

CALIFORNIA COASTAL COMMISSION

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Th11a

**Prepared April 11, 2011 (for April 14, 2011 hearing)**

Click here to go
to the original staff report.

To: Commissioners and Interested Persons**From:** Dan Carl, District Manager
Madeline Cavalieri, Coastal Planner**Subject: STAFF REPORT ADDENDUM for Th11a**
CDP Application Number A-3-MRB-11-010 (Morro Bay High School Solar Arrays)

The purpose of this addendum is to modify the staff recommendation for the above-referenced item. Specifically, in the time since the release of the staff report it was brought to staff's attention that the maximum height of the proposed solar panels was incorrectly identified in the report as approximately 11 feet high when the maximum height would actually be approximately 15 feet high. The staff report calculation inadvertently misapplied three factors: (1) the additional height of the panel itself, which sits on top of the panel support structure – this adds approximately one foot to the total height; (2) the potential extension of the height of the panels by two additional feet for increased solar access; and (3) the proposed distance from the ground to the higher end of the panel support structure was identified as 11 feet, while it is actually 11 feet and 8 inches. The distance from the ground to the lower end of the panel support structure is 9 feet, and all of the solar panels would be fixed at a five-degree angle relative to the ground. Therefore, the actual height of the panels would be approximately 12 feet at the lower end to 14 feet 8 inches at the higher end. Although the actual proposed dimensions are slightly different from what was identified in the staff report, the minor elevation difference does not alter staff's overall recommendation, including because: (1) the maximum height remains relatively low, especially as seen from the higher elevation of Highway 1 at this location; (2) the panels would be screened by existing vegetation, they would be further screened by the additional proposed landscaping, and they would be coated with an anti-glare material; (3) the visual simulations that were developed to illustrate the visual impacts of the project (attached to the staff report as Exhibit 3) show the correct proposed height (i.e., approximately 12 feet to 14 feet 8 inches); and (4) the panels would only be visible in the public viewshed behind screening vegetation within the context of the built environment of the school itself as a backdrop, significantly minimizing their potential impact in this regard. In short, the panels would be slightly higher than identified, but staff's evaluation of them was based on the correct proposed height (in relation to an analysis of the site and the proposed site plans and visual simulations) and only the reference to the height was incorrect.

Therefore, the purpose of this addendum is to change the references to the height of the panels from approximately nine to 11 feet to approximately 12 to 15 feet. The staff report (dated prepared March 23, 2011) is modified as shown below (where applicable, text in underline format indicates text to be added, and text in ~~strike through~~ format indicates text to be deleted):



1. Revise the second full sentence on Page 5 of the Staff Report as follows:

The arrays would have a low profile (approximately ~~nine~~ twelve to ~~eleven~~ fifteen (14'8") feet high), and the site is generally below the grade of Highway 1.

2. Revise the first sentence of Paragraph 1 on Page 7 of the Staff Report as follows:

In general, the primary installation components of the project do not present significant visual issues. First, because the site is lower than the elevation of Highway 1, because it is partially screened by vegetation currently, and because the panels are not proposed to be elevated significantly off of the ground (up to a maximum of just below 15 ~~14~~ feet (14'8")), they would not be visually prominent in this view.



Th/la

RE: **Appeal No. A-3-MRB-11-010 (San Luis Coastal Unified School District, San Luis Obispo Co.)** Appeal by Julie Tacker and Betty Winholtz of City of Morro Bay decision granting permit with conditions to San Luis Coastal Unified School District for installation of nine solar arrays with associated structures and mechanical equipment at 235 Atascadero Road in Morro Bay, San Luis Obispo County.

RECEIVED

April 9, 2011

APR 11 2011

Dear Commissioners:

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Appeal concerns were laid out succinctly by both appellants; contentions include:

- a) Visual impacts from Scenic Highway 1
- b) Project impacts on trees and their habitat value
- c) Wetland setback
- d) The lack of adequate environmental review.

Coastal staff recommends that your commission find Substantial Issue and that solar array #8 nearest the unnamed creek on the northern edge of the property is removed from consideration and that no tree trimming take place as part of the approval of this project.

Both appellants are in agreement with staff's recommendation for SI but would ask that through the de Novo proceedings that your commission examine additional contentions of the appeals and those that may not have been considered before.

This letter is to underscore and raise additional points related to the carport solar array project at Morro Bay High School you may not have considered before.

The visual impacts of this project are the most significant. Staff mistakenly states the arrays will be no taller than 11 feet in height, when in fact that approval is for "as tall as 16 feet" from the City of Morro Bay. This is a significant difference in height and your staff's analysis was done on the maximum height at 11 feet. SLCUSD provides visual simulations depicting newly planted "screening" vegetation some 10 years into maturity; the result of this is that the views of the project from the State designated Scenic Highway will be negatively impacted for at least 10 years and the Coastal Access Class 1 bike path for the life of the project.

In October of 2009, the school district presented an alternative location on the west side of the property, near a bus barn, baseball fields and a parking lot, to its Board. There is sufficient room for the project without the visual impacts of the proposed project. Exhibit 1, SLCUSD staff report dated, October 20, 2009, depicting the arrays in the west parking lot. Staff's statement (bottom of page 7) in the staff report claims "the district did perform an alternatives analysis" is false. No such analysis has taken place; please ask the applicant to provide the alternatives analysis to the level of detail that is

customary; visual simulations, biological, archeological, etc., associated with a comprehensive environmental review of the area west of the school buildings. Arguments related to future school expansion in this area west of the school would be new uses that would need environmental review and their own Coastal Development Permit. No such analysis on this area of the school site has taken place.

Ironically, while your commission was in Santa Cruz on March 11 (the day of the tragic earth quake in Japan and subsequent tsunami) you found Substantial Issue with the Morro Bay/Cayucos Wastewater Treatment Facility, located across the street from this high school. Both the WWTF and MBHS project sites have the potential to impact significant archeology and lay within the vicinity of the 100 year flood plain as well as the Tsunami impact zone (see map linked here http://www.calfireslo.org/gis/PreAttackPlans/tsunami/drafts/20100630_tsunami_10_morro-bay-central_DRAFT.pdf).

Additionally, the arrays will generate some 60 decibels each. No noise analysis was done on the cumulative effects of these electric generators on the wildlife or children who frequent the site.

Coastal staff disagrees with arguments made by both appellants that the CEQA review for this project was inadequate; evidence to the contrary references the applicant still doing biological analysis as recently as March 7, 2011. If said process had been followed the environmentally superior project would not have been appealed to your commission. We concerned citizens have been forced to use the democratic process allowed to shape this project for the betterment of our community and environment.

Thank you for your thoughtful attention to this important project.

Feel free to contact me with any questions you may have.

Julie Tacker
805-528-3569
julietacker@charter.net

Th 11a

Dear Coastal Commission,

I am writing regarding Appeal A-3-MRB-11-010 on the Morro Bay High School Solar Panels. I am not entirely against the project, but have significant concerns and think that there has not been adequate analysis of the project to insure protection of the local habit and minimize the impact on residents who live in the adjacent area. My concerns relate to visual impacts, the effect of tree topping, and possible noise impacts. The issues relating to areas other than noise are discussed directly in the appeal, which I support, so the following discussion is focused on the noise issue.

I am intimately aware of the area because my backyard faces the high school and is within about 100 feet from the proposed location of the inverter site for the solar arrays. My main concern relates to the inverter site as it was reported that the inverter unit will generate noise levels up to 65 decibels (dB). I have been told that 65 dB is roughly equal to "conversation in restaurant, office, background music, air conditioning unit at 100 ft, half as loud as 70 dB." I was additionally informed that "the prevailing NW winds would direct any noise from the inverter away from the Cloisters" and "according to Purdue University a car traveling at 65 mph is 77 dB so it is pretty clear Hwy 1 would be significantly louder than this inverter." This information was provided to me from our City Planning Commissioner, John Diodati, based on information he obtained from school district representative, Brad Parker.

Despite this reassurance, I remain concerned about the noise that would come from the inverter. Without an actual demonstration it is not clear how loud 65 dB will be in the area adjacent to the inverter and it is not known what affect that noise will have. That level of noise may not be of significant concern from a distance if produced by a car is passing for a few seconds on the highway, but as a continuous drone it may well have a negative impact on both wildlife and humans. It is important to note that this is an area where there is a rich wildlife habitat. A creek runs through the area and frogs and birds can be seen and heard. It is unknown what the effect of noise generated by the inverter would have on these animals as they use their own sounds for purposes of communication. Moreover, it is not clear what would be heard by humans who live directly adjacent to the area. The notion that prevailing winds are northwest is not a satisfactory response as there are many days where for a significant part of the day the winds are east or south.

My request is that before this project is approved that there is actual study of the potential environmental effects and that the project is modified to eliminate negative impacts. For example, in relation to the noise issue, it would be useful to set up a demonstration in which

the actual the noise that would be generated by the inverter is generated in the location where the inverter is to be placed. This would at a minimum allow residents who live adjacent to the location to learn if the noise would be at an objectionable level. Of course, additional study by experts would be needed to determine if the noise generated would affect wildlife.

Thank you for consideration of these issues.

Respectfully submitted,

Dana E. Putnam, Ph.D.

2252 Emerald Circle

Morro Bay, CA 93442

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Dana E. Putnam, Ph.D.

Clinical and Forensic Psychologist

CA Li # PSY 14615

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Appeal filed:	2/14/2011
49th day:	waived
Staff report prepared:	3/23/2011
Staff report prepared by:	M. Cavalieri
Staff report approved by:	Dan Carl
Hearing date:	4/14/2011

APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Appeal numberA-3-MRB-11-010, Morro Bay High School Solar Arrays

Applicant.....San Luis Coastal Unified School District

AppellantsJulie Tacker; Betty Winholtz

Local governmentCity of Morro Bay

Local decisionApproved by the City of Morro Bay City Council on January 11, 2011
 (Coastal Development Permit (CDP) Application Number CP0-322).

Project locationMorro Bay High School, 235 Atascadero Road, City of Morro Bay, San Luis
 Obispo County

Project description.....Install nine solar arrays with associated structures and mechanical equipment,
 and trim vegetation for solar access

File documents.....Administrative record for City of Morro Bay CDP Number CP0-322;
 Correspondence Submitted by the Applicant dated March 1, 2011, March 7,
 2011 and March 16, 2011; City of Morro Bay certified Local Coastal Program
 (LCP).

