

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863 FAX (831) 427-4877
www.coastal.ca.gov

F6

CENTRAL COAST DISTRICT (SANTA CRUZ) DEPUTY DIRECTOR'S REPORT

For the

January Meeting of the California Coastal Commission

MEMORANDUM

Date: January 14, 2011

TO: Commissioners and Interested Parties
FROM: Charles Lester, Central Coast District Deputy Director
SUBJECT: *Deputy Director's Report*

Following is a listing for the waivers, emergency permits, immaterial amendments and extensions issued by the Central Coast District Office for the January 14, 2011 Coastal Commission hearing. Copies of the applicable items are attached for your review. Each item includes a listing of the applicants involved, a description of the proposed development, and a project location.

Pursuant to the Commission's direction and adopted procedures, appropriate notice materials were sent to all applicants for posting at the project site. Additionally, these items have been posted at the District office and are available for public review and comment.

This report may also contain additional correspondence and/or any additional staff memorandum concerning the items to be heard on today's agenda for the Central Coast District.

EMERGENCY PERMITS

1. 3-10-066-G Slo County Department Of Public Works, Attn: Mr. Mark Hutchinson ()

TOTAL OF 1 ITEM

DETAIL OF ATTACHED MATERIALS

REPORT OF EMERGENCY PERMITS

The Executive Director has determined that the following developments do not require a coastal development permit pursuant to Section 13142 of the California Code of Regulations because the development is necessary to protect life and public property or to maintain public services.

<i>Applicant</i>	<i>Project Description</i>	<i>Project Location</i>
3-10-066-G Slo County Department Of Public Works, Attn: Mr. Mark Hutchinson	Remove accumulated sediment that is blocking the flood control flap gates on Meadow Creek at the Oceano Lagoon outlet in Oceano.	Sand Canyon Flap Gates, Oceano Lagoon

Emergency CDP 3-10-066-G (Sand Canyon Flap Gates)

Issue Date: December 16, 2010

Page 2 of 4

Conditions of Approval

1. The enclosed ECDP acceptance form must be signed by the owner(s) of the property where the emergency development authorized by this ECDP is located and returned to the California Coastal Commission's Central Coast District Office within 15 days of the date of this permit (i.e., by December 31, 2010). This ECDP is not valid unless and until the acceptance form has been received in the Central Coast District Office.
2. Only that emergency development specifically described in this ECDP is authorized. Any additional and/or different emergency and/or other development requires separate authorization from the Executive Director and/or the Coastal Commission.
3. The emergency development authorized by this ECDP must be completed within 30 days of the date of this permit (i.e., by January 15, 2011) unless extended for good cause by the Executive Director.
4. The emergency development authorized by this ECDP is only temporary, and shall be considered unpermitted if it is not ultimately authorized by a regular CDP. Within 60 days of the date of this ECDP (i.e., by February 14, 2011), the Permittee shall submit a complete application for a regular CDP to have the emergency development be considered permanent. The emergency development shall be undone in its entirety within 150 days of the date of this permit (i.e., by May 15, 2011) unless before that time the California Coastal Commission has issued a regular CDP for the development authorized by this ECDP. The deadlines in this condition may be extended for good cause by the Executive Director.
5. In exercising this ECDP, the Permittee agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
6. This ECDP does not obviate the need to obtain necessary authorizations and/or permits from other agencies (e.g., San Luis Obispo County, California Department of Parks and Recreation, California State Lands Commission, California Department of Fish and Game, U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Army Corps of Engineers, etc.). The Permittee shall submit to the Executive Director copies of all such authorizations and/or permits upon their issuance.
7. The emergency work shall be limited in scale and scope to that which was identified in the County Department of Public Works letter dated December 15, 2010 and dated received in the Coastal Commission's Central Coast District Office on December 16, 2010.
8. A biological monitor experienced with Oceano Lagoon habitats, including for California red-legged frog, steelhead, and tidewater goby, shall oversee all construction activities to ensure such habitats are protected to the greatest possible degree, and shall be authorized to modify construction practices to avoid harm to such species and/or habitats.
9. A licensed civil engineer with experience in flood capacity and conveyance shall oversee all construction activities and shall ensure that all emergency development is limited to the least amount



Emergency CDP 3-10-066-G (Sand Canyon Flap Gates)

Issue Date: December 16, 2010

Page 3 of 4

necessary to abate the emergency.

