minimizing adverse effects of waste water discharges* and entrainment, controlling runoff, *preventing depletion of ground water supplies* and substantial interference with surface water flow, *encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats*, and minimizing alteration of natural streams.

Discussion: The project weighs heavily in its logic for this site based upon the reuse of the existing ocean outfall. While the existing ocean outfall is termed as mitigated by new treatment process, no alternative site or method was discussed that could possibly remove the ocean outfall as a component of the treatment process, thereby negating the chance of discharge due to flood, tsunami, rain event or equipment failure. Further, the reuse of treated water in the current design has no long term plan associated with the project or site that suggests the plant will help mitigate Morro Bay's long term dependence on the State Water System or enhance the local aquifers that City wells depend upon during State Water System maintenance. The site develops new construction adjacent to the current vegetative buffer of Morro Creek, increasing the possibility of accident that would impact the creek and ocean outfall.

Chapter V, B. references California Coastal Act Section 30250.

(a) *New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.* In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the useable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

(b) *Where feasible, new hazardous industrial development shall be located away from existing developed areas.*

Discussion: The parts of the existing plant slated for reuse are the untreated waste pipe in and the treated waste pipe out; everything between, including the site itself as fill, is from new construction. The idea that the plant is 'renovated' or 'updated' is a stretch of logic. It is demolished. While the EIR contends the plant is protected through zoning and other documents due to the current treatment plant, this is an environmental impact issue, not a zoning law issue. It is critical to consider the environmental impact of the plant regardless of it's being allowed by zoning. The proposed treatment plant, for the purposes of environmental impact, not legality of site use, should be considered a new plant. The EIR should not be allowed to use a 'grandfathered' clause to dismiss the environmental impacts based on accepting adverse conditions because they occur now in the plant to be demolished. Any impact that is established by the new construction and siting should be made to address mitigation as if a second site under consideration existed as a possibility, not dependent on this site. If considered in this manner, odors, visual impact, chemical hazards, hazards from flood and tsunami all are impacts that cannot be addressed by simply being dismissed as 'they currently exist, the situation is no worse, and therefore the impacts do not exist, or do not require mitigation'. As no stand-alone site alternative was reviewed, the infeasibility of alternatives for hazardous uses was never discussed.

Chapter V, C.1. Water Resources [pp. 71-98]

Discussion: The section describes the 1970-80 water issues that have changed radically. What has not changed is the lack of concern for the groundwater basin. The lack of a water re-use component or plan in the Concept Plan is not looking forward to future water needs and risks dependence on the State for water or more expensive additions- currently unplanned or conceptually accommodated- in the WWTP concept plan.

Chapter VI, Archeology

B.2. CEQA , B.3 Public Resources Code, B.4 Health and Safety Code

Policy 4.01. Where necessarily significant archeological...resources shall be preserved to the greatest extent possible...

Policy 4.04. Where archeological resources are found as a result of a preliminary site survey before construction, the City shall require a mitigation plan to protect the site.

Policy 4.07. All available resources...shall be explored to avoid development on significant archeological sites...

Discussion: As noted in testimony at the Joint Sanitary Commission, Playano Salinan representatives discussed their concerns about the nature of the WWTP site relative to burials and other cultural resources. The representative of the Northern Chumash Council noted in an EIR workshop he had not been contacted after years of project design. . By the time of the DEIR review a few weeks later, the Northern Chumash noted they had been contacted and noted satisfactory progress toward understandings on the project. However, by the final EIR, there was no 'plan' in place. The site contains both long-standing dunescape, but also considerable fill placed over the typical trough/lowlands/wetlands that lies landward of the primary dune system. It is impossible with simple surface archeological investigation to ascertain the cultural resources that may lie below ten to fifteen feet of fill. No record for deep site investigation [ground penetrating radar, etc] was available by the final EIR. Additionally, no specific structural system had yet been identified that could be associated with construction processes relative to ground and sub-grade disturbance. Project discussion included, but with no commitment, to stone piles. In effect this may be accomplished by drilling- that would leave little cultural materials or human remains encountered during the process to be in any state for identification as such. Other mechanical construction operations, while under observation by Native American personnel, could similarly disturb materials with no obvious trace.

