



CITY OF MORRO BAY PLANNING COMMISSION MEETING AGENDA

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

209 Surf Street, Morro Bay
Monday, December 20, 2010

Chairperson – Vacant
Vice-Chairperson - Gerald Luhr
Commissioner - Michael Lucas
Commissioner - John Diodati
Commissioner - Jamie Irons
Rob Livick – Secretary

I. CALL MEETING TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. ELECTION OF CHAIR AND VICE-CHAIR

Special Election of a Chair and Vice-Chair that will serve until the first meeting in February 2011, at which time the Planning Commission will hold a regular election.

V. ACCEPTANCE OF AGENDA

VI. DIRECTOR'S REPORT/WRITTEN COMMUNICATIONS

A. Oral Report

VII. PUBLIC COMMENT

Members of the audience wishing to address the Commission on matters other than scheduled hearing items may do so when recognized by the Chairman, by standing and stating their name and address. Comments should be limited to three minutes.

VIII. CONSENT CALENDAR

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

IX. PRESENTATIONS

Informational presentations are made to the Commission by individuals, groups or organizations, which are of a civic nature and relate to public planning issues that warrant a longer time than Public Comment will provide. Based on the presentation received, any Planning Commissioner may declare the matter as a future agenda item in accordance with the General Rules and Procedures. Presentations should normally be limited to 15-20 minutes.

IX. FUTURE AGENDA ITEMS

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

X. PUBLIC HEARINGS

- A. **Site Location:** 160 Atascadero Road, Wastewater Treatment Plant
Applicant: City of Morro Bay and Cayucos Sanitary District
Agent: Bruce Keogh, Wastewater Division Manager
Request: The applicant proposes the Morro Bay-Cayucos Wastewater Treatment Plant (WWTP) Upgrade Project to provide full secondary treatment for all effluent discharged through its ocean outfall and to provide tertiary filtration capacity equivalent to a PSDWF of 1.5 mgd. The tertiary filtered effluent would meet Title 22 standards for disinfected secondary-23 recycled water and as such could be used for limited beneficial uses. The project includes construction of facilities including but not limited to buildings, circulation, hardscape and landscaping. Once the upgraded wastewater treatment facilities are complete the existing wastewater treatment facilities will be demolished.
CEQA Determination: Recommend adoption of Environmental Impact Report dated September 20, 2010, to City Council.
Staff Recommendation: Consider request and make recommendation to Council on Conditional Use Permit #307 and Coastal Development Permit #339.
Staff Contact: Kathleen Wold, Planning Manager 805-772-6211.

XI. OLD BUSINESS

- A. Current Planning Processing List/Advanced Work Program.

XII. NEW BUSINESS

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

XIII. ADJOURNMENT

- Adjourn to the next regularly scheduled Planning Commission meeting at the Veteran's Memorial Building, 209 Surf Street, on Tuesday, January 18, 2011 at 6:00 p.m.

PLANNING COMMISSION MEETING PROCEDURES

Materials related to an item on this Agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the Public Services Office at 955 Shasta Avenue, during normal business hours; Mill's ASAP, 495 Morro Bay Boulevard, or Morro Bay Library, 695 Harbor, Morro Bay, CA 93442. Planning Commission meetings are conducted under the authority of the Chair who may modify the procedures outlined below. The chair will announce each item. Thereafter, the hearing will be conducted as follows:

1. The Planning Department staff will present the staff report and recommendation on the proposal being heard and respond to questions from commissioners.
2. The Chair will open the public hearing by first asking the project applicant/agent to present any points necessary for the commission, as well as the public, to fully understand the proposal.
3. The Chair will then ask other interested persons to come to the podium to present testimony either in support of or in opposition to the proposal.
4. Finally, the Chair may invite the applicant/agent back to the podium to respond to the public testimony. Thereafter, the Chair will close the public testimony portion of the hearing and limit further discussion to the commission and staff prior to the commission taking action on a decision.

RULES FOR PRESENTING TESTIMONY

Planning Commission hearings often involve highly emotional issues. It is important that all participants conduct themselves with courtesy, dignity and respect. All persons who wish to present testimony must observe the following rules:

1. When you come to the podium, first identify yourself and give your place or residence both orally and on the sign in sheet at the podium. Commission meetings are audio and video tape-recorded and this information is required for the record.
2. Address your testimony to the Chair. Conversation or debate between a speaker at the podium and a member of the audience is not permitted.
3. Keep your testimony brief and to the point. Speak about the proposal and not about individuals. On occasion, the Chair may place time limits on testimony: Focus testimony on the important parts of the proposal: do not repeat points made by others. Please, no applauding or making comments from the audience during the testimony of others.
4. Written testimony is encouraged so they can be distributed in the packets to the Planning Commission. However, letters are most effective when presented at least a week in advance of the hearing. Written testimony provided after the staff reports are distributed and up to the meeting will also be distributed to the Planning Commission but there may not be enough time to fully consider the information. Mail should be directed to the Public Services Department, attention: Planning Commission Secretary.

APPEALS

If you are dissatisfied with any aspect of an approval or denial of a project, you have the right to appeal this decision to the City Council up to 10 calendar days after the date of action. The appeal form is available at the Public Services Department and on the City's web site. If legitimate coastal resource issues related to our Local Coastal Program are raised in the appeal, there is no fee if the subject property is located within the Coastal Appeal Area. If the property is located outside the Coastal Appeal Area, the fee is \$250 flat fee. If a fee is required, the appeal will not be considered complete if the fee is not paid. If the City decides in the appellant's favor then the fee will be refunded.

City Council decisions may also be appealed to the California Coastal Commission pursuant to the Coastal Act Section 30603 and the City Zoning Ordinance. Exhaustion of appeals at the City is required prior to appealing the matter to the California Coastal Commission. The appeal to the City Council must be made to the City and the appeal to the California Coastal Commission must be made directly to the California Coastal Commission Office. These regulations provide the California Coastal Commission 10 working days following the expiration of the City appeal period to appeal the decision. This means that no construction permit shall be issued until both the City and Coastal Commission appeal period have expired without an appeal being filed.

This Agenda is available for copying at Mills Copy Center and at the Public Library

The Coastal Commission's Santa Cruz Office at (831) 427-4863 may be contacted for further information on appeal procedures.

HEARING IMPAIRED: There are devices for the hearing impaired available upon request at the staff's table.

COPIES OF VIDEO, CD: Copies of the video recording of the meeting may be obtained through AGP Video at (805) 772-2715, for a fee.

ON THE INTERNET: This agenda may be found on the Internet at: <http://www.morro-bay.ca.us/planningcommission>

AGENDA ITEM: VIII-A

DATE: December 20, 2010

ACTION: _____

CITY OF MORRO BAY
PLANNING COMMISSION
SYNOPSIS MINUTES

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

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

209 Surf Street, Morro Bay
November 1, 2010

Chairperson Nancy Johnson

Vice-Chairperson Gerald Luhr
Commissioner Jamie Irons

Commissioner Michael Lucas
Commissioner John Diodati

Rob Livick, Secretary

I. CALL MEETING TO ORDER

Chairperson Johnson called the meeting to order at 6:00 p.m.

II. PLEDGE OF ALLEGIANCE

Rob Livick led the pledge.

III. ROLL CALL

Chairperson Johnson took roll and noted that all Commissioners are present.

Staff Present: Rob Livick, Kathleen Wold, Sierra Davis and Rob Schultz, City Attorney

IV. ACCEPTANCE OF AGENDA

Luhr moved to accept the Agenda and Irons seconded the motion. The motion passed unanimously. (5-0).

V. DIRECTOR'S REPORT/WRITTEN COMMUNICATIONS

Livick briefed the Commission on action taken at the October 25, 2010 City Council meeting and items scheduled for the November 8, 2010 City Council meeting.

VI. PUBLIC COMMENT

Johnson opened the public comment period.

- John Barta, resident of Morro Bay encouraged people to vote on Election Day. He also stated that the proposal to cancel the joint City Council / Planning Commission meeting is not unusual and has been cancelled in past years when an election was pending such as in 2006.

Johnson closed the public comment period.

VII. CONSENT CALENDAR

- A. Approval of minutes from hearing held on October 18, 2010
Irons asked to correct the minutes on page 3 to state that both Diodati and Irons accepted the amendment to the motion.
Irons moved to approve the minutes as amended. Lucas seconded and the motion carried unanimously (5-0).