Staff recommendation ...**Substantial Issue Exists; Approve with Conditions**

A. Staff Recommendation

1. Summary of Staff Recommendation

On January 11, 2011, the City of Morro Bay approved a CDP authorizing construction of nine solar array structures totaling 32,338 square feet of panels, installation of associated electrical equipment, and the trimming of Monterey cypress trees for solar access, at Morro Bay High School located at 235 Atascadero Road in the city of Morro Bay, San Luis Obispo County. Three of the solar arrays would be located in an existing paved school parking lot; five would be in a field used for agricultural teaching purposes (but would not disrupt that program); and one would be in an area of decomposed granite, adjacent to a riparian corridor. The Appellants contend that the City's approval is inconsistent with City of Morro Bay LCP policies related to visual and scenic resources and environmentally sensitive habitat areas (ESHAs).



The LCP requires the protection of visual and scenic resources, and identifies the Highway 1 corridor at this location as a visually significant area. Although the City's approval authorizes new development along the Highway 1 scenic corridor and at the Atascadero Road area, the solar panel installation portion of the approved project is generally consistent with the visual resource protection policies of the LCP, including because existing vegetative screening limits any potential visual impacts, because the panels would have a low profile and would be below the grade of the highway, and because the panels would be screened with additional native landscaping and coated with an anti-glare material. However, the City's conditions of approval allow for tree trimming along both Highway 1 and Atascadero Road that has the potential to lead to visual resource impacts, inconsistent with the LCP. In addition, the LCP includes strong protections for ESHA, prohibiting most development within ESHA, and requiring a 100-foot setback from ESHA areas and a 50-foot setback from urban streams. The biological information the City relied on was not adequate to conclusively determine whether or not there is ESHA at the project site, and therefore, it is unclear if the ESHA protection policies, including development setbacks, were complied with. First, it is unclear if the riparian corridor that extends along the northern property boundary, adjacent to solar array #8, contains Monarch butterfly habitat, and second, it is unclear if the other Monterey cypress trees that are proposed to be trimmed contain ESHA for special status raptors or other birds. Therefore, it is unclear if the project is consistent with the LCP's ESHA protection policies, including prohibitions on development in ESHA and development setback requirements.

For these reasons, Staff recommends that the Commission find that a substantial issue exists with respect to the grounds on which the appeal has been filed related to visual resource and ESHA protection and that the Commission take jurisdiction over the CDP application.

With respect to the coastal development permit, Staff is recommending approval of a CDP for a modified project that will completely avoid visual and ESHA impacts. With regard to visual impacts, the recommended project would be modified to prohibit all tree trimming, including the trees along Highway 1. Therefore, the screening characteristics of these trees and their contribution to the public viewshed, including as a 'gateway' into the City core area, will not in any way be impacted. With regard to ESHA impacts, a recommended special condition eliminates solar array #8 and its associated development, which had been approved adjacent to the riparian corridor that extends along the northern property boundary. The elimination of tree trimming also eliminates the potential for such trimming to adversely impact any sensitive habitat for raptors and other avian species. In addition, Staff also recommends conditions of approval requiring native vegetation in all landscaping, and requiring measures to protect archaeological resources. With these project modifications and conditions of approval, the project would be consistent with the City's certified LCP, including policies protecting visual resources and ESHA.

Staff notes that as of the date of this staff report, Staff and the Applicant are in agreement on the staff recommendation. As conditioned, the project will be in conformance with the certified LCP, and staff recommends that the Commission approve a CDP for the project. Motions and resolutions to find substantial issue and to approve the project subject to the staff recommendation are found directly below.



2. Staff Recommendation on Substantial Issue

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

Motion. I move that the Commission determine that Appeal Number A-3-MRB-11-010 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 de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution to Find Substantial Issue. The Commission hereby finds that Appeal Number A-3-MRB-11-010 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.

3. Staff Recommendation on CDP Application

Staff recommends that the Commission, after public hearing, **approve** the CDP for the proposed development subject to the standard and special conditions below.

Motion. I move that the Commission approve Coastal Development Permit Number A-3-MRB-11-010 pursuant to the staff recommendation. I recommend a yes vote.

Staff Recommendation of Approval. Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve a Coastal Development Permit. The Commission hereby approves the coastal development permit on the ground that the development as conditioned will be in conformity with the policies of the City of Morro Bay Local Coastal Program and the public access and recreation policies of the Coastal Act. Approval of the coastal development permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.



Report Contents

A. Staff Recommendation.....1

1. Summary of Staff Recommendation.....1

2. Staff Recommendation on Substantial Issue.....3

3. Staff Recommendation on CDP Application.....3

B. Findings and Declarations4

1. Project Setting and Description4

2. City of Morro Bay CDP Approval.....5

3. Appeal Procedures5

4. Summary of Appeal Contentions.....6

5. Substantial Issue Determination6

6. Coastal Development Permit Determination10

7. Coastal Development Permit Conditions of Approval12

C. Exhibits

Exhibit 1: Location Map

Exhibit 2: Site Plan

Exhibit 3: Visual Simulations

Exhibit 4: City of Morro Bay CDP Approval (CP0-322)

Exhibit 5: Appeals of City CDP Approval

Exhibit 6: Applicable LCP Policies

Exhibit 7: Historic Biological Resources Site Plan

B.Findings and Declarations

The Commission finds and declares as follows:

1. Project Setting and Description

The Morro Bay High School is located on a 52-acre site located at 235 Atascadero Road in the City of Morro Bay in San Luis Obispo County. It is located at the northern end of the City on the seaward side of Highway 1 and north of Atascadero Road (see location map in Exhibit 1). A row of established Monterey cypress trees effectively screens the high school development from Highway 1, and there are no ocean views from Highway 1, or from the area of Atascadero Road near the site.

The project includes installation of nine solar arrays, totaling 32,338 square feet of solar panels, and associated electrical equipment (see site plan in Exhibit 2). Three of the arrays would be in the existing parking lot, and five would be in an open field used for agricultural teaching purposes. There would be an additional array near the north project boundary, farther from Highway 1, towards the shoreline (Array #8). The arrays would have a low profile (approximately nine to eleven feet high), and the site is generally below the grade of Highway 1. The project also includes installation of native and drought



tolerant landscaping that would help screen the solar arrays (see visual simulations in Exhibit 3). The City's approval allows a subset of trees along Highway 1 to be trimmed to reduce their height if after a year the School District provides certain evidence that the trimming is necessary for solar access, and it authorizes trimming to reduce the height of a row of trees (trees #30 - #37) along the southeast side of the property along Atascadero Road (see Exhibit 2). The Highway 1 trees would be reduced to between 35 and 50 feet in height, and the Atascadero Road trees would be reduced to between approximately 40 and 45 feet. Pursuant to the City's approval, all tree trimming work would be done by a certified arborist. The City's approval is also conditioned so that if any of the trees die as a result of the trimming, they would be replaced.

2. City of Morro Bay CDP Approval

On November 1, 2010, the City of Morro Bay Planning Commission approved a CDP for the project. This approval was appealed to the City Council, which upheld the Planning Commission's action to approve the project on January 11, 2011. Notice of the City's action on the CDP for the project was received in the Coastal Commission's Central Coast District Office on January 31, 2011 (see Exhibit 4). The Commission's ten-working day appeal period began on February 1, 2011 and concluded at 5 pm on February 14, 2011. Two valid appeals were received during the appeal period (see below).

3. 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 a major energy facility is appealable to the Commission. This project is appealable because: (1) it is located between the sea and the first public road, within 300 feet of the inland extent of the beach, and within 100 feet of a stream; and (2) it is a major public works project and it is a major energy facility.

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.

4. Summary of Appeal Contentions

The City's approval was appealed by Julie Tacker and Betty Winholtz. The majority of their appeal contentions argue that the City-approved project is inconsistent with LCP policies related to visual resources and ESHA. In this respect, the Appellants contend that the solar arrays will negatively impact scenic views and visual resources near the shoreline and that the City-approved project is not sited and designed to avoid impacts to ESHA. See the Appellants' complete appeal documents in Exhibit 5.

5. Substantial Issue Determination

A. Applicable Policies

The Appellants cite a variety of LCP policies in their appeal contentions. The full text of the applicable policies, which are related to visual and scenic resources and ESHA can be found in Exhibit 6.

B. Substantial Issue Analysis

Visual and Scenic Resources

The Appellants contend that the approved project is inconsistent with the LCP's visual and scenic resource protection policies, including LUP policies 12.01, 12.02B, 12.06, 12.08 and 12.09 (again, see Exhibit 6). Specifically, the Appellants contend that the proposed project would cause adverse impacts to a scenic corridor due to placing development in the view corridor, creating a new source of glare, and trimming visually significant trees. The Appellants contend that these visual resource impacts could be avoided by moving the solar arrays to a location on the western portion of the property, adjacent to the dunes, and that the visual impacts of the approved project location could be minimized by eliminating the portion of the project that calls for trimming the trees.

The site is located on the seaward side of Highway 1, north of Atascadero Road, at the northern end of the City (see Exhibit 1). It is in planning area 2 of the LCP, which also includes the Cloisters subdivision directly adjacent to the north property boundary of the High School. Highway 1 at this location is designated as a street providing a view, pursuant to Figure 30 of the LCP, but Atascadero Road at this location, which is adjacent to the south property boundary, is not. Figure 32 of the LCP



shows a protected public view corridor for this planning area, but the High School property is not included in that mapped view corridor. A row of established Monterey cypress trees effectively screens the high school and related development from Highway 1, and there are no ocean views from Highway 1, or from the area of Atascadero Road near the site.

In general, the primary installation components of the project do not present significant visual issues. First, because the site is lower than the elevation of Highway 1, because it is partially screened by vegetation currently, and because the panels are not proposed to be elevated significantly off of the ground (up to a maximum of 11 feet), they would not be visually prominent in this view. Second, the native and drought tolerant landscaping that would be planted as part of the project would help to augment the existing vegetated screening, and would almost completely screen the intermittent views of the arrays from Highway 1 through the trees, within ten years of construction. The visual simulations prepared for the project illustrate these mitigating factors (see Exhibit 3). Finally, with regard to glare, solar panels are designed to absorb, not reflect, light. Solar panels have been improved in this respect over time to absorb more and more light, thereby reducing the degree of reflection and glare. The panels would be coated with anti-glare material that would further reduce glare and increase the efficiency of the panels by increasing the absorption of light. In addition, the panels would be fixed at a five degree angle (relative to the ground), and therefore any direct reflection of sunlight would be directed at a sharp angle toward the sky, eliminating the potential for direct reflection of sunlight towards Highway 1 or other areas at ground level.