Chapter VII, Energy/ Industrial Development

Policy 6.14 d. '...Any storage areas shall be inconspicuously located and extensively screened from public view with heavy landscaping.'

Discussion: It is a contradiction that coastally dependent energy resources, while zoned and allowed in industrial areas, are thought of as needing significant screening from public view, while the industrial WWTP is rationalized as needing none, due to industrial zoning. This seems a serious deficiency of the EIR in acknowledging the visual impact of the industrial facilities such as the WWTP, given the fact that the WWTP is a coastal facility. (C)

Chapter VIII, Coastal Agriculture

C.4.(a) Morro, Chorro and Los Osos Watersheds. "...Considerations for the Morro and Chorro watersheds directly interrelate with the City's planning issues and efforts...Morro Bay's primary interest lies with the land use and facilities planning for the Morro and Chorro Watershed, since policies for these areas directly affect City resources...there are found to be social and economic interdependencies...While cities have not been traditionally involved in rural planning, it is incumbent upon Morro Bay to abandon convention and assert itself in planning for these two critical watershed areas

(b). Groundwater/Basin Management. "...in order to respond to current and future obligations for municipal water services, and the priorities of the Coastal Act, the City will be required to implement certain management activities which may or may not occur within its corporate boundary. An example of these activities might include...groundwater recharge using surplus stream flow...and other water resources. Beyond municipal water production, the City has a vital interest in protection and enhancement of the larger Morro and Chorro groundwater basins.

Discussion: The current concept plan has no mechanism, despite the tertiary treatment capability, to affect the groundwater issues that the future holds for the City. The fact the City uses State water currently, despite its water privileged locale, is shocking, and the fact that a major infrastructure- the major infrastructure to be built in Morro Bay over the next twenty years, ignores this condition is disturbing, and places future citizens at risk as to water sources.

Chapter X, Hazards references California Coastal Act Section 30253.

New development shall do all of the following:

- (a) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (b) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*
- (c) *Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.*
- (d) *Minimize energy consumption and vehicle miles traveled.*
- (e) *Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.*

Discussion: While adjusting the natural terrain as requisite to raise the new construction above the current landform flood plain, the new construction has no answer for tsunami protection aside from no worse than the demolished plant. While it is estimated the new landform and demolition of the existing WWTP will not expose the city to liability from flood plane and flows being altered by the project, the numerous structures that are part of the Morro Bay High School are significant structures to impact should the estimate of the direction of the altered flood water flows be incorrect. While the new landform is visually screened from several vantage points by adjacent dunes, it is a raising of the existing bluff top, and that increases the visual impact of all the planned new structures. Energy consumption is significantly increased with the proposed plant, and no elements are explicitly contained in the concept plan for on site photovoltaic or wind generation, even to off set the administrative structure power loads. The drying process is highly energy inefficient vs. current passive land based drying, and the proposed one hundred fold increase in large capacity hauling vehicles from five a year to as many as five hundred a year increases liability risk of the plant operations due to increased highway traffic and concurrent pollution.

Chapter X, Hazards

C.1. Flooding. "...The storm of January 1973, considered a storm of only a 20 year magnitude, brought flooding to the critical Highway One underpass where Highway 41 meets Main Street, and a number of areas in North Morro Bay east of Highway One.