VIII. PRESENTATIONS – None

IX. FUTURE AGENDA ITEMS

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

Commissioners reviewed future agenda items and did not add any new items.

X. PUBLIC HEARINGS

- A. Site Location: 235 Atascadero Road, Morro Bay High School
Applicant: San Luis Coastal Unified School District, Agent: FIRMA
Request: The project proposal includes the installation of 9 solar photovoltaic arrays, support structures (3 solar arrays will be utilized as carports) and the associated mechanical equipment. The trees on-site are proposed to be pruned in order to allow more passive solar radiation. The trees proposed to be pruned include 4 Monterey cypress at the North end of the property at a ratio of 10% to 20% of the live canopy and the remaining trees will be pruned to a moderate level and 80 new shrubs will be planted.
CEQA Determination: School district adopted categorical exemption under CEQA.
Staff Recommendation: Conditionally Approve Project Coastal Development Permit #CP0-322.
Staff Contact: Kathleen Wold, Planning Manager, 772-6211.

Wold presented the staff report and explained that due to circumstances associated with the public noticing requirements for the previous public hearing on October 4, 2010, the previous action on the project is now null and void and requires a new public hearing to be held for approval.

Commissioners asked staff to clarify:

- The condition for tree trimming shall be for one calendar year from date of construction, not date of Commission approval. Wold confirmed.
- Lucas asked Rob Schultz, City Attorney to clarify if it is valid for the School District to take over the CEQA part of the project. Schultz responded that yes, it is valid with the Commission's concurrence and that it has been done on previous projects.

Johnson opened the Public Hearing asking the applicant or their agent to address the Commission.

- Applicant's Agent, Brad Parker, briefly summarized the proposed project.
- Julie Tacker, resident of Los Osos, spoke against the project and objected to the omission of materials presented at the October 4th hearing and also not included in tonight's staff report. She spoke in favor of providing more information for the public and in favor of placing solar panels on the rooftops due to the large size project in order to minimize impacts to trees and the scenic views from the highway.

Commissioners had discussion with Parker regarding the following:

- Why location of photovoltaic arrays were not considered in area west of gym in order to minimize tree trimming. Parker responded that after analysis, this area was not chosen due to cost impacts.
- The status of grants and financing for the project. Parker responded that the recovery zone bonds have elapsed, but that other funding alternatives from Sun Edison are available to pursue.
- Whether there is a master plan for the high school for future build out. Parker clarified that yes there is a master plan for additional buildings in the future, but at this point there are no plans to implement or construct those buildings.
- The inverter noise and whether this is constant. Parker said that inverter noise happens at maximum production, which is during peak hours during the day.

Johnson closed the public hearing and brought it back to the Commission for discussion.

Commissioners had discussion on the following:

- Irons, as the dissenting vote from the Oct. 4th meeting, noted that he is in favor of solar projects in general. Irons clarified his concern on the project centered on the following: 1.) shading issues as it pertained to some of the trees, 2.) the impacts to the scenic corridor if the project is approved and 3.) whether the trees proposed to be trimmed would survive the tree trimming;
 - In addition, Irons presented an alternative plan to clarify his position and add another perspective as it relates to preserving the view corridor and the arrays that are in the parking lot. His proposal involves removing three trees in the lot and pruning some trees to the south. The benefit is this would allow 44 more linear feet of solar arrays while also preserving the view corridor. Although it does involve some tree removal, there is no guarantee that the Applicant's proposed trees to be trimmed would survive.
- The issue of tree trimming and replacement trees and whether the existing trees may have been planted too close together and also the remaining natural life span of those trees;
 - Lucas asked if staff had vetted Exhibit C. Wold responded yes and noted that condition 2 where the school district requests an administrative permit is not consistent with code and any appeal would need to come back to the Planning Commission for approval. Wold expressed concern about condition 1 which states that any tree that dies as a result of pruning would be replaced and stated it would be hard to enforce.
 - Rob Schultz, City Attorney spoke to suggest that condition 1 be left as it is.
 - Diodati proposed an alternate condition to modify planning condition 1 that would state "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.
- Alternate design ideas with better location of arrays. If the Applicant considers the conditions onerous, then they can redesign it to come back with better project; and
- How to determine a baseline for an economic rate of return to test against a loss of efficiency. Commissioners discussed in detail the differences between unshaded versus shaded measurements for the purpose of determining a point of reference and an array's predicted output and best time for production. Luhr noted that production will change according to an array's orientation.

MOTION: Diodati moved the Planning Commission conditionally approve CPO-322 by adopting a motion including the following actions:

- A. Adopt the Findings for Approval included as Findings of Approval included in Exhibit "A", including the following amendments:

To amend Planning Commission condition #1 to read:

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.

To amend Planning Commission condition #2 to read:

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 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.

Luhr seconded the motion.

The motion carried (4-1). Irons dissented.

XI. OLD BUSINESS

A. Current Planning Processing List/Advanced Work Program

Commissioners reviewed with staff the Work Program and agenda items to be discussed at the next Planning Commission meeting.

Luhr commented that it is not appropriate to grant to landowners or leaseholders exceptions from the boardwalk area because it is good for tourists to see what goes on in a commercial harbor. Commissioners agreed to add this topic as a future agenda item.

Diodati proposed moving the December 6th Planning Commission meeting to start earlier in the day in order to allow enough time to review and hear public comment on the final Environmental Impact Report (EIR). Schultz noted that 6p.m. is the customary start time for regular meetings. It would be preferable to start at 6p.m. rather than start early and risk having members of the public unknowingly arrive late if they came at 6p.m. Schultz stated that he prefers the Commission start the meeting and then if it goes late, to continue the meeting to another day. As long as the continued Planning Commission meeting is held within 5 days, new public noticing is not legally required.

XII. NEW BUSINESS

A. Consider cancelling the November 15, 2010 Planning Commission meeting

Wold discussed with Commissioners the staff reasoning for requesting cancellation of the PC meeting. Lucas moved to accept the staff report and cancel the November 15, 2010 Planning Commission meeting. Luhr seconded the motion. The motion carried unanimously (5-0)

XIII. ADJOURNMENT

Johnson adjourned the meeting at 7:49 p.m. to the next regularly scheduled Planning Commission meeting at the Veterans Hall, 209 Surf Street, on Monday, December 6th 2010 at 6:00 p.m.

Nancy Johnson, Chairperson

ATTEST:

Rob Livick, Secretary

AGENDA ITEM: _____ VIII-A

DATE: _____ December 20, 2010 _____

ACTION: _____

CITY OF MORRO BAY
PLANNING COMMISSION
SYNOPSIS MINUTES

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

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

209 Surf Street, Morro Bay
December 6, 2010

Chairperson Nancy Johnson

Vice-Chairperson Gerald Luhr
Commissioner Jamie Irons

Commissioner Michael Lucas
Commissioner John Diodati

Rob Livick, Secretary

I. CALL MEETING TO ORDER

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

II. PLEDGE OF ALLEGIANCE

Kathleen Wold led the pledge.

III. ROLL CALL

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

Staff Present: Rob Livick and Kathleen Wold

IV. ACCEPTANCE OF AGENDA

Diodati moved to accept the Agenda and Lucas seconded the motion. The motion passed unanimously. (4-0).

V. DIRECTOR'S REPORT/WRITTEN COMMUNICATIONS

Livick briefed the Commission on the status of the following:

- Completion of the North Main project,
- Items scheduled for the December 8, 2010 City Council meeting which includes the swearing in of the new Council and;
- Items scheduled for the December 13, 2010 City Council meeting.

Luhr asked if the Commission should agendaize to select a new chairperson of the Planning Commission. Livick agreed, noting that by the next meeting, the City Council would have accepted Chairperson Johnson's resignation.

VI. PUBLIC COMMENT - None.

VII. CONSENT CALENDAR

- A. Approval of minutes from hearing held on November 1, 2010

Irons asked to amend the minutes on page 3 by reviewing the audiotape to include a bullet statement that summarizes the alternative plan for the high school as he discussed it at the meeting in order to clarify his reasons for his dissenting vote.

Luhr asked to correct the minutes on page 4 regarding the condition that reads, "Approval of tree trimming shall not be reasonably denied if the economic and production information is supportive of an incomplete economic return. He suggested the the word "incomplete" be changed to "insufficient". Wold clarified the tape was reviewed by staff and the word "incomplete" was used. Diodati as the speaker in the minutes stated he preferred to keep the sentence as proposed. Luhr agreed.