The Appellants contend that the school district should have more thoroughly reviewed alternative locations for the project, and they specifically identify an alternative project that would be located on the southwest corner of the property. The district did perform an alternatives analysis. In it, they analyzed the potential for placing the solar panels on the roofs of the existing buildings, as well as the alternative location cited by the Appellants. According to the Applicant, placing the panels on the rooftops is not feasible because the economic life of the panels spans a different time than the economic life of the roofs, which would result in needing to remove and reinstall the panels when the roof is repaired or replaced. This would add to the cost of maintaining the project and complicate the arrangement to have the panels owned by an independent company, making it infeasible.¹ The alternative that included locating the majority of the panels on the southwest corner of the property was rejected because it would hinder existing school activities as well as potential future expansion of the school and school activities. In addition, this alternative would have required trimming or removal of trees, as would the approved project (see also below), and it would have been located closer to the beach and dunes, potentially causing visual impacts from the shoreline area. Therefore, because this alternative was not feasible from an operational standpoint, and because it has the potential to cause additional coastal resource impacts, there is no reason to consider this alternative further.

The final visual issue raised by the Appellants is related to the impacts of tree trimming to increase solar access. The approved project allows for tree trimming along Highway 1 and along Atascadero Road near where it intersects Highway 1. In terms of the latter, the City's approval authorizes trimming a row

¹ The solar project's financing is dependent on an agreement to have the panels owned by a separate entity.



of trees (trees #30 - #37) along the southeast side of the property to between about 40 and 45 feet (see Exhibit 2 for the site plan, and see City planning condition #5 in Exhibit 4). This row of trees can be seen from the area around the intersection of Highway 1 and Atascadero Road, but because they do not line Highway 1, and because they are set back a good distance from Atascadero Road, trimming them would not have a significant, negative impact on the viewshed, if done in a way that maintains tree form (as opposed to rote 'topping' of trees). The trees would be trimmed to a height of no less than approximately 40 feet, and pursuant to the City's approval, the work would be done by a certified arborist. Trimming these trees would not reduce their ability to screen the high school and, if done properly, should not result in significant adverse public viewshed problems. In addition, the City's approval was conditioned so that if any of the trees die as a result of the trimming, they will be replaced.

However, as discussed above, the trees along Highway 1 create an important visual corridor at the entrance to the City, and therefore, trimming them has the potential to cause significant impacts on the view corridor due to the importance of the trees in creating a visually-pleasing corridor and northern entrance to the City. The City's approval authorized trimming these trees if, after one year, the district shows that the solar production and economic return of the project is not adequate due to the trees being left untrimmed (see City Planning Commission condition #2 in Exhibit 4). The language of this condition is ambiguous in that the criteria for economic inadequacy is not clear, and the mechanism for Planning Commission authorization is also not clear. Given the potential for significant impacts caused by trimming this important row of trees, the ambiguity of this language does not ensure that visual resources will be protected, as required by the LCP. Therefore, this aspect of the project does raise a substantial issue of conformance with the visual and scenic resources policies of the LCP.

In summary, the approved project is generally consistent with LCP requirements to protect scenic corridors because the solar arrays would not be visually prominent, they would be screened by existing vegetation, they would be further screened by native and drought tolerant landscaping, and because the potential for glare is low and is further minimized by the proposed anti-glare coating. However, because the City's condition does not adequately protect significant trees prominent in the Highway 1 viewshed, there is a potential for significant visual impacts, and the project raises a substantial issue of conformance with the LCP.

Environmentally Sensitive Habitat Area (ESHA)

The LCP defines coastal streams, wetlands, and terrestrial habitat as environmentally sensitive habitat areas (ESHAs) and includes policies to ensure that development within or adjacent to such ESHAs does not significantly disrupt the resource, including standards addressing allowable uses, and design standards related to location, setbacks, and setback adjustments (see LCP ESHA Policies 11.01, 11.02, 11.05 and 11.06 in Exhibit 6). Policy 11.06 requires a 100-foot setback from ESHA and Policy 11.14 requires a 50-foot setback from streams in urban areas.² The Appellants contend that the City approved project fails to comply with these provisions. Specifically, the Appellants contend that: (1) there is Morro Bay blue butterfly and Monarch butterfly habitat adjacent to the property site that was identified

² The site is located on the urban side of the City's urban/rural boundary in a fairly developed and urbanized area.



in the Cloisters Conceptual Plan of 1996, but was not considered in the project approval; and (2) that the project may impact wetlands because it is located near a creek.

The Cloisters is a large single-family residential development directly north of the High School.³ The two developments are separated by a drainage that, according to the Applicant, was formed in the 1960s to redirect storm drainage toward the ocean. This drainage existed at the time of environmental review of the Cloisters development, and it apparently connected to a wetland that was north of the property boundary. At the time of environmental review for the Cloisters development, there were also dunes that extended farther inland than they currently do. These dunes were habitat for the Morro Bay blue butterfly and the plant on which the butterfly relies, silver bush lupine. The area also supported Monterey cypress, which were used by Monarch butterflies.

Solar array #8, which is located near the northern property boundary, is near the Cloisters property and the area that was studied when the Cloisters development was reviewed in the 1990s. However, although the watercourse area between the properties does still exist, there have been significant changes to the landscape due to the construction of the Cloisters residential development. First, the wetland area that was identified near the drainage is now occupied by houses. Second, the dunes, which provide habitat for the Morro Bay blue butterfly and silver bush lupine do not extend as far inland as they once did. These changes were allowed when the Cloisters was approved in 1992 and can be seen on Exhibit 7, which shows the biological resources map from the Cloisters EIR over a current aerial of the site area.

With regard to Morro Bay blue butterfly habitat, the Applicant's biologist performed a vegetation survey of the area, and the closest silver bush lupine plant, on which this species relies, was approximately 250 feet northwest of the proposed array. In addition, the aerial shows that the existing dunes are more than 100 feet from the proposed solar array #8. Therefore, with regard to Morro Bay blue butterfly habitat, the project complies with the LCP's requirement for a 100-foot setback from habitat for this sensitive species, and this appeal contention does not raise a substantial issue of conformance with the LCP.

The drainage supports Monterey cypress trees and arroyo willows and so it is a riparian corridor, which is protected by the LCP. As discussed, the LCP requires a setback of 50 feet from creeks and their riparian vegetation in urban areas of the City, such as this one. Solar array #8 is located approximately 60 feet from the edge of the riparian vegetation, in an area of decomposed granite adjacent to an athletic field (See Exhibit 2). Therefore, it meets the LCP's requirement for urban riparian setbacks.

However, the Appellants also raise the issue of the potential for impacts to Monarch butterfly habitat along the riparian corridor. According to the Applicant's biologist, the Monterey cypress trees here may offer refuge to Monarch butterflies during the winter months.⁴ The Applicant's biologist visited the site in March 2011, at which time no Monarch butterflies were present, and he interviewed the High

³ The Cloisters was approved by the Commission in 1992 (CDP A-4-MRB-91-44).

⁴ Mike McGovern, Consulting Biologist, to David Foote, Firma, 7 March 2011, San Luis Obispo, CA; Page 2.



School's biology teachers, who stated that the trees had not been known to be used as Monarch butterfly roosting areas. However, the Commission's staff biologist reviewed this information and determined that given the potential for Monarch butterfly habitat at this location, including because of the configuration of the trees and their proximity to the riparian corridor, the information provided by the Applicant's biologist is not adequate to conclusively determine whether or not these trees provide habitat for Monarch butterflies. Therefore, because this area has the potential to be ESHA, and because the LCP requires development to be set back 100 feet from any ESHA, the setback of 60 feet from this area may not be adequate, and this raises a substantial issue of conformance with the ESHA policies of the LCP. In addition, the project raises ESHA issues that were not included in the appeal contentions but which are addressed in the de novo findings that follow.

Other Issues

The Appellants raise a number of other issues related to the City's approval and the way the project was processed under the California Environmental Quality Act (CEQA). In addition, the Appellants cited general plan policies, as well as LCP policies that are not related to the project, including policies that apply specifically to the geographic area of the neighboring Cloisters development and not the high school property. These contentions are not valid appeal issues, as they do not relate to the project's LCP conformance, and thus, they do not raise a substantial issue.

C. Substantial Issue Determination Conclusion

The City-approved project raises substantial issues concerning compliance with the LCP's visual resource and ESHA requirements. As approved, visually-significant trees may be negatively impacted, and development would be allowed within 100 feet of potential ESHA, contrary to the requirements of the LCP. Although several appeal contentions that were raised do not present substantial issues of conformance with the LCP, the City-approved project as a whole does not adequately protect visual resources and ESHA. Therefore, the Commission finds that **a substantial issue** exists with respect to the City-approved project's conformance with the certified City of Morro Bay LCP and takes jurisdiction over the CDP application for the proposed project.

6. Coastal Development Permit Determination

The standard of review for this CDP determination is the City of Morro Bay certified LCP and the public access and recreation policies of the Coastal Act. All Substantial Issue Determination findings above are incorporated herein by reference.

A. Modifications Necessary for an Approvable Project

ESHA and Visual Resources

As discussed, the riparian corridor associated with the drainage that runs along the northern property boundary may contain habitat for Monarch butterflies, and therefore, may constitute ESHA. Given the lack of information available about potential Monarch butterfly habitat, it is not possible to determine whether this area of the site should be considered ESHA or not. At least two options could be pursued to



address this issue: one, the Applicant could be asked to develop additional information and analysis to identify habitat resources more precisely, and then any issues could be resolved based on that new information framework; or two, the Commission could apply the precautionary principal of presuming such habitat is present absent evidence to the contrary, and could adjust the project to address this issue. When Commission staff approached the Applicant with these choices, the Applicant requested that solar array #8 be eliminated, as opposed to preparing additional supporting documentation.⁵ Thus, the Commission here agrees with the Applicant and, applying the precautionary principle, eliminates solar array #8 from the project (see Special Condition 1). Such change will ensure that any potential ESHA along the northern property boundary is not impacted by the project, and that no impacts to potential ESHA along the northern property boundary will occur.