Figure 22: 100 Year Flood Plans

D. Hazard Policies

Policy 9.01. *All new development located within areas subject to natural hazards from geologic, flood and fire conditions, shall be located so as to minimize risks to life and property.*

Policy 9.03. *All development, including construction, excavation and grading, except for flood control projects and agricultural uses shall be prohibited in the 100-year floodplain areasThe heights of permitted development shall be compatible with the character of the surrounding area and not conflict with scenic and visual qualities.*

Policy 9.05. *Plans for development shall minimize cut and fill operations. Plans showing excess cutting and filling shall be modified or denied if it is determined that the development could be carried out with less alteration of the natural terrain.*

Policy 9.06. *All development shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. To accomplish this, structures shall be built to existing natural grade whenever possible.*

Discussion: While the EIR states that the concept plan has raised the new construction for the WWTP out of the 100 year flood plain, the proposed project remains isolated within that plain along much of the length of Atascadero Road for emergency services and essential personnel access, in effect creating an island in the 100 year flood plain. While this potentially mitigates the WWTP itself, it restricts access in emergency conditions of high system loading- potentially compromising plant operation, perhaps with only a 20-year storm/flood event. The sole alternative examined was to raise the new construction on a mound within the 100-year flood plain. No alternative mitigation such as an alternative site without this impact was examined. The EIR proposes the mounding for the new construction and resultant project height does not affect the viewsheds nor is aesthetically displeasing to visitor serving commercial, high school, Lila Kaiser Park, scenic dunescape or beach due to the status of the underlying zoning as industrial. The concept plan raised mound, as linked to solving the 100 year flood plain, never is discussed in the larger visitor serving context of neighboring uses as contributing to visual blight, and this situation is never mitigated by alternative site study that would completely mitigate and enhance the existing site for new uses.

Chapter X, Hazards

C.2. Seismic Hazards (a) Groundshaking, (b) Liquefaction

(c) Tsunamis. "...striking shore within minutes...[or] taking hours to reach the coast...Morro Bay has suffered from tsunami damage in recent years, once in 1960 and then again in 1964...For planning purposes, tsunami risk is indicated by potential run-up areas...This would then include ...all areas up to Highway One in the Atascadero Beach area...The California Division of Mines and Geology classifies the Morro Bay coast as 'potentially dangerous if tide and tsunami are in phase'.

Figure 23 Ground Shaking Map

Figure 24 Liquefaction Potential Map

D. Hazard Policies

Policy 9.01. *All new development located within areas subject to natural hazards from geologic, flood and fire conditions, shall be located so as to minimize risks to life and property.*

Policy 9.05. *Plans for development shall minimize cut and fill operations. Plans showing excess cutting and filling shall be modified or denied if it is determined that the development could be carried out with less alteration of the natural terrain.*

Policy 9.08. *All development shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. To accomplish this, structures shall be built to existing natural grade whenever possible.*

Discussion: These sections clearly articulate the existing WWTP site is subject to all three major hazards under the seismic heading in the LCP. The mitigation explored for groundshaking in the EIR is structural and civil engineering to satisfy codes. Virtually no alternative to structural and civil engineering mitigation for groundshaking may exist within the City bounds or edge areas. Geologic record and Figure 24 show a liquefaction hazard, mitigated by structural and civil engineering design. However, no alternative to engineering mitigation for liquefaction was explored or examined, such as an alternative site without geologic conditions not subject to liquefaction. No tsunami mitigation was deemed necessary in the EIR beyond reference to the City's disaster response for a tsunami, meaning that the elevated new construction site was never seriously mitigated for tsunami at all for protection of the plant itself. No alternative tsunami mitigation was explored or examined, including an alternative site without the tsunami hazard due to elevation or distance inland from shore.