Commissioners and staff agreed the minutes would be brought back for approval as amended to the next Planning Commission meeting.

VIII. PRESENTATIONS – None

IX. FUTURE AGENDA ITEMS

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

Commissioners reviewed future agenda items and agreed to add the nomination and selection of a Chair and Vice-Chair for the December 20, 2010 Planning Commission meeting.

X. PUBLIC HEARINGS

- A. **Site Location:** Main Street between Harbor and Pacific, Morro Bay Farmers Market

Applicant: Chamber of Commerce

Agent: Don Doubledee

Request: The applicant requests approval of Use Permit #UP0-298, this request includes the closure of Main Street between Harbor and Pacific every Saturday from 2 p.m. through 7 p.m. for a Farmers Market consisting of approximately 50 vendors.

Recommended CEQA Determination: Categorically Exempt, Class 11, Section 15311.

Staff Recommendation: Review and take action on the Conditional Use Permit #UP0-298.

Staff Contact: Sierra Davis, Assistant Planner, 805-772-6270.

Wold presented the staff report noting that although the staff report indicates a continuance will be requested, staff has received an email request from the new CEO of the Chamber of Commerce requesting the item be tabled instead and not continued to a date certain. Therefore, staff recommends the Commission table this item until the Applicant is ready.

Luhr opened the Public Hearing:

- Stuart McElhinney, president of the Morro Bay Chamber of Commerce asked if there is a difference in processing time whether the item is tabled or continued. Wold said there is no difference in time, but staff typically always re-notices the project.

Hearing no further comment, Luhr closed the Public Hearing.

Commissioners asked staff to clarify:

- Whether there is a cost difference for the City between whether this item is tabled or continued. Wold clarified any additional cost would be the publishing of noticing in the newspaper. It is preferable to continue the item indefinitely in order to be certain of the applicant's readiness.

Commissioners agreed to continue the item.

MOTION: Lucas moved the Planning Commission continue the item indefinitely. Irons seconded the motion.

The motion carried unanimously (4-0).

B. **Site Location:** 801 Embarcadero, lease sites 87-89/87W-89W and a portion of Morro Bay Boulevard Street

Applicant: Burt Caldwell & Doug Redican

Request: The concept plan for the project #UP0-212 was approved September 26, 2008 by the Planning Commission. The project was then submitted to the California Coastal Commission for Coastal Development Permit #3-08-052 and approved on November 20, 2009. Due to circumstances out of the applicant's control it is necessary for the applicant to request a time extension of one calendar year to allow additional time for submittal of the precise plan pursuant to Municipal Code section 17.40.0303.

CEQA Determination: Mitigated Negative Declaration was filed for the project and was approved by the State Clearinghouse # 2008071074.

Staff Recommendation: Consider request and take action on project #UP0-212.

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

Wold presented the staff report.

Commissioners discussed with staff:

- Whether the extension request affects conditions or negotiations on the lease. Wold clarified this does not affect the lease, but that a lease needs to be completed prior to submitting for precise plan. The Coastal Commission has made significant revisions to the project and the Applicant is working to incorporate that into their project. In addition, the Applicant is demonstrating good faith in moving forward with the project so there is no valid reason to deny his request. The request does not change any rights or negotiating capability.
- Whether there are any requirements of the Municipal Code that require a finding to be made. Wold said there are no specific findings. The original findings for the use permit are still in force and the extension request was submitted prior to the expiration date which is the requirement.
- Whether this requires the project to come back for a re-review of the concept plan since there are major changes. Wold stated the proposal is unknown until the applicant submits it and therefore staff cannot determine if it meets substantial conformity until then.

Luhr opened the Public Hearing:

- John Barta, resident of Morro Bay, spoke against the request for an extension. Mr. Barta encouraged the Commission to grant a shorter extension of the permit due to the changed nature of the project. He questioned whether to have valuable waterfront property tied up if the project might not happen.
- Stuart McElhinney, spoke as a representative for Applicant Burt Caldwell. He stated the extension request is for one year, but they do not know how long the precise plan approval will take and they are diligently moving forward, with no intentions of delaying the project.

Commissioners had discussion with the Applicant's Representative on the following:

- Coastal Commission's suggestion to reduce the footprint. McElhinney responded that the Coastal Commission suggested a reduced footprint which the Applicant did reduce the project

from 2 stories to 1 story and eliminated retail on the first story. The conference area is still the same size.

- Parking and whether there will be sufficient parking for both persons staying at local hotels or those persons driving from local communities.
- Retail spaces on ground floor, how to maintain a lively streetscape interface down the Embarcadero with the changed plans to eliminate the retail on the first story. McElhinney clarified that although reduced, there will still be retail footage on the street side of the building along the Embarcadero.
- Whether the changes to the plan constitute a major change to the concept plan and whether the concept plan will be brought back to the Planning Commission. McElhinney disagreed that this changes the concept plan, noting the primary usage is still the conference center and the restaurant is part of the original plan.

Livick clarified the public hearing noticed for tonight limits the Commission to only discuss the Applicant's request for an extension, not the merits of the project itself.

Luhr closed the Public Hearing.

Lucas and Irons discussed the time extension request with the understanding that granting the request does not give the Applicant any special privileges or change rights to the site and spoke in favor of granting the one year extension.

MOTION: Irons moved the Planning Commission approve the request for extension for the Applicant for precise plan project #UPO-212. Lucas seconded the motion.

Lucas asked staff to clarify if they feel the concept has substantially changed, would they have to come back for a concept plan and then a specific plan within the year.

Wold responded that if the project changed, staff would bring it back to the Planning Commission for approval if staff determined that it was not in substantial conformance and also clarified that staff cannot make a determination regarding substantial conformity until they receive the precise plan submittal. At that time, staff will do a review and analysis with a determination that it is or is not in conformance. If it is not in conformance, then the Applicant would be required to submit a concept plan amendment.

Irons requested to re-state his motion in order to be clearer. Lucas agreed.

MOTION: Irons moved the Planning Commission approve an extension allowing an additional 1 year time frame to submit for a precise plan for Use Permit #UPO-212. Lucas seconded the motion.

The motion carried unanimously (4-0).

XI. OLD BUSINESS

A. Current Planning Processing List/Advanced Work Program

Commissioners reviewed with staff the Work Program and asked when the Planning Commission will receive the Environmental Impact Report (EIR) comments. Livick responded that staff is working with the environmental consultant to release them as soon as possible.

XII. NEW BUSINESS – None.

XIII. ADJOURNMENT

Luhr adjourned the meeting at 6:50 p.m. to the next regularly scheduled Planning Commission meeting at the Veterans Hall, 209 Surf Street, on Monday, December 20th 2010 at 6:00 p.m.

Gerald Luhr, Vice-Chairperson

ATTEST:

Rob Livick, Secretary



CITY OF MORRO BAY PLANNING COMMISSION

AGENDA ITEM: X-A
ACTION: _____

December 20, 2010

FILE NUMBERS/ADDRESS

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

LEGAL DESCRIPTION (S)

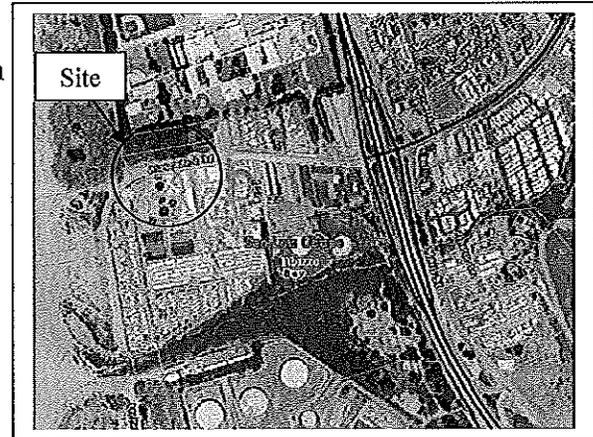
Being a portion of Block 28 of the Atascadero Beach Subdivision in the City of Morro Bay, County of San Luis Obispo State of California, According to a Map Filed in Book 2 at Page 15 of Maps, on July 2, 1917 in the Office of the County Recorder

APN/ADDRESS

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

APPLICANT

City of Morro Bay/Cayucos Sanitary District



Vicinity Map

ATTACHMENTS

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

STAFF RECOMMENDATION

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

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

PROJECT SUMMARY

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

PROJECT OBJECTIVES

The objectives of the proposed project are as follows:

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

ENVIRONMENTAL DETERMINATION

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

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

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

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

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

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

Significant and Unavoidable: mitigation might be recommended but impacts are still significant;

Less than Significant with Mitigation: potentially significant impact but mitigated to a less-than-significant level;

Less than Significant: mitigation is not required under CEQA but may be recommended; or

No Impact.