In addition, when the Commission's staff biologist reviewed the biological reports submitted by the Applicant, she determined that the raptor survey conducted in the trees that surround the project site was not sufficient, in part because the survey was limited to one site visit. In addition, the survey identified a potential white-tailed kite roosting in one of the trees that would be trimmed. White-tailed kites (*Elanus leucurus*) are designated by Fish and Game Code Section 3511 as a fully protected species and, as such, they cannot be taken at any time by permit or otherwise, except for scientific research or to protect livestock. The U.S. Fish and Wildlife Service considers the species a Migratory Nongame Bird of Management Concern. Such species are considered to be of concern in the United States because of documented or apparent population declines, small or restricted populations or dependence on restricted, vulnerable, or declining habitats. Therefore, if white-tailed kites use these trees for nesting or for roosting, the trees would be considered ESHA, and if so, trimming the trees for the purpose of solar access would not be allowed under the biological resources policies of the LCP.

As in the case for Monarch butterfly habitat along the riparian corridor, without further information, it is not possible to make an ESHA determination with respect to whether the trees that would be trimmed provide habitat for certain special status species. When Commission staff approached the Applicant with regard to this question, the Applicant again preferred the application of the precautionary principal and the elimination of all tree trimming to address this concern.⁶ Therefore, Special Condition 1 prohibits all tree trimming, and potential impacts to ESHA from tree trimming have therefore been eliminated. Further, this change to the project will ensure that any visual resource impacts due to tree trimming will be completely avoided, thus resolving the viewshed problems as well. To ensure compatibility of new plantings and effective integration into the view corridor, Special Condition 1 also requires native and non-invasive landscaping in the revised project plans.

Archaeological Resources

The LCP includes strong protections for archaeological resources, including LCP Policy 4.01, requiring significant archaeological resources to be preserved to the greatest extent possible; Policy 4.03, requiring archaeological surveys prior to approval of projects that contain potential archaeological sites;

⁵ E-mail communication between Commission Coastal Planner Madeline Cavalieri and project representative David Foote, Firma. 16 March 2011.

⁶ Id (e-mail communication 16 March 2011).



and Policy 4.05, requiring specific mitigation measures in the event that archaeological resources are discovered during construction. The proposed project would not include extensive grading or other ground disturbing activities, but the site is near a known archaeological site (Morro Valley Archaeological Site CA-SLO-165). Therefore, a Phase I archaeological surface survey was completed for the project, in conformance with LCP Policy 4.03. The survey determined that no cultural resources were visible at any of the proposed array locations. However, due to the proximity of the previously recorded archaeological site, the report recommends archaeological monitoring for all ground disturbing activities associated with the project. Special Condition 2 requires such archaeological monitoring, and ensures that the project is consistent with LCP policies that require protection and preservation of archaeological resources.

7. Coastal Development Permit Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Final Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of Final Project Plans to the Executive Director for review and approval. The Final Project Plans shall be substantially in conformance with the plans submitted to the Coastal Commission (titled *Morro Bay High School Photovoltaic Arrays*, by Firma, dated May 18, 2010) except that they shall be revised and supplemented to comply with and account for the following requirements:



- (a) **Solar Array #8.** Solar array structure #8 shall be eliminated from the northern area of the project site. An amendment to this CDP is required if the Permittee chooses to pursue alternative on-site locations for this array structure.
- (b) **Tree Trimming.** The proposed tree trimming, as identified on the submitted plans, dated May 18, 2010, shall be prohibited, and the Final Project Plans shall include notes identifying this prohibition.
- (c) **Non-Native and Invasive Plant Species Prohibited.** Plans shall identify all plant materials to be used for landscape purposes, and all irrigation systems designed to maintain site landscaping. Landscaped areas shall consist only of native plants of local stock that are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist on the property. Plans shall include provisions to ensure that all site landscaping is maintained in its approved state in perpetuity, and shall include notes identifying the parameters of this condition.

The Permittee shall undertake development in accordance with the approved Final Project Plans.

2. **Archaeology.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of an archaeological mitigation and monitoring plan prepared by a qualified archaeologist for review and approval of the Executive Director. The Plan shall provide for an archaeological monitor to be present during all ground disturbing activities. The Plan shall also include a description of monitoring methods, including provision for a pre-project survey that includes participation by qualified local Native Americans, frequency of monitoring, procedures for halting work on the site and a description of reporting procedures that will be implemented during ground disturbing activities to ensure that cultural resources are not disturbed. The Plan shall include a list of the personnel involved in the monitoring activities and their qualifications, and shall include qualified local Native Americans as project monitors. At a minimum, the Plan shall provide for the following:

PRIOR TO COMMENCEMENT OF CONSTRUCTION, the archaeological monitor shall conduct a training session with construction personnel discussing the cultural sensitivity of the area and the protocol for discovery of cultural resources during construction. The archaeological monitor shall also inform all qualified local Native Americans of the timing of construction and their opportunity to participate in construction monitoring.

SHOULD ARCHAEOLOGICAL RESOURCES BE ENCOUNTERED DURING ANY CONSTRUCTION, all activity that could damage or destroy these resources shall be temporarily suspended until qualified archaeologist and Native American representatives have examined the site and mitigation measures have been developed that address and proportionately offset the impacts of the project on archaeological resources.



DURING ALL GROUND DISTURBING ACTIVITIES, the Permittee shall retain a qualified archaeologist, approved by the Executive Director, to monitor all earth disturbing activities per the approved monitoring plan. The Permittee shall also include qualified local Native Americans as project monitors as applicable. If an area of cultural deposits is discovered during the course of the project, all construction shall cease in the vicinity of the resource, and a new plan shall be submitted that avoids such resources that shall be submitted for the review and approval of the Executive Director.

8. California Environmental Quality Act (CEQA)

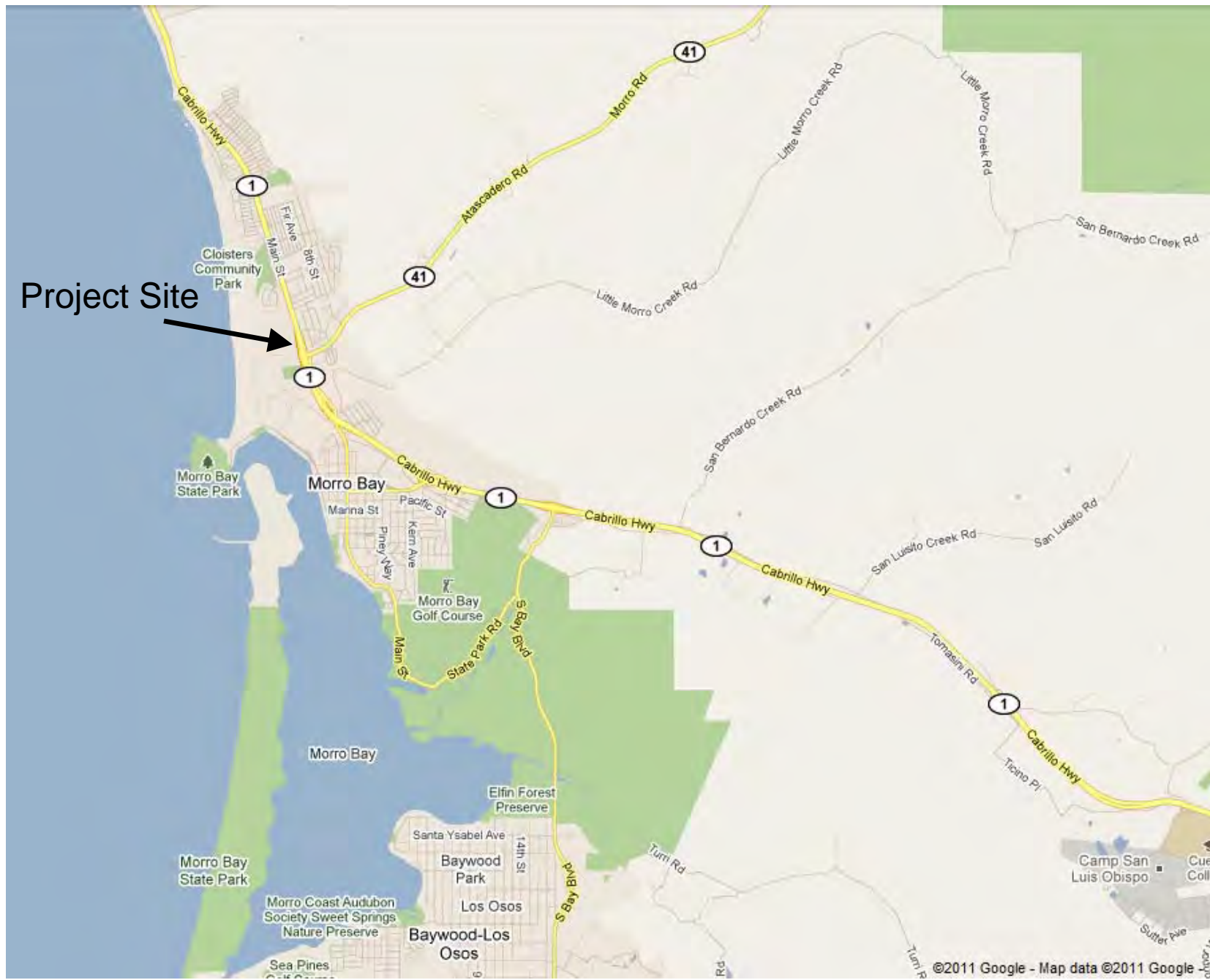
Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The School District, acting as CEQA lead agency, found the proposed project to be categorically exempt from environmental review under CEQA.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues associated with the proposal, including the significant adverse environmental effects expected due to the project, and has recommended appropriate suggested modifications to avoid and/or lessen any potential for adverse impacts to said resources. All public comments received to date have been addressed in the findings above. All above Coastal Act findings are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. Thus, if so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).