Chapter XII, Environmentally Sensitive Habitat Areas

Chapter XII references California Coastal Act Section 30231. [also referenced in Chapter V, above]

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Chapter XII references California Coastal Act Section references California Coastal Act Section 30240. [also referenced in Chapter V, B and Chapter III]

(a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

(b) *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 those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Figure 28 Environmentally Sensitive Habitat Areas

Policy 11.02. *Development in areas adjacent to [ESHAs] and parks and recreation areas shall be sited and designed to prevent impacts that would significantly degrade such areas, and shall maintain the habitats functional capacity.*

Policy 11.19. *...New development adjacent to wetlands shall not result in adverse impacts due to addition sediment, runoff, noise, and other disturbances.*

Discussion: The EIR continually discusses the existing WWTP site and new construction elevated site as 'industrial' due to zoning designation, but is also adjacent to the Morro Creek ESHA, one of the largest ESHA in the city. It is critical to not lapse into disregard for this edge condition. THE concept project and EIR do not address the south boundary of the new construction and elevated mound, so it is not possible to attempt an understanding if the ESHA is adequately maintained, although the idea that the mound adds runoff to the ESHA is a possibility. No attempt has been made in any document text to enhance expand or restore the ESHA or return any part of the site to pre-fill riparian conditions.

Chapter XIII Visual Resources

A. Introduction. *The City of Morro Bay is located in a physical setting with spectacular visual qualities. The visual resources serve as valuable assets to both City residents and visitors....'*

Chapter XII references California Coastal Act Section 30251.

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

C. Assessment of Scenic Values. *...Because man-made visual quality and natural visual quality are aesthetically pleasing and desirable in different ways, urban views are evaluated under different criteria than natural views. The criteria for assessing views of the urban environment includes such things as:*

- (a)** *the enhancement of the City's character through use of building materials and scale of the structures,*
- (b)** *the compatibility with surrounding structures*
- (c)** *the compatibility with the natural features of the area*
- (d)** *the preservation of public views*
- (e)** *the enhancement and definition of the City's image*
- (f)** *the uniqueness of the City's image.*

Figure 30 Scenic Views [The site is bordered by the northern extension of the Embarcadero, which is indicated as a 'street providing views', and close to two separate 'angle of view' markers, each of which indicates broad 270 degree vistas ne, nw, and sw, except se toward the site].

Figure 31 Areas of Visual Significance [The site falls adjacent the demarcated 'Morro Rock City Beach/Atascadero State Beach' designation]

C.5.b. PG&E Plant: *'...while many aspects of the power plant have detracted from the visual character of Morro Bay, the main facility with its three stacks thrusting skyward have become a part of Morro Bay's visual character.*

C.5.c. Coleman Park: *'A City park...that could take better advantage of its potential views...[to] Atascadero Beach to the north.*

D. Conflicts and Issues. *While Morro Bay has been blessed with a physical setting of unique and spectacular visual quality, the community can improve, take better advantage of, and prevent abuses to its visual character. It is desirable to enhance Morro Bay's views. It is equally desirable that the City consciously seeks to take better advantage of its visual qualities while attempting to restore and repair the damage that had been done to those qualities.*

Policy 12.01. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic and coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of the surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designate on Figure 31, shall be subordinate to the character of its setting.

Policy 12.02 Permitted development shall be sited and designed to protect views to and along the coast and designated scenic areas shall be visually compatible with the surrounding areas...

Policy 12.11. Industrial development shall be sited and designed in areas specifically designated in the Land Use Plan to protect views to and along the ocean and scenic coastal areas, to minimize land alteration, to be visibly compatible with the character of the surrounding areas, and where feasible, shall include measures to restore and enhance visually degraded areas. In addition, Industrial development shall be subordinate to the character of the setting.