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

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

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

A) Approved

B) Denied

C) Whether or not alternatives or mitigation conditions should be required to mitigate adverse environmental effects.

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

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

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

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

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

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

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

BACKGROUND

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

COASTAL ACT REGULATIONS REGARDING THE REVIEW OF WASTE WATER TREATMENT FACILITIES

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

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

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

CONSISTENCY WITH THE LOCAL COASTAL PROGRAM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SITE CHARACTERISTICS

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

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

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

PLANNED DEVELOPMENT (PD)

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

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

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

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

PROJECT FEATURES

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

Design of the Buildings:

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

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

Landscaping:

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

Parking Spaces & Onsite Circulation:

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

Public Improvements:

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

Sustainable features:

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

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

Design Standards for the M-1 district

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

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

PUBLIC NOTICE

Notice of this item was posted at the site and published in the San Luis Obispo Telegram-Tribune newspaper on December 10, 2010, and all property owners of record within 300 feet of the subject site and occupants within 100 feet of the subject site were notified of this evening's public hearing and invited to voice any concerns on this application.

CONCLUSION

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

Report prepared by: Kathleen Wold, Planning Manager

RESOLUTION NO. 01-10

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

THE PLANNING COMMISSION
City of Morro Bay, California

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

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

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

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

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

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

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

, Chairperson

Rob Livick, Planning Commission Secretary

EXHIBIT A:
FINDINGS

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

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

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

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

Conditional Use & Coastal Development Permit Findings

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

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

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

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

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

EXHIBIT B
CONDITIONS OF APPROVAL

STANDARD CONDITIONS

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

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

1. Precise Plan Submittal: A Precise Plan must be submitted to the Planning Commission within one year from the date of City Council approval or approval of the State Coastal Commission where said plan requires their approval. Without further action, concept plans shall automatically become null and void after one year has elapsed.
2. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Director of Public Services. Any changes to this approved permit determined not to be minor by the Director shall require the filing of an application for a permit amendment subject to Planning Commission review.
3. Compliance with the Law: (a) All requirements of any law, ordinance or regulation of the State of California, City of Morro Bay, and any other governmental entity shall be complied with in the exercise of this approval (b) This project shall meet all applicable requirements under the Morro Bay Municipal Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use Plan and General Plan for the City of Morro Bay.
4. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicants failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.
5. Compliance with Conditions: The applicant's establishment of the use and/or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed here on shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Director of Public Services and/or as authorized by the Planning Commission. Failure to comply with these conditions shall render this entitlement, at the discretion of the Director, null and void.

Continuation of the use without a valid entitlement will constitute a violation of the Morro Bay Municipal Code and is a misdemeanor.

6. Acceptance of Conditions: Prior to obtaining a building permit the applicant shall file with the Director of Public Services written acceptance of the conditions stated herein.
7. State and County Compliance: Prior to the any final issued for the project the applicant shall demonstrate compliance with all State and County regulations and provide documentation to the Public Services Department.
8. Construction Hours: Pursuant to MBMC Section 9.28.030 (I), noise-generating construction related activities shall be limited to the hours of seven a.m. to seven p.m. on weekdays and eight a.m. to seven p.m. on weekends, unless an exception is granted by the Director of Public Services pursuant to the terms of this regulation.
9. Dust Control: Prior to issuance of a grading permit, a method of control to prevent dust, construction debris, and windblown earth problems shall be submitted to and approved by the Building Official to ensure conformance with the performance standards included in MBMC Section 17.52.070.
10. Screening of Equipment/Utility Meters/Fencing: All roof-mounted air conditioning, or heating equipment, vents, ducts and/or utility meters shall be screened from view from adjoining public streets in a manner approved by the Director of Planning and Building. Prior to building permit issuance, the approved method of screening shall be shown on the project plans.
11. Timing of Landscaping: Prior to issuance of a final Certificate of Occupancy, all required plantings, groundcover and irrigation systems shall be in place to the satisfaction of the Director of Planning & Building. The landscape consultant shall provide a watering schedule and certify that all plantings and irrigation systems have been installed pursuant to the approved plans prior to issuance of the final Certificate of Occupancy.
12. Maintenance of Landscaping: All required plant materials shall be maintained in accordance with the watering schedule as specified in the approved landscape plan notes. All landscaping shall be cared for, maintained, watered, fertilized, fumigated, pruned and kept in a healthy growing condition for the life of the project. Where required plant(s) have not survived, it shall be promptly replaced with new plant materials of similar species, functional, size, and characteristics as specified in the approved landscape plant notes.
13. Archaeology: In the event of the unforeseen encounter of subsurface materials suspected to be of an archaeological or paleontological nature, all grading or excavation shall immediately cease in the immediate area, and the find should be left untouched until a qualified professional archaeologist or paleontologist, whichever is appropriate, is contacted and called in to evaluate and make recommendations as to disposition, mitigation and/or salvage. The developer shall be liable for costs associated with the professional investigation and implementation of any protective measures as determined by the Director of Planning & Building.