NORTH 
SCALE PER GOOGLE MAP

GRAPHIC SCALE



Morro Bay High School
Photovoltaic Array Project

Array Number 8: Setbacks from potential ESHA

EXHIBIT
2

MARCH 16, 2011
A-3-MRB-11-010 (MBHS Solar Project)

Exhibit 2
Page 2 of 2



ARRAY 5
NORTH END

ARRAYS 6 & 7
HIDDEN BY EXISTING PLANTS

firma
landscape architects

Photovoltaic Project
San Luis Coastal Unified School District

View with No Screen
Morro Bay High School
View # 1, looking West-Northwest from
Northbound Hwy One

Figure
1a

File Name: Firma MBHS_PV Array_2022

Last Date Modified: 6/22/10



firma
landscape architects

Photovotaic Project
San Luis Coastal Unified School District

Artist Rendering
Morro Bay High School
View # 1, looking West-Northwest from
Northbound Hwy One

**Figure
1b**

File Name: F:\MBHS_PV Array_2022 Date Drawn/Checked: 02/27/20





firma
landscape architects

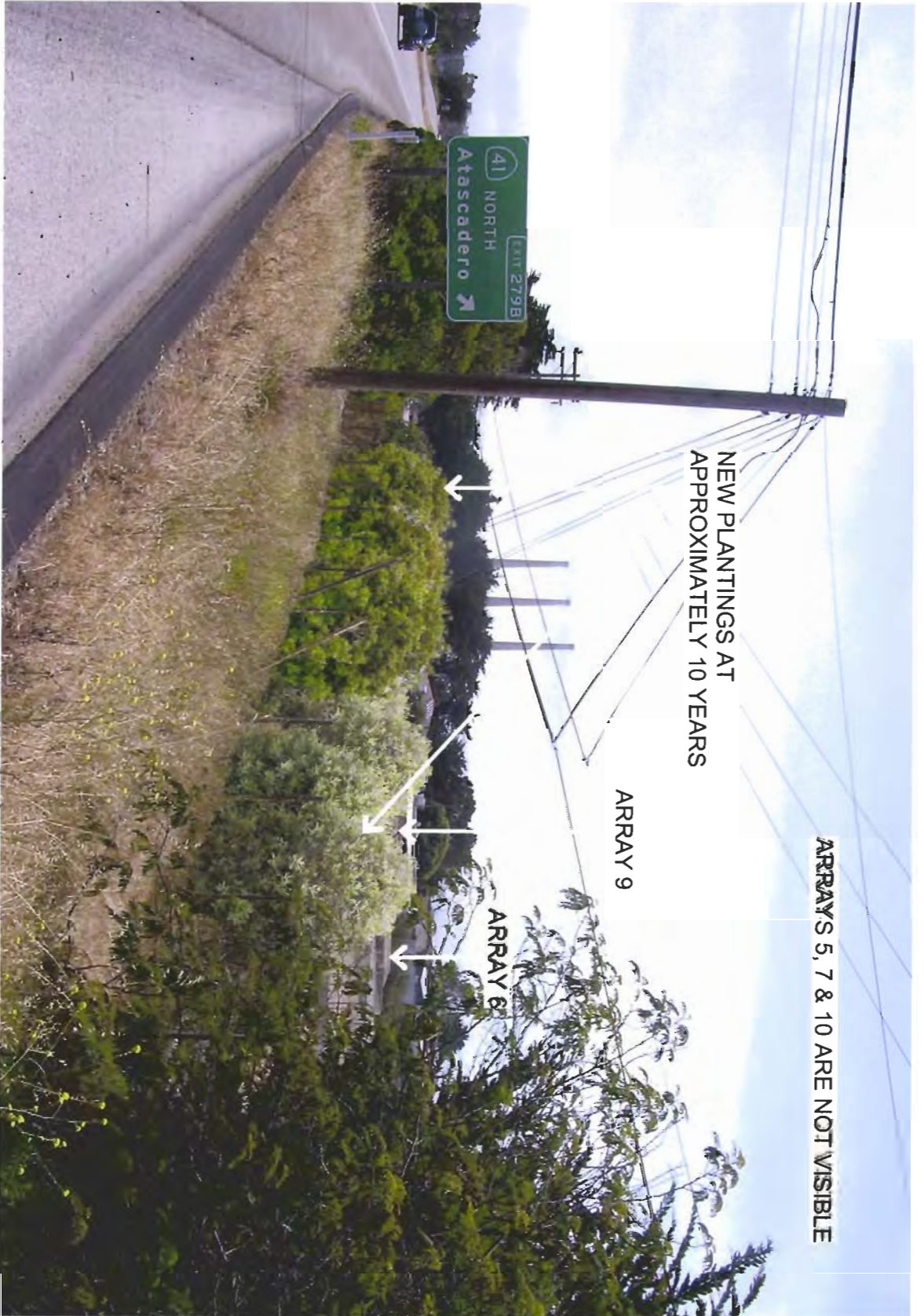
Photovotaic Project
San Luis Coastal Unified School District

Artist Rendering
Morro Bay High School
View #2, looking West from
Northbound Hwy One

Figure
2b

File Name: Firma-MBHS_P14.jpg, 2022 Last Date Modified: 6/22/19





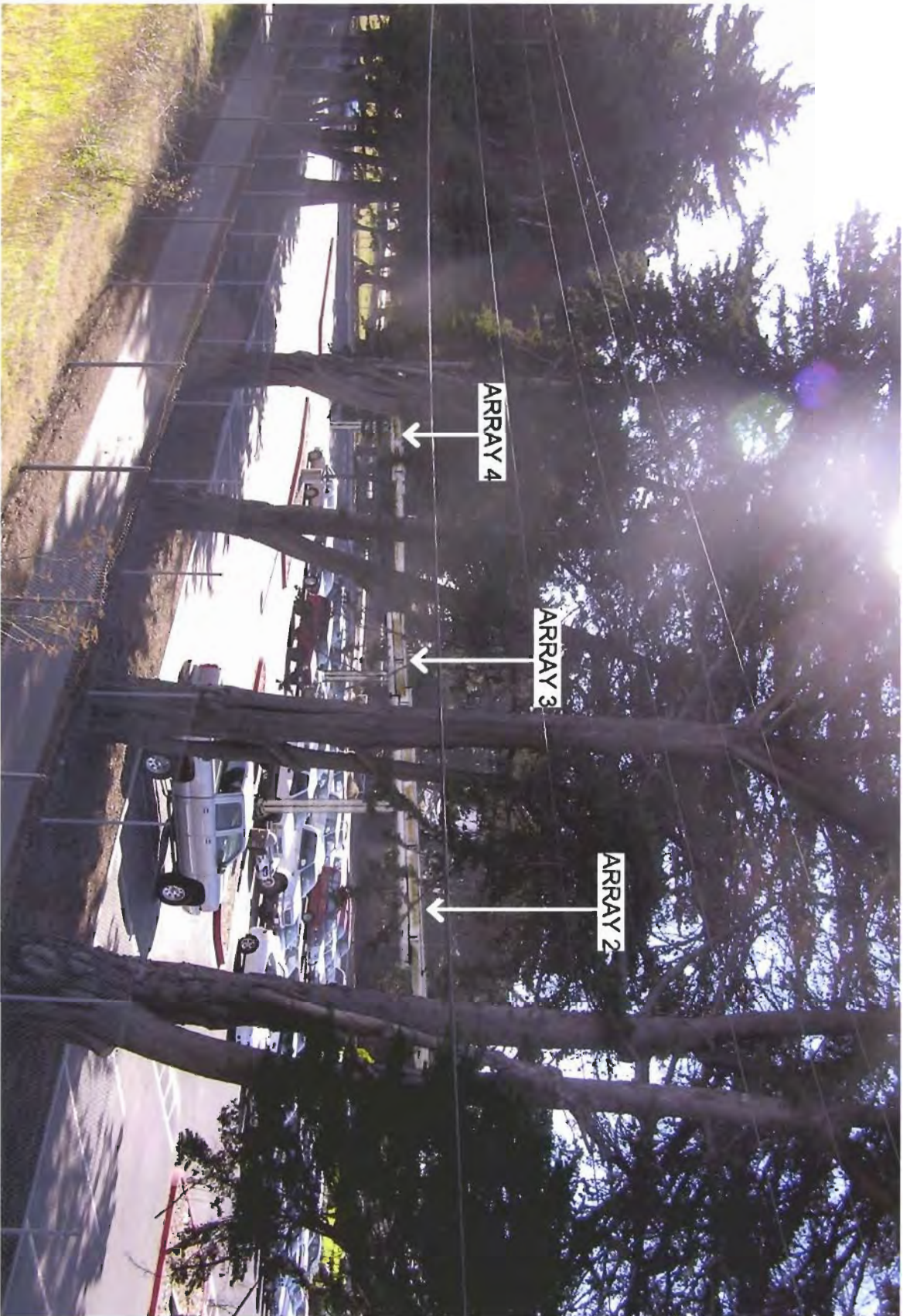
firma
landscape architects

Photovotaic Project
San Luis Coastal Unified School District

Artist Rendering
Morro Bay High School
View #3, looking South from
Southbound Hwy One

Figure 3b

File Name: Firma MBHS_PV Array_2022 Last Date Modified: 6/22/19





RECEIVED

JAN 31 2011

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

PUBLIC SERVICES DEPARTMENT

**FINAL LOCAL
ACTION NOTICE**

REFERENCE # 3-MRB-11-020

APPEAL PERIOD 2/1 - 2/14/2011

NOTICE OF FINAL ACTION ON COASTAL DEVELOPMENT PERMIT

NOTICE OF FINAL CITY ACTION on Coastal Development Permit No. CP0-322

THE FOLLOWING PROJECT IS LOCATED IN THE MORRO BAY COASTAL ZONE AND A COASTAL PERMIT APPLICATION HAS BEEN ACTED ON BY THE CITY.

Applicant: San Luis Coastal Unified School District

Address: 235 Atascadero Road

Project Description:

Approval of a Coastal Development Permit CP0-322 for the installation of 9 solar arrays with associated structures and mechanical equipment. The project as proposed also includes the trimming of major vegetation.