Discussion: The EIR consistently dismissed aesthetic and visual impacts onto adjacent beach, visitor serving commercial RV parks, beach access public streets and high school among other immediate properties, due to the site being zoned as an industrial use. The location, while industrial, is feet from a city controlled public beach, adjacent to a protected creek ESHA, and is along Atascadero Road, the end of potentially scenic Highway 41 after it crosses Highway 1 a few hundred feet away. The WWTP is counting as neighbors two successful motels, Morro Bay High School (student population approximately 900 on a 43 acre oceanfront campus), a planned community swimming pool, and ball fields of Lila Keiser Park. The new two story industrial construction, raised on its new altered land form of five feet of fill, will be visible for miles of beachfront, including Morro Rock, and the north extension of the Embarcadero, that accesses another public beach parking area. The EIR visual analysis is highly selective, with more impacted views to the site ignored in the analysis. A line of two story structures is indicated, running east-west across the creek side site. Exact heights are couched as still undetermined, as it is a concept plan, but as was made obvious in the EIR public discussion by Morro Bay Planning Staff, illustrated buildings could be raised in height even taller than shown due to the industrial zone allowances. While some of the new building heights are determined by equipment sizes or maintenance or service vehicles, the western most structure, the administration building, is unnecessarily two stories, when compared to facilities used throughout the EIR as comparative sites (for example, the Plamo Beach WWTP). The sludge drying structure walls are high due to attempted containment of odors, and has upper level service deck and stainless steel structures facing southern beaches, Morro Rock and downtown, supposedly visually mitigated by being non-glare. It is possible additional height may aid in odor mitigation at the cost of additional visual impact. No lighting studies to date have been done to show the visual impact of service or security lighting at dusk or night.

Below are additional concerns relative to California Coastal Act sections that may be applicable, (with emphasis provided by me):

30260.

Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. *However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Sections 30261 and 30262 if*

- (1) *alternative locations are infeasible or more environmentally damaging;*
- (2) *to do otherwise would adversely affect the public welfare; and*
- (3) *adverse environmental effects are mitigated to the maximum extent feasible.*

Discussion: At face value the proposed WWTP is new construction on a newly created site. At a minimum, the proposal is an expansion spatially and in site plan of the existing plant, with underground components across the six acres. One of the points raised by many at the WWTP Planning Commission hearings was a lack of true alternative studies. *This section requires alternate sites to be shown as infeasible, and that existing locations be mitigated to maximum extent possible, not simply mitigated to less than significance.* The fact the natural hazards are not fundamentally mitigated, but merely rationalized as less than existing, places significant infrastructure potentially at risk, adversely affecting the public welfare. An alternative stand-alone site and plant with no ocean outfall potentially mitigates impacts of odor and visual impact from a beach block site, higher energy use, truck traffic and pollution, exposure of high school to hazardous chemicals, and ocean accidental spill.

30500.

(a) Each local government lying, in whole or in part, within the coastal zone shall prepare a local coastal program for that portion of the coastal zone within its jurisdiction. However, any local government may request, in writing, the commission to prepare a local coastal program, or a portion thereof, for the local government. *Each local coastal program prepared pursuant to this chapter shall contain a specific public access component to assure that maximum public access to the coast and public recreation areas is provided.*

Discussion: By a lack of study of alternative sites and non-ocean outfall technologies, the spirit of this section is violated relative to the benefit of the vacated site for different visitor serving or other recreational or coastal dependent uses.

Fax to 831 427 4877

STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060-4600
VOICE (831) 427-4863 FAX (831) 427-4877

ARNOLD SCHWARZENEGGER, Governor



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Steve Hennigh
Mailing Address: 136 ocean front
City: Cayucos, CA Zip Code: 93430

RECEIVED

JAN 31 2011

CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA

SECTION II. Decision Being Appealed

- Name of local/port government: Morro Bay City and
- Brief description of development being appealed: Wastewater Treatment Plant
- Development's location (street address, assessor's parcel no., cross street, etc.): 160 Atascadero Rd. Morro Bay 93442
- Description of decision being appealed (check one.):
 - Approval; no special conditions
 - Approval with special conditions:
 - Denial

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MRB-11-001

DATE FILED: January 31, 2011

DISTRICT: Central Coast

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:

1-11-11

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

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:

*Morro Bay City Hall
595 Harbor
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)

N/A

(2)

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**SECTION IV. Reasons Supporting This Appeal****PLEASE NOTE:**

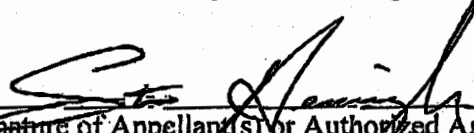
- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal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