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

PLANNING CONDITIONS

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

BUILDING CONDITIONS

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

ENVIRONMENTAL CONDITIONS

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

FIRE CONDITIONS

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

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

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

PUBLIC WORKS

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

Volumetric Treatment Control BMP

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

Flow Based Treatment Control BMP

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

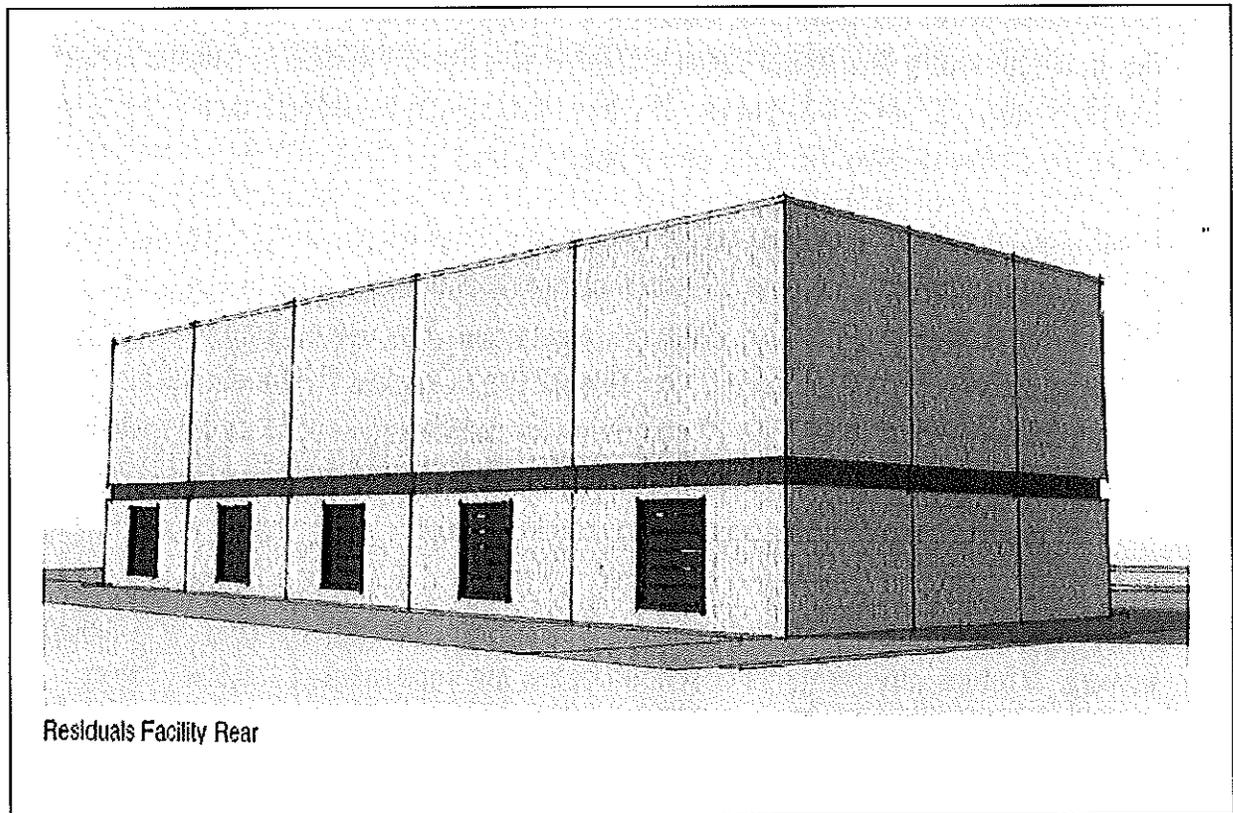
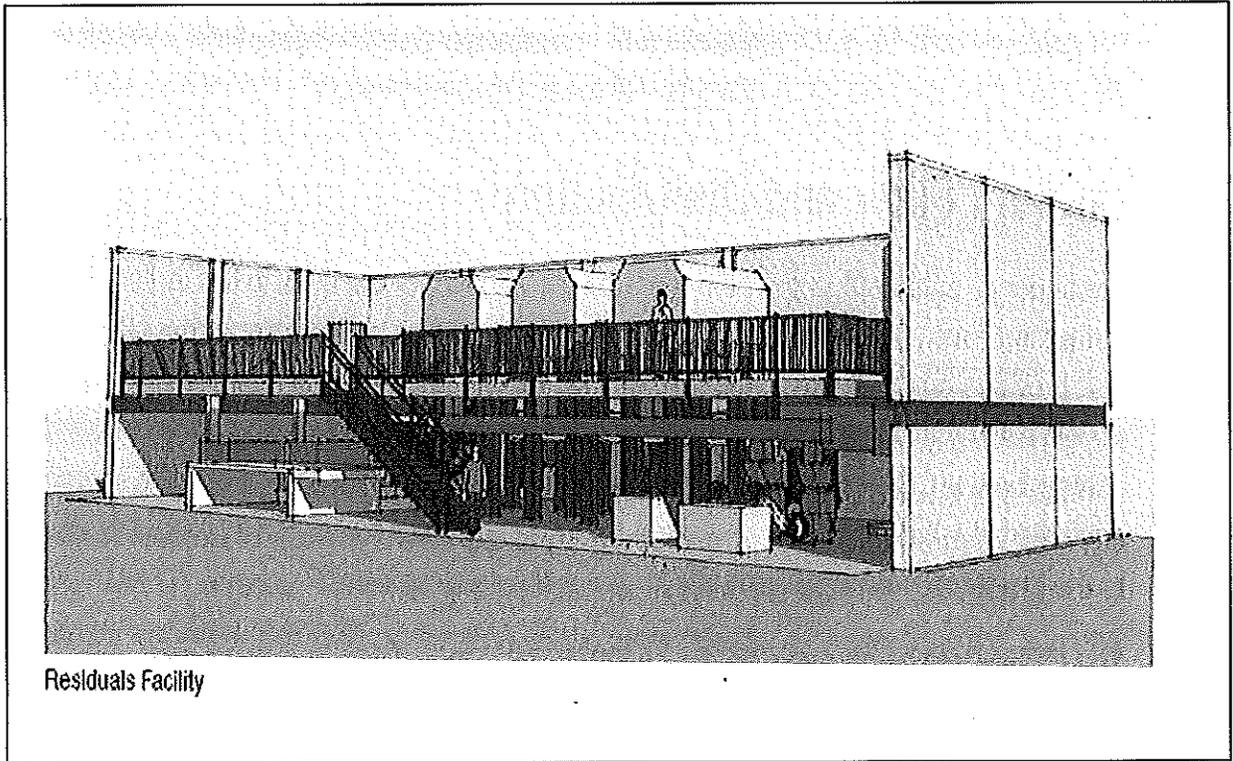
5. Driveway Approach: The commercial driveway approach shall have a minimum pan width between 24 and 35 feet. The driveway approach near the curve in Atascadero Rd shall meet the minimum sight distance. The minimum distance from the top of the approach to the BCR of the curve shall be the curb return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

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

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

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

EXHIBIT C



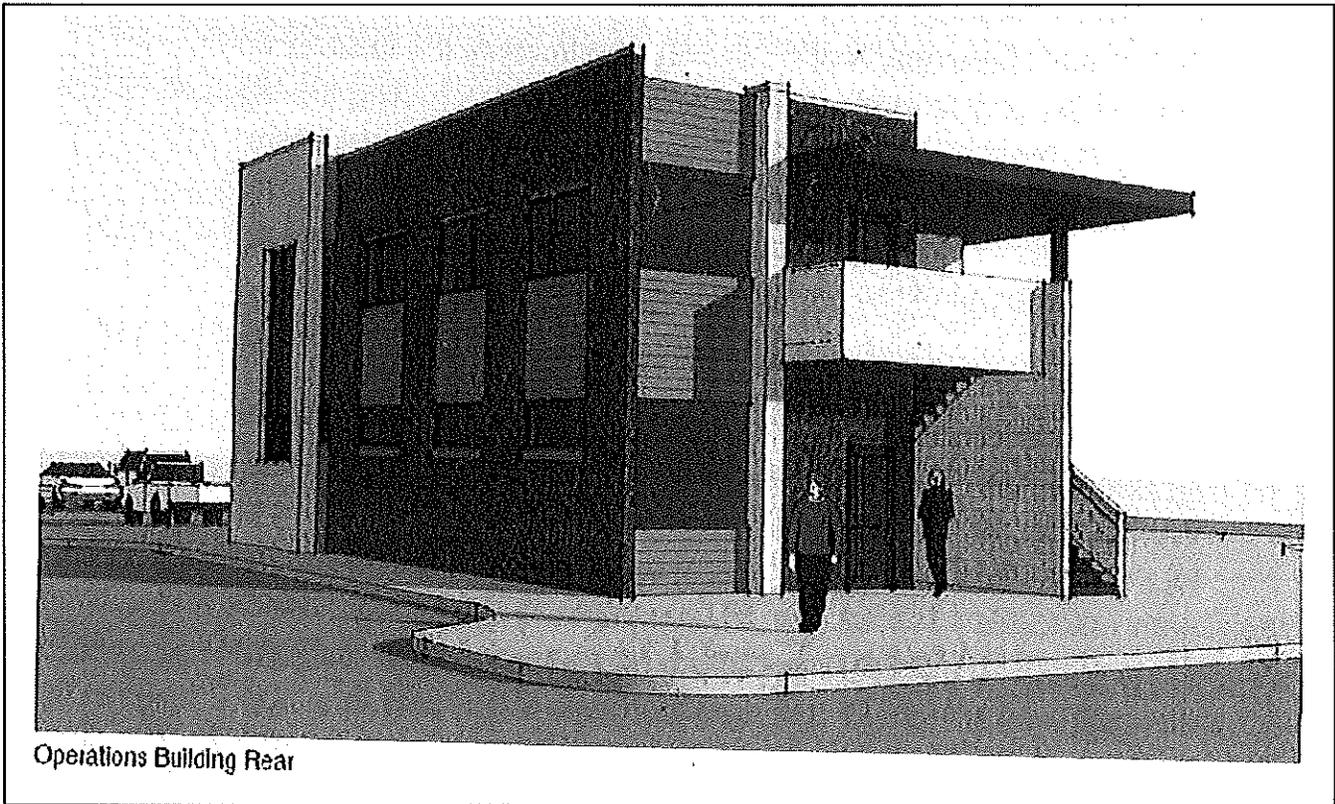
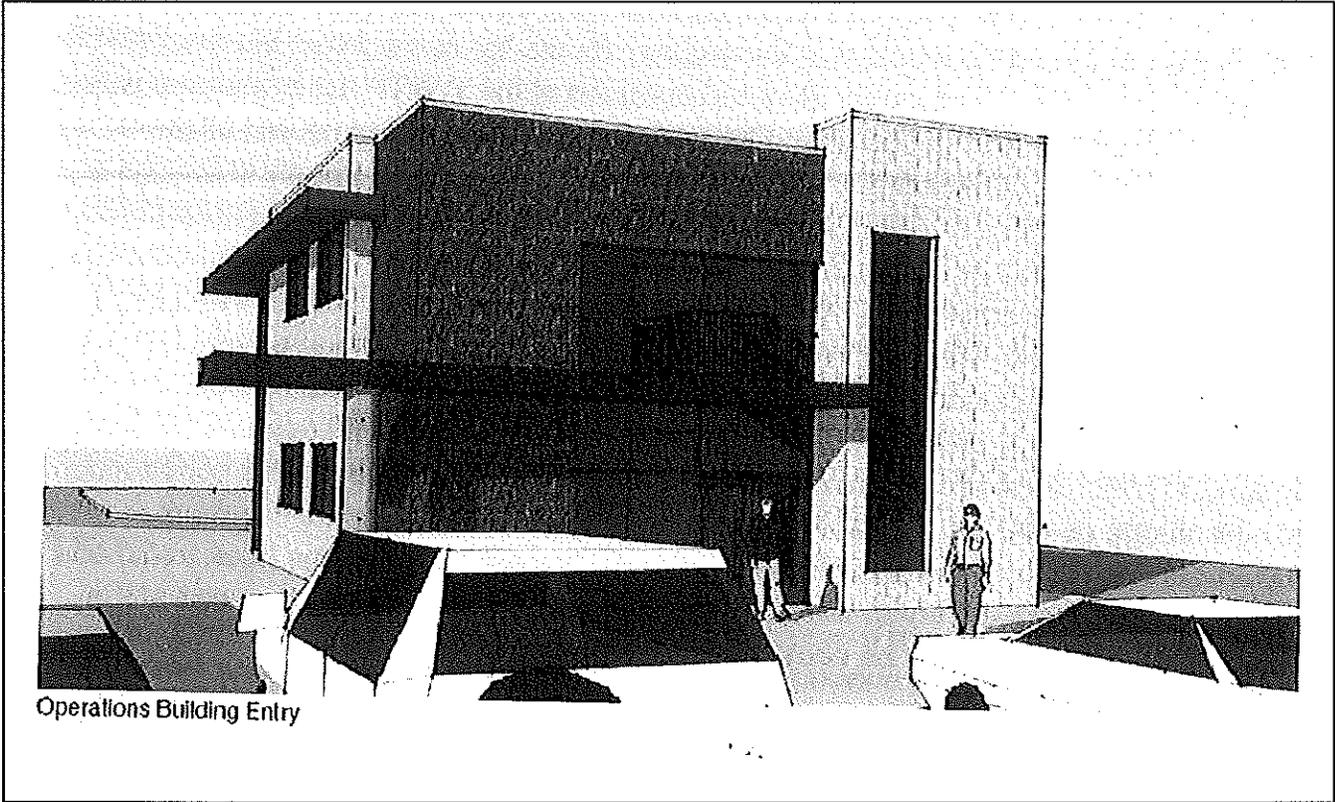
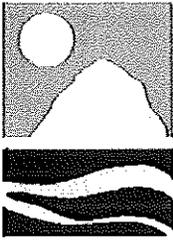