Project Location: 235 Atascadero Road

APN: 065-182-001

Lot Area: 54+ acres

Zoning: School (SCH)

LUP/General Plan: School (SH)

Filing Date: December 9, 2009

Action Date: January 11, 2011

Action By: City Council

Action Taken: Approved with Conditions

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



THIS SITE IS OUTSIDE OF THE COASTAL COMMISSION APPEAL JURISDICTION



This City decision is appealable to the California Coastal Commission pursuant to the California Public Resource Code, Section 30603. The applicant or any aggrieved person may appeal this decision to the Coastal Commission within TEN (10) working days following Commission receipt of this notice. Appeals must be in writing and should be addressed to: California Coastal Commission, 725 Front Street, #300, Santa Cruz, CA 95060, 531-427-4863.

APPLICANT'S ACCEPTANCE
OF
CONDITIONS OF APPROVAL

CASE NO. CP0-322

SITE LOCATION: 235 Atascadero Road

APPLICANT NAME: San Luis Coastal Unified School District

APPROVAL BODY: City Council

DATE OF ACTION: January 11, 2011

I, _____ the undersigned, have read and
(APPLICANT'S NAME - PLEASE PRINT)

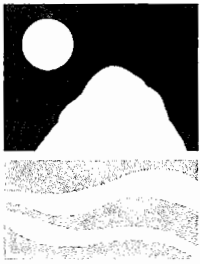
reviewed the conditions of approval imposed by the Approval Body in its action

approving Case Number: CP0-322

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

APPLICANT'S SIGNATURE

DATE:



City of Morro Bay

Morro Bay, CA 93442 • 805-772-6200

www.morro-bay.ca.us

RECEIVED

JAN 31 2011

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

January 24, 2011

San Luis Coastal Unified School District
ATTN: Brad Parker, Director
937 Southwood Avenue
San Luis Obispo, CA 93401

SUBJECT: Case No.: CP0-322

SITE: APN: 065-182-001
Address: 235 Atascadero Road

Project Description: Approval of a Coastal Development Permit CP0-322 for the installation of 9 solar arrays with the associated structures and mechanical equipment.

Dear Mr. Parker,

At the City Council's publicly noticed meeting on January 11, 2011, the council approved your request for a Coastal Development Permit as described above the attached conditions. ***Please be advised that you must return the enclosed Acceptance of Conditions form, signed, to this department.***

The Morro Bay Municipal Code provides for an appeal of the action by the California Coastal Commission within ten (10) working days of adoption and anyone wishing to appeal may do so in writing to the California Coastal Commission.

Sincerely,

Rob Livick
Director Public Services Department

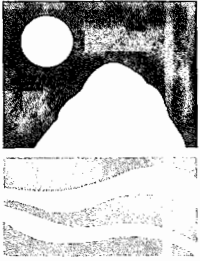
By: Kathleen Livick

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

RECREATION AND PARKS
1001 Kennedy Way
A-2-MRB-11-010 (Morro Bay Solar Project)
955 Shasta Street
Exhibit 4
Page 3 of 8



City of Morro Bay

Morro Bay, CA 93442 • 805-772-6200

www.morro-bay.ca.us

COASTAL DEVELOPMENT PERMIT

This approval is based upon the attached findings and is valid only if the attached conditions 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.

CASE NO: CP0-322

THIS PERMIT IS HEREBY APPROVED AND ISSUED FOR:

SITE ADDRESS: 235 Atascadero Road

APPLICANT: San Luis Coastal Unified School District

APN/LEGAL: 065-182-001

DATE APPROVED: January 11, 2011

APPROVED BY: City Council

CEQA DETERMINATION: Categorical Exemption

DESCRIPTION OF APPROVAL:

Approval of a Coastal Development Permit CP0-322 for the installation of 9 solar arrays with associated structures and mechanical equipment. The project as proposed also includes the trimming of major vegetation.

☐ **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 and after expiration of the City of Morro Bay appeal period. 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, 772-6270.

IF NOT APPEALED, YOUR PERMIT WILL BE EFFECTIVE: February 10, 2011

ATTEST:

Kathleen A. Sord

DATE:

1/24/2011

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

FINANCE 595 Harbor Street	ADMINISTRATION 595 Harbor Street	FIRE DEPARTMENT 715 Harbor Street	PUBLIC SERVICES 955 Shasta Street
HARBOR DEPARTMENT 1275 Embarcadero Road	CITY ATTORNEY 955 Shasta Avenue	POLICE DEPARTMENT 850 Morro Bay Boulevard	RECREATION AND PARKS 1001 Kennedy Way

MBHS Solar Project
Exhibit 4
Page 4 of 8

COASTAL DEVELOPMENT PERMIT
CASE NO.: CP0-322
SITE LOCATION: 235 ATASCADERO ROAD

I. FINDINGS OF APPROVAL

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

1. The project, the installation of 9 solar arrays with the associated structures, mechanical equipment and the trimming of vegetation, as conditioned, is consistent with the applicable provision of the certified local coastal program.

II. CONDITIONS OF APPROVAL

STANDARD CONDITIONS

1. This permit is granted for the land described in the staff report dated January 11, 2011 for the project depicted on the plans dated June 29, 2010, on file with the Public Services Department, as modified by these conditions of approval, and more specifically described as follows:
2. Inaugurate Within Two Years: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this approval and is diligently pursued thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Said extensions may be granted by the Director of Public Services, upon finding that the project complies with all applicable provisions of the Morro Bay Municipal Code, General Plan and Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.
3. 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.
4. 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.
5. 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.

6. 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 through the state, the applicant shall call for an inspection from the City of Morro Bay's Public Services Department, Planning and Building Division. 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.
7. Acceptance of Conditions: Prior to obtaining a building permit through the Division of the State Architect, the applicant shall file with the Director of Public Services written acceptance of the conditions stated herein.

PLANNING CONDITIONS

1. Archaeological monitoring shall occur for all ground disturbing activities in the development area by a qualified archaeologist and qualified local indigenous cultural monitor. Collection of historic and prehistoric cultural remains deemed significant shall occur, and if necessary, analysis of any features encountered including but not limited to historic refuse dumps and diagnostic prehistoric habitation deposits shall occur. Selection and processing of prehistoric marine shell for radiocarbon dating shall also occur.
2. The applicant/property owner shall provide an archaeological monitoring evaluation plan prepared by a qualified archaeologist for all construction excavations associated with demolition activity. The plan shall identify all the ground disturbance activity monitored including dates the archaeologist and culturally affiliated, indigenous individual recognized by the Native American Heritage Commission were present. The evaluation report shall describe all the densities or features of artifacts associated with a particular activity encountered. Any isolated human remains encountered during construction shall be protected and their disposition be undertaken consistent with Public Resources Code 5097.98.
3. The following actions must be taken immediately upon the discovery of human remains: Stop immediately and contact the County Coroner. The coroner has two working days to examine human remains after being notified by the responsible person. If the remains are Native American, the Coroner has 24 hours to notify the Native American Heritage Commission. The Native American Heritage Commission will immediately notify the person it believes to be the most likely descendent of the deceased Native American. The most likely descendent has 48 hours to make recommendations to the owner, or representative, for the treatment or disposition, with proper dignity, of the human remains and grave goods. If the descendent does not make recommendations within 48 hours the

owner shall reinter the remains in an area of the property secure from further disturbance, or; If the owner does not accept the descendant's recommendations, the owner or the descendent may request mediation by the Native American Heritage Commission Discuss and confer means the meaningful and timely discussion careful consideration of the views of each party.

4. A preconstruction survey to determine if there are any nesting birds within the trees proposed for trimming shall be conducted prior to any work being performed.
5. This permit provides for the trimming of trees as delineated in the project as follows: Trees 1, 3 through 6 will be trimmed to a height of a minimum of 50 feet and no lower. Tree 2 will be side trimmed. Trees 24-29 will be pruned to a height of 35-40 feet and no lower. Trees 30-37 will be trimmed to 39'6" or 45 feet in height and no lower. All measurements will be taken from the finished grade near the base of the tree. Removal of more than 40% of the live crown or reducing the height beyond the limits noted above shall require an amendment to this permit. A certified arborist shall supervise all tree trimming activities.
6. The solar array structures and panels shall be adequately screened from view from the Highway one corridor by the inclusion of new landscaping along with the tree trimming. If tree trimming results in lack of screening additional landscaping shall be planted.
7. The solar arrays installed shall be the REC type Solar Arrays with anti-reflective coating. Prior to receiving a final inspection the applicant shall submit documentation indicating that the arrays are indeed REC type Solar Arrays.

FIRE CONDITIONS

1. Fire Department field inspection is required.

PUBLIC WORKS CONDITIONS

1. Stormwater requirements: **Development projects that exceed 500 square feet of new or redeveloped impervious area** will be required to provide water quality treatment for the runoff resulting from a two year storm event either through retention (infiltration) or an alternative Water Quality BMP such as biofiltration, mechanical filtration or hydrodynamic separation.

Additionally, these same development or redevelopment projects that drain to a natural creek, swale or City storm drain either directly or indirectly will be required to provide peak runoff rate control for the runoff resulting from the two, ten and one- hundred year rainfall events. For the purposes of stormwater management the pre-construction condition shall be that of native soil and vegetation.

Drainage analysis, runoff calculations, design and justification of drainage facilities shall be performed by a Registered Civil Engineer and submitted with the building permit

application. The responsible Soils Engineer shall review all proposed infiltration or storage systems for site suitability.

2. Provide a standard erosion and sediment control plan. The Plan shall show control measures to provide protection against erosion of adjacent property and prevent sediment or debris from entering the City right of way, adjacent properties, any harbor, waterway, or ecologically sensitive area.

PLANNING COMMISSION CONDITIONS

1. Any Monterey Cypress tree that dies shall be replaced by a Monterey cypress tree, unless otherwise determined by the Public Services Director it will result in overcrowding. Replacement tree size, location and spacing shall be subject to the direction of the Public Services Director. Maximum replacement tree size shall be a 24-inch box.
2. No tree trimming shall occur on the east side of the school boundary on trees number 1 through 29 for one calendar year after start up of operations to determine if solar production is adequate. If solar production and economic rate of return is not adequate after one year the school district may appeal to the Planning Commission for appropriate tree trimming and shall provide relevant supportive data. Approval of tree trimming shall not be reasonably denied if the economic and production information is supportive of an incomplete economic return. Solar production and economic return shall be based on a comparison of solar panel array 8 compared to solar panel array number 2, 3 and 4.
3. The lower level screening shall be native and non-invasive vegetation.
4. Along the northern boundary of the school site the vegetative gaps shall be planted with appropriate vegetation to screen the solar array number 8.

STATE OF CALIFORNIA - THE RESOURCES AGENCY

EDMUND G. BROWN JR., Governor

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE

725 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

Mailing Address: 405 Acacia

City: Morro Bay

Zip Code: 93442

Phone: (805)772-5912

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Morro Bay

2. Brief description of development being appealed:

To allow the installation of 9 solar arrays with the associated structures and mechanical equipment at Morro Bay High School. The project as proposed also includes the trimming of major vegetation.

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

235 Atascadero Road, west of Highway 1.

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-11-010DATE FILED: ☐☐☐☐☐ February 14, 2011DISTRICT: ☐☐☐☐☐ A-3-MRB-11-010 (MBHS Solar Project)**RECEIVED**

FEB 14 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): CPO-322

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:

San Luis Obispo Coastal Unified School District, 1500 Lizzie, San Luis Obispo, CA 93401

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) Julie Tacker, Los Osos, CA 93402

(2) Nancy Bast, 450 Fairview, Morro Bay, CA 93442

(3) Barry Branin, Morro Bay, CA 93442

(4) Barbara Doerr, 349 Arcadia, 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.

5. Piper Reilly, 691 Woodland, Los Osos, CA 93402

6. Jane Von Koehe, 2755 Hemlock, Morro Bay, CA 93442

7. Kathryn Eisendrath-Rogers, %San Luis Coastal Unified School District, 1500 Lizzie, San Luis Obispo, CA 93401

8. Mark Buchman, %San Luis Coastal Unified School District, 1500 Lizzie, San Luis Obispo, CA 93401

9. Robbin Gross, 2258 Emerald Circle, Morro Bay, CA 93442

10. Dawn Beattie, Morro Bay, CA 93442

11. Bill Martony, P. O. Box, Cayucos, CA 93430

12. Marjorie York, 2260 Emerald Circle, Morro Bay, CA 93442

13. Dana Putnam, 2252 Emerald Circle, Morro Bay, CA 93442

14. Beverley, Abbey, 2246 Emerald Circle, 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 statement.

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.

Betty Winkels
Signature of Appellant(s) or Authorized Agent

Date: February 13, 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:

1. NO FUNDAMENTAL ENVIRONMENTAL REVIEW and, therefore, no environmental determination was done. Whether CEQA or CCA, the school district claimed categorical exemption because of Title 14.15304 class 2, 3, and 14. However, they ignored Title 14.15300.2(c)(d); 15304 class 4 and 8; and 15308* which directly apply to the proposed project requiring an environmental review, not an exemption. Neither the city planning commission nor city council addressed the district's wrongful claim of exemption, and therefore, no environmental review was done. Consistency with applicable GP/LCP and LORS is unknown.

Glare, or light blight, from the panels was not evaluated. Since the panels are below the grade of Highway One, could this become a driving hazard?

Alternatives were proposed by at least one planning commissioner, but not considered seriously.

The Cloisters Conceptual Plan, June 27, 1996, identified the Morro Blue Butterfly and Monarch Butterfly as residents of the adjacent property to the north including the latter species in the Monterey cypress row, potentially affected by the proposed development. The EIR for the Cloisters Subdivision Project gives further detail by mapping where the two species were located confirming their presence in and around the Monterey cypress row.

From the General Plan Land Use Element:

14. Conservation. Objective: To protect and maintain the natural resources of the area for their obvious importance to the community and their significance to the natural processes of which they support and are a part.

Policy LU-86: The City should assist the schools in their studies and activities related to conservation. *The message is counterintuitive to perform at the high school: damaging trees in order to provide solar energy.*

*Title 14; Unlike statutory exemptions, categorical exemptions are not absolute. There are exceptions to the exemptions depending on the nature or location of the project (Guidelines §15300.2).

15300 2--Exceptions (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. (d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

15304 Minor Alterations to Land

Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes.

15308. Actions by Regulatory Agencies for Protection of the Environment

Class 8 consists of actions taken by regulatory agencies, as authorized by state or local

ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.

2. **NOISE.** As reported in the planning commission minutes, the school district's representative, Brad Parker, said "that inverter noise happens at maximum production, which is during peak hours during the day." There is no analysis on the level and effect of this kind of noise on maturing teenagers in class, workers in offices, or wildlife within several hundred feet of a stationary noise source. It is unknown whether the project as proposed is consistent with the following policies, programs, and regulations.

From the Morro Bay Municipal Code:

9.28.010 - Necessity for antinoise regulations.

B. The making, creation or maintenance of such loud, unnecessary, unnatural or unusual noises which are prolonged, unusual and unnatural in their time, place and use affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the city;

9.28.020 - Prohibited conduct.

It is unlawful for any person to make, continue, or cause to be made or continued any loud, unnecessary or unusual noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of any reasonable person of normal sensitiveness residing in the neighborhood. The standards which shall be considered in determining whether a violation of the provisions of this section exists shall include, but not be limited to, the following:

A. The audible volume of the noise; B. The intensity of the noise; C. Whether the nature of the noise is usual or unusual; D. Whether the origin of the noise is natural or unnatural; E. The volume and intensity of the background noise, if any; G. The nature and zoning of the area within which the noise emanates; H. The density of the inhabitation of the area within which the noise emanates; I. The time of the day or night the noise occurs; J. The duration of the noise; K. Whether the noise is recurrent, intermittent, or constant; and L. Whether the noise is produced by a commercial or noncommercial activity.

9.28.030 - Description of representative offensive conduct.

The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this section, but said enumeration shall not be deemed to be exclusive, namely:

J. **Schools, Courts, Churches and Hospitals.** The creation of any excessive noise other than that resulting from construction or excavation work on any street adjacent to any school, institution of learning, church or court while the same are in use, or adjacent to any hospital, which unreasonably interferes with the workings of such institution, or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in such streets indicating that the same is a school, hospital or court street.

From the General Plan Noise Element:

Policy N-1: The City will establish land use noise compatibility standards for general

As2 MBP 11.010 (MBHS Solar Project)

Exhibit 5

Page 7 of 19

planning and zoning purposes.

Program N-1.1: The City shall use the noise compatibility standards provided in Figure N-2 for identifying potential noise problem areas, and in reviewing environmental impact documents.

Policy N-3: Existing and potential incompatible noise levels in problem areas should be reduced through land use planning, building, and subdivision code enforcement, and other administrative means.

Program N-3.1: The City will discourage development of noise sensitive uses near major noise sources.

Program N-3.2: The City will enforce all existing noise control regulations.

Program N-4.2: The City will require noise abatement by stationary sources in cases of excessive noise emissions when feasible.

Policy N-5: The City will coordinate noise control activities with those of other responsible jurisdictions.

3. VISUAL RESOURCES. The northern site impacts a row of Monterey cypress which acts as a visual barrier between the Cloisters neighborhood and the high school playing fields. The eastern site impacts a row of Monterey cypress that shields the high school parking lot from the All-American Road and designated scenic Highway One. The Monterey cypress has just been designated The City Tree. The trees in these two rows are mature specimens. Though the school district originally wanted to cut them down, it is now willing to trim them to varying percentages. The project as proposed is conditioned to wait a year to see if trimming/cutting is necessary; however, it remains a real possibility. Even trimming is life threatening to this major vegetation, which would compromise this visual resource. The project as proposed is inconsistent with the finding:

From the California Government Code 53067. Tree Pruning, Legislative declaration; specifications

(4) That the California Department of Forestry and Fire Protection Guidelines for Developing and Evaluating Tree Ordinances 1991 publications states that an ordinance shall be developed for the purpose of prohibiting topping of public and private trees. Topping is the practice of cutting back large diameter branches of a mature tree to stubs and is a particularly destructive pruning practice. It is stressful to mature trees, and may result in reduced vigor, decline, or even death of trees. In addition, new branches that form below the cuts are only weakly attached to the tree and are in danger of splitting out. Topped trees require constant maintenance to prevent this from happening and it is often impossible to restore the structure of the tree crown after topping. Unfortunately many people believe that topping is a proper way to prune a tree, and this destructive practice is prevalent in some communities.

(8) That the use of proper tree maintenance techniques benefits the public because of reduced costs, reduced hazards, reduced public liability, protection from premature decline or death (conserving energy reducing carbon dioxide and ozone, absorbing particulate matter, producing more oxygen by increasing canopy spread, reduction in wind speed, reducing noise pollution, increasing real property values, enhancing visual and aesthetic qualities that attract visitors and businesses, serve as a source of community image and pride by providing maximum shade and canopy cover). As canopy cover increases the public benefits increase.

(9) (A) The Legislature's findings recognize that topping of trees is a widespread misunderstood consumer request and this form of pruning detracts from public benefits including, but not limited to, safety and property values, and causes premature decline, death, disease, insects, wood rot, and increased maintenance costs. These findings also recognize that a great number of personnel performing maintenance on trees unknowingly and unintentionally produce irreversible harm.

From the Coastal Land Use Plan Visual Resources Element:

Policy 12.01 (and Coastal Act Section 30251 Scenic and visual qualities): 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 designated in Figure 31, shall be subordinate to the character of its setting.

Policy 12.02B: The City shall require a specific development plan for the VRM parcel [known today as the Cloisters] consistent with Policy 1.13; said plan shall at a minimum include the following visual resource design standards: (1)b. Secondary view corridors contiguous with and paralleling each side of the primary corridor shall also be provided....In no case shall the height of any structure within this corridor obscure the existing tree line presently visible along the southern boundary of the parcel. *While the project is not proposed to be taller than this tree line, this quote emphasizes the importance of this row to the scenic quality of the area.*

Policy 12.08: Morro Bay shall request the Division of Highways to develop a plan and program for landscaping the entire length of State Highway One as it traverses through the community that would: b. Screen unattractive views. *I.e. parking lots (high school).*

From City Council Resolution 39-07 Major Vegetation Removal, Replacement and Protection Guidelines

A. Pursuant to 17.12.199.G. Major vegetation shall be defined as:

1. Natural riparian vegetation within fifty (50) feet from the top of a creek bank, coastal bluff, beach, or sand dune..
6. Any tree with a trunk with a minimum of six (6) inches in diameter at four and one half feet (4 1/2) vertically above the ground, or, any tree with multiple trunks that include at least one trunk with a minimum diameter of six (6) inches in diameter at four and one half feet (4 1/2) vertically above the ground or with trunks that have an aggregate diameter of at least twenty(20) inches at four and one half feet (4 1/2) vertically above the ground.

4. SCHOOL DISTRICT MUST COMPLY.

Section 30003 Compliance by public agencies: All public agencies and all federal agencies, to the extent possible under federal law or regulations or the United States Constitution, shall comply with the provisions of this division.

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: Julie Tacker

Mailing Address: PO Box 6070

City: Los Osos

Zip Code: 93412

Phone: 805-528-3569

SECTION II Decision Being Appealed**RECEIVED**

FEB 14 2011

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

1. Name of local/port government:

City of Morro Bay

2. Brief description of development being appealed:

32,000 sq.ft. of free standing solar array/carports, associated structures and mechanical equipment.

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

235 Atascadero Road, Morro Bay CA

Most visible from State designated Scenic Coast Highway 1, aka Cabrillo Highway, site is located at the intersection of Hwy 41 and Hwy 1 in central Morro Bay, this is the gateway to Morro Strand Beach.

The subject site is bordered to the north by the Cloisters housing development, across the street to the south is the Morro Bay Cayucos Wastewater Treatment Facility and west of Hwy. 1. See photo (Exhibit 1).

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-11-010

DATE FILED:

February 14, 2011A-3-MRB-11-010 (MBHS Solar Project)
Exhibit 5
Page 10 of 19

STATE OF CALIFORNIA - THE RESOURCES AGENCY

EDMUND G. BROWN JR., Governor

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060-4508

VOICE (831) 427-4883 FAX (831) 427-4877



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): CP0-322

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:

San Luis Coastal Unified School District
1550 Lizzie Street
San Luis Obispo, Ca 93401

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) Barry Brannin
P.O. Box 540
Morro Bay, CA 93442

(2) Betty Winholz
405 Acacia
Morro Bay, CA 93442

(3) Nancy Bast
450 Fairview
Morro Bay, CA 93442

(4) Linde Owen
1935 10th St., #B
Los Osos, CA 93402

(5) Piper Riley

691 Woodland Drive
Los Osos, CA 93402

(6) Barbara Doerr
340 Arcadia
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.

Dear California Coastal Commission,

I ask that you find Substantial Issue and schedule a de novo hearing to condition the above referenced project to relocate the 32,000 sq. ft. of proposed structures. The project as currently proposed has significant visual impacts along Scenic Coast Highway 1 ("The Cabrillo Highway"). These impacts can be avoided by placing the structures on the west side of the school grounds, as depicted in an October 2009 SLCUSD staff report presented to the School Board (Exhibit I). The condition for landscape screening placed on the project by the City of Morro Bay are inadequate as you are aware, small scrubs and trees take years to become established (see the visual simulations provided by the District, notice the disclaimer that states "New Plantings at Approximately 10 years").

The project may also have impacts to wetlands; one of the arrays is proposed near the norther boarder of the property along an unnamed creek/drainageway. This concern is further underscored by the statement of SLCUSD Building and Grounds Supervisor, Jeff Guy, at a 2/1/11 Board meeting confirming that the water table is merely 10 below the school site.

Appeal Contentions include:

- a) Visual impacts from Scenic Coast Highway 1/Cabrillo Highway and the Morro Bay Class I Citywide bike system bordering property. (Exhibit II)
- b) Wetland setback; no wetland delineation has been performed to determine the appropriate setback for solar array #8 from the unnamed creek/drainage channel north of the school. 2/1/11 SLCUSD Board meeting Buildings and Grounds Supervisor Jeff Guy admits MBHS is just 10 ft. above water table.
- c) Inadequate environmental review; there is adequate space for this project west of the school buildings, out of sight from the public viewshed along State Scenic Highway 1 and likely fewer impacts to trees and/or habitats.
- d) Inadequate visual simulations. Depictions portray project 10 years post construction (landscape established) and omit impacts associated with tree trimming.

The project is inconsistent with portions of the City of Morro Bay's Visual Resources and Scenic Highway Element Objective; to enhance, protect and preserve the existing and potential visual resources of Morro Bay and its surroundings.

The project is specifically inconsistent the City's LCP Policies:

12.06 c. Permitted development shall be sited and designed to protect views to and along the coast designated scenic areas and shall be visually compatible with surrounding areas.

12.09 a. Develop clearer requirements, standards, and criteria for installation of landscaping and retention of existing specimen trees as part of new developments, parking lots, etc.

The trees impacted by this project may meet the definition of "specimen trees."

The proposed project is also inconsistent with:

Program VR-1.4

b. Screen unattractive views (Morro Bay High School) and

c. Accentuate entrances to the City (Hwy 1 at Hwy 41).

A goal for City Entryways states "the City should exercise strict design control over new development along these corridors to improve architectural coordination and quality."

Program VR-2.1 Permitted development shall be sited and designed to protect views to and along the coast designated scenic areas and shall be visually compatible with surrounding areas.

Program VR-2.2: New development in the areas designated on Figure VR-2 as having visual significance shall include as appropriate the following:

c. View easements or corridors designed to protect views to and along the ocean and scenic and coastal areas. (LCP 230)"

Policy VR-3: The City shall implement the Coastal Land Use Plan/Coastal Element map and policies, through adoption of appropriate ordinances, to protect and enhance the visual resources associated with the corridor of the City's scenic highways and local designated routes. (SH27)

Program VR3.5: Development between State Highway One and the ocean in Planning Areas 1,2 and 5 shall provide corridor as defined in Policy 12.02B and by Figure 32 so as not to significantly degrade views to and along coast from Highway One. New development shall subordinate to the character of its setting and shall be visually compatible with the surrounding areas. (LCP 229)

Additionally the City's Access and Recreation Element expressly states:

Program AR-14.4: View corridors and visual protection consistent with provisions of Coastal Act Section 30251 and Policy 12 of the LUP. (LCP Program 1.12d).

Section 30251: The scenic and visual qualities of coastal areas shall be permitted considered and protected as a resource of public importance. 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.

Thank you for your consideration of this appeal. Please find Substantial Issue and schedule a de novo hearing to better condition the project to locate arrays outside of the public viewshed and away from wetlands.

Feel free to contact me with any questions you may have.

Julie Tacker
805-528-3569

Please find 2 Exhibits attached

Exhibit II

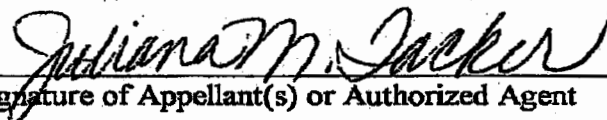
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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**SECTION V. Certification**

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



Signature of Appellant(s) or Authorized Agent

Date: 2/14/11

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: _____

Visual Resources 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 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 on Figure 31, shall be subordinate to the character of its setting.

Policy 12.03. Development between State Highway One and the ocean in Planning Areas 1, 2 and 5 shall provide view corridors as defined in Policy 12.02B and by Figure 32 so as not to significantly block views of travelers on the Highway. New development shall be subordinate to the character of its setting and shall be visually compatible with the surrounding area.

Policy 12.06. New development in areas designated on Figure 31 as having visual significance shall include as appropriate the following: ... (c) View easements or corridors designed to protect views to and along the ocean and scenic and coastal areas.

Policy 12.08. Morro Bay shall request the division of Highways to develop a plan and program for landscaping the entire length of State Highway One as it traverses through the community that would: (a) Frame and protect important views; (b) Screen unattractive views; (c) Accentuate entrances to the City.

Policy 12.09(a). Morro Bay will modify its ordinances so as to: (a) Develop clearer requirements, standards, and criteria for installation of landscaping and retention of existing specimen trees as part of new developments, parking lots, etc...

ESHA Policies

Policy 11.01. Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas...

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

Policy 11.05. Prior to the issuance of a coastal development permit, all projects on parcels containing environmentally sensitive habitat as depicted on the Land Use Plan map or habitat map included within the LUP and on the adopted U.S. Fish and Wildlife wetland inventory map, 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 Land Use Plan...

Policy 11.06. Buffering setback areas a minimum of 100 feet from sensitive habitat areas shall be required...

Policy 11.14. A minimum buffer strip along all streams shall be required as follows: ...(2) a minimum buffer strip of 50 feet in urban areas...

Archaeological Resources Policies

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.

Policy 4.03. An archaeological reconnaissance performed by a qualified archaeologist shall be required as part of the permit review process for projects with areas identified as having potential archaeological sites...

Policy 4.05. Where archaeological resources are discovered during construction of new development, or through other non-permit activities (such as repair and maintenance of public works projects) all activities shall cease until a qualified archaeologist knowledgeable in Chumash culture can determine the significance of the resource and designate alternative mitigation measures...

SCALED DRAWING,
SEE EXHIBIT 2

ATHLETIC
FIELDS,
PORRO BAY HS

EXISTING SILVER BUSH
LUPINE LOCATED BY
McGOVERN, MARCH 2011

WETLAND IDENTIFIED IN
CLOISTERS EIR :
HAS BEEN FILLED

PROPOSED
PV ARRAY #8

REAR YARD LIMIT OF
EXISTING HOUSING

EXISTING
BIKE PATH

Emerald

Coral Ave

Wetland drainage potentially subject to regulation by the U.S. Army Corps of Engineers.

Indicates water will drain here at this point

Wetland area is **UPDM**, subject to regulation by the U.S. Army Corps of Engineers.

Project area is within a habitat area boundary

Morro Bay Blue Butterfly Habitat

Recommended Environmentally Sensitive
Habitat Area Boundary Modification

(Note: does not include required buffer areas)

**CLOISTER EIR FIG. 3.10-7 OVERLAID UPON
CURRENT GOOGLE AERIAL**

EXHIBIT

—

MARCH 16, 2011

~~A-3-MRB-11-010 (MBHS Solar Project)~~

Exhibit 7

Page 1 of 1



earth metrics

NO SCALE

FIGURE 3.10-7
HABITAT CONSTRAINTS MAP AND CANDIDATE
ESH BOUNDARY

firma

Morro Bay High School Photovoltaic Array Project

Array Number 8: Setbacks from potential ESHA