See Attached written appeal

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

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: 1-31-11

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

Section VI. Agent Authorization

I/We hereby
authorize

N/A

to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

To: California Coastal Commission

From: Steve Hennigh
Good Clean Fun Inc.
136 Ocean Front
Cayucos, California 93430
805 995 1993 ph.
805 995 1473 fax

Dear Commission,

This is a formal appeal to the commission to oppose the Morro Bay Waste Water Treatment Plant Environmental Impact Report and general plan to build this project in their proposed location. Not only has it been clearly stated this is a "new development" and not a rebuild of the existing plant. Therefore it "has to" be more clear and precise on "WHY" this is the best location for this Waste Water Treatment Plant to be built in this highly sensitive Beach location. But also the current board of directors has been negligent in its process and very incomplete in its findings. I have been attending publicly held meetings for the past several years and have asked many questions and stated many points of concern during public comment times. So, Steve Hennigh, should be on the records and completely within his rights to appeal this project.

A little about myself and why I got involved. I have owned and operated a water-sports / recreational business on the waterfront in Cayucos for 35 years. I am a docent to the Estero Bluff's. I operate eco kayak tours, lessons, and rentals. I also have built a large part of my business around Surfing, my life's passion, and the Stand Up Paddle Boarding for all the years of my business. This has been a great privilege to be right on the water front all these years with minimal sewage spills. I also own the beach front commercial property right here in Cayucos where my business is located and operates. This location is less than 5 miles from this WWTP proposed site in Morro Bay. Myself and my family are active watermen and as you can see, we have a vested interest in the local environment. I would suffer great financial hardship if a spill or natural disaster took this plant out. You can only imagine the hardships of business when the beach is closed. This is why I am involved.

I was given the opportunity to ask in writing the concerns I have with the project and was told they would be addressed in the

Environmental Impact Report. These were poorly covered in their EIR and should be addressed thoroughly by the Coastal Commission. It would be a tragedy to allow this project to go forward with the lack of information and proof this is the site to build on. This waterfront site has potential to be a Tsunami disaster beyond anyones clear findings. It's location in a "flood plane" alone is of tremendous concern. The lack of acknowledgment for "valuable recreational" use is also of great legal liability. It reduces Public Access and Recreation in many ways both on land and in the water. A "spill" or Tsunami would be catastrophic. It's currently located in a "100" year flood plane, existing some 60 years with minimal spillage. A flood is inevitable in the next 30 to 40 years according to scientific study. This alone would cut off or eliminate public access when (not if) it happens. Section 30221 protects oceanfront land for recreational use. This site is not in accordance with this rule. Section 30223 reserves upland coastal areas for public recreational use and it's clear this is not being considered. Any disaster would cut off and impair public access.

Morro Bay Waste Water Treatment Plant is clearly not looking for alternative sites. Only "One" other site was considered and flooding and Tsunami's were not discussed in it's consideration. Only high costs and financial reasons why not to build at Chorro Basin. The commission clearly stated to consider "alternative sites" plural or several. Not just one and barely talk about it. Morro Bay WWTP was asked to be more explanatory on their Tsunami evacuation plan by the public, the commission, and myself. This has never happened. Section 9.01 requires "New Development" to locate to minimize risk. Risk has not been clearly covered and this site should not be allowed to happened. Many alternative sites are there and have been suggested to the Board. The Morro Bay Planning commission hired has been ignored with their findings and were threatened to be fired with their results. The appeal process has started. Thank you very much for taking the time to listen and consider my appeal. I am not a politician or statesman that can write without fault. I am a concerned local businessman and tax payer who will be doing my part to pay for this new Waste Water Treatment Plant. Please consider my appeal.

Respectfully,


Steve Hennigh
Good Clean Fun Inc.