EXHIBIT D



City of Morro Bay

Morro Bay, CA 93442

(805) 772-6200

Chronology of Major Milestones in WWTP Upgrade Project

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

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

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

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

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

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

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

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

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

FINANCE
595 Harbor Street

ADMINISTRATION
595 Harbor Street

FIRE DEPT.
715 Harbor Street

PUBLIC SERVICES
955 Shasta Avenue

HARBOR DEPT.
1275 Embarcadero Road

CITY ATTORNEY
595 Harbor Street

POLICE DEPT.
850 Morro Bay Boulevard

RECREATION & PARKS
1001 Kennedy Way

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recitals

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

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

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

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

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

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

Agreement

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

A. DEFINITIONS

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

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

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

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

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

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

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

B. TERMS.

1. Conversion Schedule

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

CONVERSION SCHEDULE

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

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

Task	Date of Completion ¹
Requirements	

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

a. First Permit Cycle – Waiver Permit.

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

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

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

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

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

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

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

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

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

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

d. Water Board Discretion.

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

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

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

C. REQUIRED ACTIONS DURING CONVERSION PERIOD.

1. Force Majeure

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

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

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

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

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

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

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

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

E. ENFORCEMENT

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

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

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

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

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

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

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

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

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

F. MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

If to the Discharger:

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

If to the Water Board:

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

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

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

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

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

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

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

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

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

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

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

CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, CENTRAL
COAST REGION

Dated: _____, 2005

By: _____
Roger W. Briggs, Executive Officer

CITY OF MORRO BAY

Dated: _____, 2005

By: _____
Mayor, Janice Peters

CAYUCOS SANITARY DISTRICT

Dated: _____, 2005

By: _____
President, Robert Enns

APPROVED AS TO FORM

Dated: _____, 2005

By: _____
Lori T. Okun
Senior Staff Counsel

Dated: _____, 2005

By: _____
Rob Schultz, Morro Bay City Attorney

Dated: _____, 2005

By: _____
Timothy J. Carmel
Cayucos Sanitary District Counsel

Exhibit E

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

Draft EIR

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

Final EIR

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

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

EXHIBIT G

CAYUCOS SANITARY DISTRICT

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

GOVERNING BOARD

R. Enns, President
R.H. Bud McHale, Vice-President
H. Fones, Director
S. Lyon, Director
M. Foster, Director

December 14, 2010

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

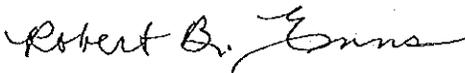
Honorable Commissioners

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

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

Thank you for your thoughtful consideration.

Sincerely,



Robert B. Enns, President
Cayucos Sanitary District



City of Morro Bay Public Services Current Project Tracking Sheet

Agenda Item _____
Date: _____
Action: _____

New items or items which have been recently updated are italicized. Approved projects are deleted on next version of log.

#	Applicant/Property Owner	Project Address	Date	Permit Numbers	Project Description/Status	Project Planner
Hearing or Action Ready						
1	City of Morro Bay & Cayucos	160 Atascadero	7/1/08	EIR	WWTP Upgrade. Submitted 7/1/08, Preparing Notice of Preparation, Staff reviewing Ad Min Draft EIR. Modifications to project description underway and subsequent renoticing. Staff reviewing screencheck document. Public draft out for review and comments. Comment period open until 11/4/2010. Project scheduled for 12-6-2010 P.C. Project rescheduled for 12/20/2010.	RL
30 -Day Review, Incomplete or Additional Submittal Review						
2	<i>James Maul</i>	<i>530, 532, Morro Ave 534</i>	<i>3/12/10</i>	<i>SP0-323 & UP0-282</i>	<i>Parcel Map. CDP & CUP for 3 townhomes. Incomplete letter sent 4/20/10. Met with applicant 5/25/10. Resubmittal 11/8/10.</i>	<i>KW</i>
3	Walter & Karen Roza	595 Driftwood	3/30/10	UP0-285 S00-103 CP0-325	Coastal Development Permit, Use Permit, Parcel Map Demo Reconstruct SFR & 2nd Unit. VPM, CUP & CDP. Pending resubmittal. Revised plans submitted on 9/1/10. Staff working on project environmental.	KW
4	Morro Bay Chamber	Main between Pacific and Harbor	8/9/10	UP0-298	Use Permit to establish the Farmer's Market on Main Street between Harbor and Pacific Streets. The market will be conducted every Saturday between 2 p.m. and 7 p.m. With a maximum of 50 vendors. Continued to 1/3/10 PC Meeting. Applicant has continued project to date uncertain.	SD
5	Frantz	499 Nevis	9/27/10	CP0-337	New SFR. Incomplete Letter 10/7/10. Meeting with applicant's representative on 11/16/2010.	SD
6	<i>Daniels</i>	<i>606 Agave</i>	<i>10/13/10</i>	<i>CP0-338</i>	<i>New SFR. Incomplete Letter 11/16/10. Incomplete. Resubmittal 11/24/10</i>	<i>SD</i>
7	<i>Taurus Sulaitis</i>	<i>540 Fresno</i>	<i>11/15/10</i>	<i>UP0-306</i>	<i>SFR Addition. Incomplete letter 7/13/10. Resubmittal 11/15/10.</i>	<i>SD</i>
8	<i>Heller</i>	<i>271 Palm</i>	<i>11/24/10</i>	<i>AD0-058</i>	<i>Parking Exception.</i>	<i>SD</i>
9	<i>Rodgers</i>	<i>941 Marina</i>	<i>12/1/10</i>	<i>AD0-059</i>	<i>Parking Exception and Addition to NC Structure.</i>	<i>SD</i>

#	Applicant/Property Owner	Project Address	Date	Permit Numbers	Project Description/Status	Project Planner
Projects in Process						
10	Rudolph Kubes	1181 Main & Bonita	11/23/06	UP0-086 & CP0-130	Morro Mist 20 Lot SFR Subdivision. Submitted 11/23/06, SRB 3/15/06, Staff requested information Resubmitted 8/16/06 MND analysis needed MIND Complete 7/20 PC 8/20/07 Continued date uncertain revised project smaller units still 100% residential. Applicant has redesigned project and resubmitted on June 1, 2009. Project under review. Letter sent to applicant regarding issues on 7/2009. Subsequent meeting with applicant team 8/2009. Staff has had additional correspondence with the applicant. Project tentatively scheduled for Planning Commission late February/early March 2010. Applicant considering redesign of project. Change in agent. Project resubmitted on June 29, 2010, project routine to various divisions for comments and conditions. Resubmittal 7/6/10. Initial Study needs to be revised to reflect new project submitted. Revised Initial Study pending submittal of new Geotechnical study by applicant. New I.S./MND routed for review and review period completed as of November 29, 2010.	KW
11	Burt Caldwell, (Embarcadero 801 LLC)	801 Embarcadero	5/15/08	UP0-212	Conference Center. Submitted 5/15/08, Inc Ltr 5/23 Resubmitted MND Circulating 7/15/08 PC 9/2 Approved, CC 9/22/08 Approved, CDP granted by CCC. Waiting for Precise Plan submittal. Applicant has submitted a request for a time extension on November 4, 2010. Extension granted, now expires 12/11/11.	KW
12	Dan Reddell	1 Jordan Terrance	7/25/08	UP0-223 & CP0-285	New SFR. Submitted 7/25/08, Inc. Later 8/19/08; resubmitted 2/24/09, project under review. Letter sent to agent regarding issues. Applicant and staff met 1/20/10 on site to further discuss issues. Resubmittal 2/16/10. Administrative Draft Initial Study complete. Comment review period ends 6/22/10. Comments recieved on MND.	JH/KW
13	California State Park	201 State Park Drive	2/11/09	CP0-303 & UP0-254	Solar Panels at the State Park with the addition of one carport structure for support of the panels. Coastal Development Permit and Conditional Use Permit. Comments sent 3/23/10.	SD/KW
14	Tank Farm	1290 Embarcadero	2/27/10	N/A	Tank Demo. Demo of seven tanks at the Morro Bay Power Plant. Materials submitted and under review. All materials submitted to date have been reviewed and sent back to the applicant. Applicant indicated to staff that the project is on hold until better weather in 2011.	SD
15	City of Morro Bay	Citywide	5/1/10	AD0-047	Text Amendment modifying Section 17.68 "Signs". Planning Commission placed the ordinance on hold pending additional work on definitions and temporary signs.-5/17/2010	KW
Environmental Review						

#	Applicant/Property Owner	Project Address	Date	Permit Numbers	Project Description/Status	Project Planner
16	Larry Newland	Embarcadero	11/21/05	UP0-092 & CP0-139	Embarcadero-Maritime Museum (Larry Newland) . Submitted 11/21/05, Incomplete 12/15/05 Resubmitted 10/5/06, tentative CC for landowner consent 1/22/07 Landowner consent granted. Incomplete 3/7/07. Resubmitted 5/25/07 Incomplete Letter sent 6/27/07 Met to discuss status 10/4/07 Incomplete 2/4/08. Met with applicants on 3/3/09 regarding inc. later. Applicant resubmitted additional material on 9/30/2009. Met with applicants on 2/19/2010. Environmental documents being prepared. Applicant working with City Staff regarding an lease for the subject site.	KW
17	Chevron	3072 Main	12/31/08	CP0-301	Remove Underground Pipes . Submitted 12/31/08, environmental reports submitted for review 5/8/09. Project under review. Project routed to other agencies for comment. Environmental being processed. Requested additional documentation 4/29/10.	SD
18	Giovanni DeGarimore	1001 Front	3/22/10	UP0-284	Floating Dock . CUP to reconfigure existing side tie floating dock to include 4 new finger floating docks, 50 ft. x 4 ft. Incomplete letter sent 4/26/10. Resubmittal 6/10/10. Resubmittal 6/29/10. Incomplete Letter 7/29/10. Resubmittal 7/30/10. Incomplete Letter and Request for Addition funds 8/24/10. Staff is currently working on environmental documents.	SD
Coordinating with Other Jurisdictions						
19	City of Morro Bay	887 Atascadero	3/9/09	N/A	Nutmeg Water Tank Upgrade (City of Morro Bay CIP project) . Oversight of County of San Luis Obispo application process. Preapplication meeting 3/9/09. Consultant coordination meeting 3/12/09.	KW
20	John King	60 Lower State Park	7/2/08		Lower parking lot resurface and construction of 2 new stairways . Submitted 7/02/08, PC Tent 10/6, PC Date TBD Applicant coordinating w/ CCC 10/20/08.	KW
Projects Continued Indefinitely or No Response to Date on Incomplete Letter						
21	SLO County	60 Lower State Park	09/28/04	CP0-063	Master Plan for Golf Course . Submitted 9/28/04, On hold per applicant, project to be amended. Resubmitted 2/9/07 Tentative PC 3/19/07 Continued, date uncertain; Planting trees.	KW
22	Cameron Financial	399 Quintana	04/11/07	CP0-233	New Commercial Building . Submitted 4/11/07, Inc. Letter 5/09/07. Sent letter 1/25/2010 to applicant requesting direction, letter returned not deliverable	KW
23	West Millennium Homes	895 Monterey	7/10/07	CUP-151 S00-067 & CP0-215	Mixed-use building . 16 residential units and 3 commercial units, Submitted 7/10/07, Inc Later 7/25 Resubmitted 1/14/08 SRB 3/10/08.	KW
24	Kenneth & Lisa Blackwell	2740 Dogwood	07/20/07	UP0-178	Addition to nonconforming residence . Submitted 7/20/07, Complete, tentative PC 9/17/07 Continued, date uncertain Resubmitted 10/31/07, PC 12/17/07 Continued, date uncertain.	KW
25	Jeff Gregory	1295 Morro	09/25/07	CP0-254	Coastal Development Permit to allow a second single family residence on lot with an existing home . Incomplete letter sent 10/9/2007. Intent to Deem Application Withdrawn Letter sent 12/29/09. Response from applicant 1/8/10 keep file open indefinitely.	KW

#	Applicant/Property Owner	Project Address	Date	Permit Numbers	Project Description/Status	Project Planner
26	Nicki Fazio	360 Cerrito	08/15/07	CP0-246	Appeal of Demo/Rebuild SFR and 2 trees removal. Continued to a date uncertain.	KW
27	Cathy Novak	263 Main Street	09/12/07	CP0-258/S00-078	Lot line Adjustment. Application has had no activity from the applicant since 2007. A Parcel Map was finalized for the property.	SD
28	Ron McIntosh	190 Olive	8/26/08	UP0-232 &CP0-288	New SFR. Submitted 8/26/08, Inc. Letter 9/24/08; Resubmitted 12/10/08, 1/9/09 request for more information. Applicant resubmitted on 2/06/09. Environmental under review. Applicant and City agree to continuance. Applicant put project on hold.	SD
29	Pina Noran	2176 Main	10/3/08	CUP-35-99 & CDP-66-99R	Convert commercial space to residential use. Submitted 10/03/08, Inc. Later 10/22/08, resubmitted 2/5/09. Project still missing vital information for processing 11/30/09. Called applicant 3/22/10 and requested information. Applicant is considering a redesign of the project.	KW
30	Candy Botich	206 MainWater Lease Site 34 Main & Oak St.	6/17/09	CP0-310	New Parking. Project under review. Agent given DRT comments July 10, 2009. Applicant submitted redesigned project 9/30/2009. Associated application submitted for a parking exception for the lease site generating the parking demand.	KW
31	Bob Crizer	206 Main Street, water lease site 34	11/9/09	AD0-047	Oak Street Parking Exception. Also see 206 Main Street (Botich). Request to allow parking spaces to be placed on Oak Street to replace parking currently provided at 206 Main Street. Waiting for parties to resolve issue of ownership.	KW
32	Debbie Dover	500 Quintana	4/21/10	UP0-289	UP0-289, Use Permit Outdoor Fitness Classes. Incomplete letter sent 5/11/10. Applicant resubmitted 5/14/2010. Spoke to Ginger 6/3/10 discussed project. Comment letter 6/3/10. Project Noticed for Admin Action 6/16/10. Waiting on addition information.	SD
33	Hamrick Associates	1129 Market	6/10/10	UP0-291	Remodel and Addition. Incomplete letter 6/23/10. Submitted additional information 6/30/10. Submitted additional information 7/7/10. Building Comments. 7/9/10. Met with agent 7/15/10. Applicant will resubmit addressing fire/building comments.	SD
34	Dan Reddell	550 Morro Bay Blvd	6/14/10	UP0-293	Farmer's Market. Conditional Use Permit for vendors and events. Resubmittal 6/17/10. Scheduled for 9/20/10 PC Mtg. Met with agent 8/24/10 and discussed feasibility of project, needs to be revised.	SD
Projects in Building Plan Check						
35	John & Alair Hough	285 Main	2/16/10	Building	SFR Addition. Second unit over detached garage. Comments sent 3/19/10. Resubmittal 6/10/10. Comments sent 6/16/10. Resubmittal 9/8/10. Project plans not consistent with approved planning plans. Incomplete memo 11/8/10. Resubmittal 12/8/10.	SD
36	Lou McGonagill	690 Olive	6/7/10	Building	SFR Addition. 1,000 sf. addition with garage. Incomplete letter 6/28/10. Resubmittal 9/29/10. Incomplete Memo 11/16/10.	SD
37	Taurus Sulaitis	540 Fresno	6/23/10	Building	SFR Addition. Incomplete letter 7/13/10. Resubmittal 11/15/10.	SD
38	Frantz	499 Nevis	9/27/10	Building	New SFR. Incomplete Letter 10/7/10.	SD
39	Luce	2431 Reno	9/28/10	Building	Single Family Addition. Incomplete memo 11/8/10. Resubmittal 12/9/10.	SD
40	Camee	977 Las Tunas	10/11/10	Building	Tenant Improvements	KW

#	Applicant/Property Owner	Project Address	Date	Permit Numbers	Project Description/Status	Project Planner
41	Daniels	606 Agave	10/13/10	Building	New SFR. Incomplete Letter 11/16/10.	SD
42	Viole/Held	575 - 591 Embarcadero	11/1/10	Building	New Commercial Building. Incomplete Memo 12/2/10.	SD
43	St. Timothy Church	962 Piney Way	11/23/10	Building	New Commercial Addition.	SD
44	Hall	2234 Emerald Circle	12/2/10	Building	New SFR.	SD
45	Saurwein	2708 Alder	12/8/10	Building	New SFR.	SD
Aging Building Permits - No response from applicant in more than 90 days.						
46	Don Doubledee	360 Morro Bay Blvd	5/15/09	Building	Mixed Use Project - Ciano. Comments sent 2/25/10.	SD
47	Valori	2800 Birch Ave	2/10/10	Building	Remodel/Repair. Sunroom, garage, and study. Comments sent 2/24/10	SD
48	Colhover	2800 Dogwood	3/8/10	Building	New SFR. Comments sent 3/25/10.	SD
49	Ronald Stuard	490 Avalon	4/22/10	Building	SFR Addition. 79 sf. bedroom addition. Comments sent 4/27/10.	SD
50	Joe Silva	570 Avalon	5/12/10	Building	SFR Addition. 84 sf. addition. Comments sent 5/17/10.	SD
51	Pam & Bob Hyland	2754 Indigo Circle	7/22/10	Building	New SFR. CP0299/UP0-248 ISSUANCE BY PC ON MARCH 2, 2009. Incomplete Letter 8/24/10.	SD
52	Mike Wilson	957 Pacific	8/24/10	Building	Demo/Rebuild. Incomplete letter 8/26/10.	SD
Projects & Permits with Final Action						
53	Steve & Tammy Wark	399 Tulare	8/23/10	Building	Demo/Addition. Incomplete letter 9/2/10. Resubmittal 10/4/10. Approved 11/4/10.	SD
54	Putnam	2252 Emerald Circle	10/28/10	Building	Single Family Addition. Express Check. Approved 11/4/10.	SD
55	David Foote	235 Atascadero	12/16/09	CP0-322	CUP and Coastal Development Permit. Solar Arrays. Solar arrays located on carport structures at Morro Bay High School. Incomplete letter sent . 1/15/10. Mtg follow up letter sent 1/29/10. Resubmittal - change in project description 3/16/10. Comments sent 4/16/10. Resubmittal 5/18/2010. Project deemed complete for processing 5/25/2010. Agent indicates that the project has been revised so that no trees will be removed. Resubmittal 6/29/10. School district revised environmental. Project Scheduled for 10/4/10 P.C. Project was heard at the 10/4/10 P.C. but noticing was wrong. The project will be renoticed for 11/1/2010 P.C. meeting	KW
56	Robert and Elizabeth Mastro	582 Zanzibar	6/29/10	CP0-332	New SFR. Incomplete Letter 7/29/10. Resubmittal 9/3/10. Incomplete letter 9/10/10. Applicant resubmitted 10/12/2010. Deemed complete and noticed 10/18. Permit Issued 11/2/10.	SD
57	Dooley	565 Marina	11/4/10	Building	Single Family Addition. Approved 11/8/10.	SD
58	William Fraker	575 Acacia	7/19/10	Building	SFR Alteration. Express Check. Incomplete Letter 8/6/10. Resubmittal 8/24/10. Sent covenant 9/8/10. Covenant given to applicant to record 11/12. Recorded 11/12.	SD
59	Mastro	582 Zanzibar	11/3/10	Building	New SFR. Incomplete items 11/18/10. Resubmittal 11/22/10. Approved 11/29/10.	SD
60	Valley and Crafton	430 Olive	11/23/09	S00-102	Lot Line Adjustment. Incomplete letter sent 12/23/09. Resubmittal 4/16/10. Project does not meet Zoning Standards, letter sent indicating the project is deficient. Applicant resubmitted new plans 9-22-2010. Project approval pending.	KW



City of Morro Bay
Public Services
Advanced Planning Work Program

Work Item	Planning Commission	City Council	Coastal Commission	Comments	Estimated Staff Hours
Neighborhood Compatibility Standards	TBD	TBD			120 to 160
Strategic plan for managing the greening process					200 to 300
	Annual Updates	Annual Updates			
AB811	continuing with updates				120 to 160
Safety Element	Approved	TBD			20 to 40
Draft Urban Forest Management Plan	TBD	TBD			200 to 300
CEQA Implementation Guidelines	TBD	TBD	NA		120 to 160
Update CEQA checklist pursuant to SWMP (2/2011)	TBD	TBD			120 to 160
Downtown Visioning	TBD	TBD			120 to 160
PD Overlay	TBD	TBD			80
Annexation Proceeding for Public Facilities		TBD			TBD
Sign Ordinance Update	Continued to hold workshop		TBD		50 to 100
<i>Planning Commission Generated Items</i>					
Work Item	Requesting Body				Estimated Staff Hours
Pedestrian Plan	Planning Commission				TBD
<i>Items Requiring Further Analysis When Received Back From The Coastal Commission</i>					
Work Item	Plng. Comm.	City Council	Coastal Comm.		Estimated Staff Hours
Updated Zoning Ordinance	TBD	TBD			1,800
Updated General Plan/LCP	TBD	TBD			1,800



Memorandum

TO: PLANNING COMMISSION **DATE:** DECEMBER 20, 2010
FROM: KATHLEEN WOLD, PLANNING MANAGER
SUBJECT: CANCELLATION OF THE JANUARY 3, 2011 PLANNING COMMISSION MEETING

DISCUSSION

Staff is recommending that the January 3, 2011 Planning Commission meeting be cancelled. The cancellation of this meeting will not affect the processing of any planning project currently in the queue. Staff is working on the environmental documents and plan review for several projects, however there are no projects complete to be scheduled for a meeting. Once environmental documents are complete they must be routed to applicable agencies for review and then staff shall address comments. The project plans that are under review are going through both the planning and building review process. In addition, planning staff has been reviewing and responding to EIR comments from agencies and members of the public.

Staff would also like to highlight that the two weeks prior to this meeting are during holiday weeks and the offices will be closed on both Fridays. In addition to the short weeks much of the Public Services Department staff will be out of the office. The short weeks and reduced staffing would not allow adequate time to prepare for a meeting. Due to staff's commitments regarding the above mentioned items staff requests that the January 3, 2011 meeting be cancelled.