10. All emergency construction activities shall limit impacts to coastal resources (including Meadow Creek, Oceano Lagoon, and other related resource areas; public recreational access; and the Pacific Ocean) to the maximum extent feasible including by, at a minimum, adhering to the following construction requirements (which may be adjusted by the Executive Director if such adjustments: (1) are deemed necessary due to extenuating circumstances; and (2) will not adversely impact coastal resources):
 - a. All work shall take place during daylight hours. Lighting of the lagoon area is prohibited.
 - b. All excavated material shall be hauled off-site to an official County-designated site.
 - c. No equipment is allowed in the creek and all equipment shall remain on top of the levee.
 - d. All construction materials and equipment placed on the levee during daylight construction hours shall be stored beyond the reach of tidal/lagoon/creek waters.
 - e. All construction areas shall be minimized and demarked by temporary fencing designed to allow through public access and protect public safety to the maximum extent feasible. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.
 - f. The construction site shall maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the levee; etc.).
 - g. All construction activities that result in discharge of materials, polluted runoff, or wastes to the lagoon or the adjacent marine environment are prohibited. Equipment washing, refueling, and/or servicing shall not take place on the levee. Any erosion and sediment controls used shall be in place prior to the commencement of construction as well as at the end of each work day.
 - h. All shoreline access points impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction.
 - i. All contractors shall insure that work crews are carefully briefed on the importance of observing the construction precautions given the sensitive work environment. Construction contracts shall contain appropriate penalty provisions sufficient to offset the cost of retrieval/clean up of foreign materials not properly contained and/or remediation to ensure compliance with this ECDP otherwise.
 - j. The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office immediately upon completion of construction. If planning staff should identify additional reasonable measures necessary to restore the levee and beach access points, such measures shall be implemented immediately.



Emergency CDP 3-10-066-G (Sand Canyon Flap Gates)

Issue Date: December 16, 2010

Page 4 of 4

11. Copies of this ECDP shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of this ECDP, and the public review requirements applicable to it, prior to commencement of construction.
12. A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.
13. Within 30 days of completion of the construction authorized by this ECDP (i.e., by January 15, 2010), the Permittee shall submit site plans and cross sections prepared by a licensed civil engineer with experience in flood capacity and conveyance clearly identifying all development completed under this emergency authorization (comparing any previously permitted condition to both the emergency condition and to the post-work condition), and a narrative description of all emergency development activities undertaken pursuant to this emergency authorization.
14. This ECDP shall not constitute a waiver of any public rights which may exist on the property. The Permittee shall not use this ECDP as evidence of a waiver of any public rights which may exist on the property.
15. Failure to comply with the conditions of this approval may result in enforcement action under the provisions of Chapter 9 of the Coastal Act.
16. The issuance of this ECDP does not constitute admission as to the legality of any development undertaken on the subject site without a CDP and shall be without prejudice to the California Coastal Commission's ability to pursue any remedy under Chapter 9 of the Coastal Act.

As noted in Condition 4 above, the emergency development carried out under this ECDP is at the Permittee's risk and is considered to be temporary work done in an emergency situation to abate an emergency. If the property owner wishes to have the emergency development become a permanent development, a regular CDP must be obtained. A regular CDP is subject to all of the provisions of the California Coastal Act and may be conditioned or denied accordingly.

If you have any questions about the provisions of this ECDP, please contact the Commission's Central Coast District Office at 725 Front Street, Suite 300, Santa Cruz, CA 95060, (831) 427-4863.



California Coastal Commission

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4883



January 13, 2011

To: Commissioners and Interested Parties

From: Charles Lester, Senior Deputy Director, Central Coast District

Re: Additional Information for Commission Meeting Friday, January 14, 2011

<u>Agenda Item</u>	<u>Applicant</u>	<u>Description</u>	<u>Page</u>
F8a, A-3-SLO-10-053	San Luis Obispo CUSD	Ex parte Correspondence	1 2
F8b, A-3-SLO-10-054	San Luis Obispo CUSD	Ex parte Correspondence	1 2
F8c, A-3-SLO-10-055	San Luis Obispo CUSC	Ex parte Correspondence	1 2

F8a, F8b, F8c

Jonathan Bishop

From: Dan Cari
Sent: Monday, January 03, 2011 10:47 AM
To: Jonathan Bishop; Diana Chapman
Subject: FW: San Luis Coastal Solar Array projects -- Morro shoulderband snail issues- ex-parte
For Jan DD's report...

From: Vanessa Miller
Sent: Monday, January 03, 2011 9:17 AM
To: Jeff Staben; Dan Cari; Charles Lester
Subject: FW: San Luis Coastal Solar Array projects -- Morro shoulderband snail issues- ex-parte

From: Sara Wan [mailto:lwan22350@aol.com]
Sent: Saturday, January 01, 2011 1:18 PM
To: Vanessa Miller
Subject: FW: San Luis Coastal Solar Array projects -- Morro shoulderband snail issues- ex-parte

From: Julie Tacker [mailto:julietacker@charter.net]
Sent: Saturday, January 01, 2011 11:39 AM
To: 'Sara Wan'
Subject: RE: San Luis Coastal Solar Array projects -- Morro shoulderband snail issues

Sara,
Here's the complication; your staff only recommends SI on one of the three projects. I, of course, would like for all three to receive SI and de novo, each project has different impacts associated. For the record, neither Sierra Club nor I would have appealed these at all if the solar arrays were on the rooftops of the schools, an option never analyzed by a structural engineer or through a proper MND.
Thanks,
Julie

-----Original Message-----

From: Sara Wan [mailto:lwan22350@aol.com]
Sent: Saturday, January 01, 2011 11:17 AM
To: 'Julie Tacker'
Subject: RE: San Luis Coastal Solar Array projects -- Morro shoulderband snail issues

Julie,
Process is not ex-parte so that's fine. The Commission's procedure on Substantial Issue is that if the staff recommends SI, which I think this is the case here, there must be 3 or more commissioners who want to hear the appeal. If not, then the commission will hear the appeal. If there are 3 or more then there will be a hearing on whether or not the commission wants to find SI. My assumption is that these will have a combined hearing. If there is a hearing on SI then it is very brief, just on the question of why we should find SI- usually 3 minutes per side. In this case since there are 2 appellants I would allow 4 minutes per side and the appellants speak first.
Once we get to the de-novo hearing (if we find SI) there is a full hearing on the merits of the projects. Again, I would guess the 3 will be heard together. The applicant will speak first and then the opponents. I will give you and the Sierra Club a total of 15 minutes (unless the applicant seeks to have more time than that and then your time will equal their) to speak (you have no rebuttal). All members of the general public, pro and con, will get 3 minutes each (no combining of their time).

Sara

From: Julie Tacker [mailto:julietacker@charter.net]
Sent: Saturday, January 01, 2011 10:07 AM
To: 'Sara Wan'
Subject: RE: San Luis Coastal Solar Array projects -- Morro shoulderband snail issues

Sara,
Thanks for the heads up. I will ask that Jonathan distribute the email to the entire Commission. As for ex-parte, since there are three appeals with two appellants (me and Santa Lucia Chapter of Sierra Club) on these projects on the 14th, can we talk about process and how these will be heard? I want this to be as quick as possible, yet highlight how each project has different impacts. I know Friday's are tough for the Commission, everybody wants to go home.
Thanks,
Julie

-----Original Message-----

From: Sara Wan [mailto:lwan22350@aol.com]
Sent: Saturday, January 01, 2011 9:47 AM
To: 'Julie Tacker'
Subject: RE: San Luis Coastal Solar Array projects -- Morro shoulderband snail issues

Julie,
I don't know why I am on this email list but this constitutes ex-parte and must be reported by me
Sara

From: Julie Tacker [mailto:julietacker@charter.net]
Sent: Saturday, January 01, 2011 9:47 AM
To: 'Jonathan Bishop'

1/5/2011

firma

landscape architecture
environmental studies
planning
ecological restoration

RECEIVED

JAN 11 2011

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

January 10, 2011

Jonathan Bishop
California Coastal Commission
Central Coast District Office
725 Front Street
Santa Cruz CA 95060
Sent Via E-mail

RE: San Luis Coastal School District Appeal A-3-SLO-10-054 and 055, Monarch Grove Elementary and Los Osos Middle School

Dear Jonathan,

This letter is to clarify the intent of the school district in the matter of compliance with County CDP condition of approval #10 for replacement of trees removed by the project. This condition of approval requires replacement trees at a 2:1 ratio using native trees. Because the replacement trees will likely be coast live oak, the County condition allows the replacement to occur either on the school sites or off-site. This is because the eventual large size of coast live oak trees may limit their placement on the existing campuses in some cases. During the County's review of these projects, the USFWS was contacted informally to ensure the activities on the sites both for the proposed solar panels and replacement trees would not result in a take of Morro shoulderband snail.

It is the District's intent to ensure that the final tree replacement plan does not result in the take of Morro shoulderband snail. To this end, at the time of the County's approval of the CDP the District indicated their willingness to work with the Loss Osos Community Advisory Committee in the selection of appropriate off-site locations. This step would result if the District determines that adequate and feasible areas on the school sites for the all the replacement trees are not present. This process would select only receiving sites that are clearly not snail habitat, such as bare soils, mowed lawn or sites with recent protocol survey absence determinations, for example.

In subsequent communications with the USFWS on this matter, the District has agreed to include the USFWS in the process for selecting the final replacement tree locations. The District understands the Endangered Species Act and has every intention to comply with it by avoiding potential snail habitat completely.

The District believes that the County condition of approval #10 can be implemented in a manner that completely avoids snail habitat and is fully enforceable by the County.

Sincerely,
David Foote ASLA

Firma Consultants Incorporated
David W. Foote ASLA
187 Tank Farm Road Suite 230
San Luis Obispo, CA 9340
(805)781-9800 • fax (805)781-9803

F8a, F8b, F8c

Jonathan Bishop

From: Dan Carl
Sent: Monday, January 03, 2011 10:48 AM
To: Jonathan Bishop; Diana Chapman
Subject: FW: San Luis Coastal Solar Array projects -- Morro shoulderband snail issues- ex-parte
I think this is identical to the last one...

From: Vanessa Miller
Sent: Monday, January 03, 2011 9:18 AM
To: Jeff Staben; Dan Carl; Charles Lester
Subject: FW: San Luis Coastal Solar Array projects -- Morro shoulderband snail issues- ex-parte

From: Sara Wan [mailto:lwana22350@aol.com]
Sent: Saturday, January 01, 2011 9:54 AM
To: Vanessa Miller
Subject: FW: San Luis Coastal Solar Array projects -- Morro shoulderband snail issues- ex-parte

Please enter this an ex-parte. Fr. 8a

Sara

From: Julie Tacker [mailto:julietacker@charter.net]
Sent: Saturday, January 01, 2011 9:47 AM
To: 'Jonathan Bishop'
Cc: Andrew Christie; Sierra Club Club; 'betty winholtz'
Subject: FW: San Luis Coastal Solar Array projects -- Morro shoulderband snail issues

Jonathan,

Due to Holiday's and work schedules I am not sure I will get to speak to you before the Jan. 14, 2011 hearing in Long Beach to discuss and underscore my concerns for all three Los Osos schools relative to these solar array carport things. As you know, I, along with LOCAC find them visually incompatible with our neighborhoods. But if that doesn't concern you I will take those concerns to the Commission. The applicant's visual simulations of the completed project do not include all of the "removed" trees from the artists rendering.

What should concern you, and the applicant has agreed to, is protection of the snail (see email from Julie Vanderwier, USFWS, email dated 12/27/10, below). My concerns for the snail lie within the grading of the Tree Replacement Condition of Approval for all three projects.

The COA for Tree Replacement reads: *"Prior to final inspection, the applicant shall replace, at a 2:1 ration, all trees removed as a result of the development of the project (4 native trees at Baywood, 22 native trees at LOMS, 20 native trees at Monarch). Replanting shall be completed as soon as it is feasible (e.g. irrigation water is available, grading is done in replant area). Replant areas shall be either in native topsoil or areas where native topsoil has been reapplied. If the latter, topsoil or areas where native topsoil shall be carefully removed and stockpiled for spreading over graded areas to be replanted (set aside enough for 6-12" layer). Replacement trees shall be planted on-site or at an off-site location within the community of Los Osos."*

There is no language in the condition to see that replanting is successful.

"Prior to final inspection" is way too late. Until the tree replacement scheme is resolved no existing tree should be harmed or removed.

I would prefer (and USWF is amenable to) a condition that was only at Baywood (COA #7) be added to all projects. *"Prior to any ground disturbance and commencement of construction, the applicant shall demonstrate that the project complies with the Endangered Species Act, and will not result in the take of Morro shoulderband snail."*

Please telephone me, if I am not available, Jeff Edwards is my representative on these appeals; he can speak to my concerns.

Julie Tacker
805-235-0873

-----Original Message-----

1/4/2011

3

F8a, F8b, F8c

Jonathan Bishop

From: Linde Owen [lindeowen@sbcglobal.net]
Sent: Saturday, December 25, 2010 11:34 PM
To: Jonathan Bishop
Subject: Cutting trees to install Solar arrays/Los Osos

Dear Jonathon and Coastal Commission staff,

I understand that you are recommending Substantial Issue with Baywood Elementary (Appeal No. A-3-SLO-10-053). As much as I commend you for realizing the absurdity of cutting large trees to install carport- array collection in that school scenario, I urge you to re-consider approval of the solar array structures proposed in the other two Unified School District sites.

The trees slated for removal to install the carport structures have and give far more value than the visual clutter that the structures will add to both drive-by traffic and school parents.

I also can't buy that the regulations or maintenance excuses given should eliminate rooftop installation. Costco has them covering their building roof, the at least 60 yr old Palm Theater has them covering their roof .

The idea that enhancing student awareness and interest by installing solar collection should start from the proper placement of collection, rooftops. If this was such a grand idea why don't parking lots start putting in carport collection?

Solar technology is a good and brilliant direction to go, when used correctly. There will be many unproductive efforts on the way. Like the low flush toilet, many bad models flooded the market.

If we can't design collection on rooftops of fairly new school infrastructures than I think we have a problem.

Please don't allow removal of any of the trees before you evaluate the rooftop option.

Thankyou and Happy New Year!

Linde Owen
1935 10th B
Los Osos, CA 93402
(805) 528-6403



SIERRA
CLUB
FOUNDED 1892

Santa Lucia Chapter
P.O. Box 15755
San Luis Obispo, CA 93406
(805) 543-8717
www.santalucia.sierraclub.org

F8a
F8b
F8c

January 7, 2011

Re: Jan. 14 hearing, Item #F8b
Appeal # A-3-SLO-10-053

Dear Commissioners,

We thank Coastal Commission staff for their recommendation that the Commission find that a substantial issue exists regarding ESHA impacts at the Baywood Elementary School project site pursuant to our appeal on this issue. The recommendation to resolve this issue by removing two proposed solar array structures from the drainage basin and avoiding the need for tree removal upholds the fundamental provision of the Coastal Act barring non-resource dependent development in an ESHA.

We would further urge a finding of substantial issue concerning the proposed tree removal and tree replacement mitigation as proposed for the other two Los Osos school sites, and that the County's COA #7 for the Baywood Elementary project also be added to the permit conditions for these two projects (*"The applicant shall demonstrate that the project complies with the Endangered Species Act, and will not result in take of the Morro shoulderband snail"*). This should be done prior to replacement trees being *"planted on site or at an off-site location within the community of Los Osos."*

Further, as the Morro Bay High School site is part of the same project, has similar issues, is likely to come before the Commission on appeal shortly, and in the event of a finding of substantial issue could present opportunities for coordinated mitigations, we suggest that the Commission continue this item with directions to staff to come back with appropriate mitigation requirements at such time as the Morro Bay High School project is also before you.

Thank you for your attention to these concerns,

Andrew Christie
Chapter Director