STATE OF CALIFORNIA - THE RESOURCES AGENCY

RECEIVED

ARNOLD SCHWARZENEGGER, Governor

225



JAN 31 2011

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060-4600
VOICE (831) 427-4863 FAX (831) 427-4877

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Mr. & Mrs. ROBERT STALLER % Morro Bay Farmers & Ranchers Assn Evolution
Mailing Address: 1800 ATASCADERO ROAD
City: MORRO BAY, CA Zip Code: 93442 Phone:
805-772-1014
805-772-7974
805-215-3007

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of MORRO BAY & the CAYUCOS COMMUNITY SERVICE DISTRICT

2. Brief description of development being appealed:

The proposed upgraded sewerage water treatment plant to be situated in its present location (below the 100yr. flood plain) as designed by MWH. The development does not address the CC staff concerns and objection and has been unanimously rejected by the MORRO BAY Planning Commission.

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

City of MORRO BAY
Waste Water Treatment Plant
160 Atascadero Road, MORRO BAY, CA 93442

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

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

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

TO BE COMPLETED BY COMMISSION:
APPEAL NO: A-3-MRB-11-001
DATE FILED: January 31, 2011
DISTRICT: Central Coast

ms

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: TUESDAY, JANUARY 11, 2011

7. Local government's file number (if any): N/A

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:

correct **MR. & MRS. ROBERT STALLER** *1/0 Farmers & Ranchers Coalition for Waste Water Reclamation/Recharge*
 MORRO CREEK RANCH
 1800 ATASCADERO 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) **MR. & MRS MIKE ARMSTRONG**
 TORO CREEK RANCH
 TORO CREEK
 MORRO BAY, CA 93442

(2) **MR. & MRS. JIM SHANLEY**
 2448 ATASCADERO ROAD
 MORRO BAY, CA 93442

(3) **MR. SCOTT & MRS. LAURI HATHER**
 LITTLE MORRO CREEK
 MORRO BAY, CA 93442

(4) **MR. TYSON DAVIS & MR. DWAYNE DAVIS**
 MORRO CANYON RANCH, HWY 41/ATASCADERO ROAD
 MORRO BAY, CA 93442

(5) **MRS. LOUISE GORFAIN**
 1/0 RANCHO SAN ANTONIO
 TORO CREEK - 1602 NEGRANTI ROAD
 MORRO BAY, CA. 93442

(6) **MR. & MRS. DON DOMENGHINI**
 SAN BERNARDO CREEK ROAD

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3) NBS**SECTION IV. Reasons Supporting This Appeal****PLEASE NOTE:**

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

1. For all the objections set forth in the Coastal Commission STAFF REPORT and EIR.

2. For all the objections set forth in the MORRO BAY Planning Commission's submission to the MORRO BAY City Council.

3. No provision for water reclamation for agriculture.

4. Findings by the City of NEW ORLEANS regarding their decision to summarily terminate their contracts with MWH for civil and criminal crimes in connection with their contractual obligations re contract negotiated with recovery work taken on the Katrina disaster.

5. Pending suit by CAPE CORAL, FLORIDA vs. MWH AMERKAS, INC. for denying access to records in order to complete an audit started in 2006; this in regards to a \$1 billion water and sewer project

b. Additional red flags for consideration:

a) unsuitable location vulnerable to tsunami, rising ocean levels, below the 100 yr. flood plain.

b) more suitable nearby location on higher ground adjacent to the Dynergy Power Plant abandoned tank farm slated for demolition north of the present plant.


c) Chorro Creek, Torno Creek and/or upper Morro Creek Delta as alternative locations.

d) California Coastal Commission must be made aware of the present fraud and deception allegations re the State Water Resource Control Board / SLD County Sanitation District vs. John ~~W~~ Wallace and Associates who were appointed as ~~per MRB# 1-001 (MRB/MTTP)~~ management for the proposed upgraded water treatment by MWH

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

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: 1/31/2011

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

Section VI. Agent Authorization

I/We hereby authorize	<input type="checkbox"/>
-----------------------	--------------------------

to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: