City of Morro Bay
City Council Agenda

Mission Statement
The City of Morro Bay is dedicated to the preservation and enhancement of the quality of life. The City shall be committed to this purpose and will provide a level of municipal service and safety consistent with and responsive to the needs of the public.

REGULAR MEETING – JANUARY 11, 2011

CLOSED SESSION – JANUARY 11, 2011
CITY HALL CONFERENCE ROOM - 5:00 P.M.
595 HARBOR ST., MORRO BAY, CA

CS-1 **GOVERNMENT CODE SECTION 54957.6; CONFERENCE WITH LABOR NEGOTIATOR**. Conference with City Manager, the City's Designated Representative, for the purpose of reviewing the City's position regarding the terms and compensation paid to the City Employees and giving instructions to the Designated Representative.

CS-2 **GOVERNMENT CODE SECTION 54956.8; REAL PROPERTY TRANSACTIONS**. Instructing City's real property negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property as to two (2) parcels.

- Property: 610 Embarcadero, Morro Bay, CA
  Negotiating Parties: Stanley Trapp and the City of Morro Bay
  Negotiations: Voluntary Purchase and Sale

- Negotiating Parties: City Tidelands Trust Leaseholders and the City of Morro Bay.
  Negotiations: Lease Terms and Conditions.

IT IS NOTED THAT THE CONTENTS OF CLOSED SESSION MEETINGS ARE CONFIDENTIAL AND EXEMPT FROM DISCLOSURE.

PUBLIC SESSION – JANUARY 11, 2011
VETERANS MEMORIAL HALL - 6:00 P.M.
209 SURF ST., MORRO BAY, CA

ESTABLISH QUORUM AND CALL TO ORDER
MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE
MAYOR AND COUNCILMEMBERS ANNOUNCEMENTS & PRESENTATIONS
CLOSED SESSION REPORT

PUBLIC COMMENT PERIOD - Members of the audience wishing to address the Council on City business matters (other than Public Hearing items under Section B) may do so at this time.

To increase the effectiveness of the Public Comment Period, the following rules shall be followed:

- When recognized by the Mayor, please come forward to the podium and state your name and address for the record. Comments are to be limited to three minutes.
- All remarks shall be addressed to Council, as a whole, and not to any individual member thereof.
- The Council respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, commission and/or staff.
- Please refrain from public displays or outbursts such as unsolicited applause, comments or cheering.
- Any disruptive activities that substantially interfere with the ability of the City Council to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in City Council meetings is welcome and your courtesy will be appreciated.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, (805) 772-6205. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

A. CONSENT CALENDAR

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion.

A-1 APPROVAL OF CITY COUNCIL MINUTES FOR THE SPECIAL MEETING OF DECEMBER 8, 2010 AND THE REGULAR MEETING OF DECEMBER 13, 2010; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 RESOLUTION NO. 01-11 TO REAFFIRM INVESTMENT OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND (LAIF) AND DESIGNATE TRANSACTION OFFICERS; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Adopt Resolution No. 01-11.

A-3 RESOLUTION NO. 02-11 DESIGNATING AND AUTHORIZING INVESTMENT TRANSACTION OFFICERS; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Adopt Resolution No. 02-11.

A-4 RESOLUTION NO. 03-11 ADOPTING THE CITY OF MORRO BAY INVESTMENT POLICY AND DELEGATING AUTHORITY TO THE CITY TREASURER TO INVEST IDLE FUNDS; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Adopt Resolution No. 03-11.

A-5 RESOLUTION NO. 04-11 ESTABLISHING TRANSACTION OFFICERS FOR DOING BUSINESS WITH RABOBANK; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Adopt Resolution No. 04-11.

A-6 RESOLUTION OF INTENTION TO APPROVE AN AMENDMENT TO CONTRACT BETWEEN THE BOARD OF ADMINISTRATION CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE CITY OF MORRO BAY - FIREFIGHTERS; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Adopt Resolution No. 05-11.

A-7 APPROVAL OF A SUBLEASE AGREEMENT BETWEEN M&M REFRIGERATION AND MORRO BAY OYSTER COMPANY FOR A PORTION OF LEASE SITE 144/144W LOCATED AT 1287 EMBARCADERO; (HARBOR)

RECOMMENDATION: Adopt Resolution No. 06-11.

A-8 APPROVAL OF MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND THE CENTRAL COAST MARITIME MUSEUM ASSOCIATION FOR THE DESIGN AND PERMITTING PROCESS FOR A MARITIME MUSEUM IN THE FRONT STREET PARKING LOT; (PUBLIC SERVICES)

RECOMMENDATION: Approve the Memorandum of Understanding between the City and the Central Coast Maritime Museum Association for the Design and Permitting Process of a Maritime Museum in the Front Street Parking Lot.

B. PUBLIC HEARINGS, REPORTS & APPEARANCES

B-1 APPEAL OF THE PLANNING COMMISSION'S DECISION TO APPROVE COASTAL DEVELOPMENT PERMIT CP0-322 TO ALLOW THE INSTALLATION OF 9 SOLAR ARRAYS WITH THE ASSOCIATED STRUCTURES AND MECHANICAL EQUIPMENT. THE PROJECT AS PROPOSED ALSO INCLUDES THE TRIMMING OF MAJOR VEGETATION; (PUBLIC SERVICES)

RECOMMENDATION: Deny the appeal and uphold the Planning Commission's conditional approval of Coastal Development Permit CP0-322.

B-2 APPEAL OF THE PLANNING COMMISSION'S DECISION TO DENY CERTIFICATION OF THE MORRO BAY CAYUCOS SANITARY DISTRICT WASTEWATER TREATMENT PLANT ENVIRONMENTAL IMPACT REPORT AND DENIAL OF THE COASTAL DEVELOPMENT PERMIT CP0-339 AND CONDITIONAL USE PERMIT UP0-307; (PUBLIC SERVICES)

RECOMMENDATION: Adopt Resolution Number 07-11 and make findings for approval of the Conditional Use Permit and Coastal Development Permit by adopting Resolution Number 08-11. Certify Morro Bay Cayucos Sanitary District's Wastewater Treatment Plant Upgrade EIR and conditionally approve Coastal Development Permit CP0-339 and Conditional Use Permit UP0-307.

B-3 ORDINANCE NO. 565 AMENDING MORRO BAY MUNICIPAL CODE SECTION 2.08.010 OF THE MORRO BAY MUNICIPAL CODE REGARDING COUNCIL MEETINGS TIME AND DATE - INTRODUCTION AND FIRST READING; (CITY ATTORNEY)

RECOMMENDATION: Move for introduction and first reading of Ordinance No. 565.

C. UNFINISHED BUSINESS – NONE.

D. NEW BUSINESS

D-1 CITY COUNCIL ANNUAL MEETING SCHEDULE; (ADMINISTRATION)

RECOMMENDATION: Adopt the proposed meeting schedule for calendar year 2011.

D-2 CONSIDERATION OF REPLACING THE CURRENT PLANNING COMMISSION; (CITY COUNCIL)

RECOMMENDATION: With three Planning Commission terms expiring January 31, 2011; it is recommended to replace the Planning Commission in its entirety.

E. DECLARATION OF FUTURE AGENDA ITEMS

F. ADJOURNMENT

THIS AGENDA IS SUBJECT TO AMENDMENT UP TO 72 HOURS PRIOR TO THE DATE AND TIME SET FOR THE MEETING. PLEASE REFER TO THE AGENDA POSTED AT CITY HALL FOR ANY REVISIONS OR CALL THE CLERK'S OFFICE AT 772-6200 FOR FURTHER INFORMATION.

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL LOCATED AT 595 HARBOR STREET; MORRO BAY LIBRARY LOCATED AT 625 HARBOR STREET; AND MILL'S COPY CENTER LOCATED AT 495 MORRO BAY BOULEVARD DURING NORMAL BUSINESS HOURS.

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK'S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE THAT REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL MEETING – DECEMBER 8, 2010
VETERANS MEMORIAL HALL - 6:00 P.M.

AGENDA NO: A-1

MEETING DATE: 01/11/11

Mayor Peters called the meeting to order at 6:00 p.m.

PRESENT:	Janice Peters	Mayor
	Carla Borchard	Councilmember
	Rick Grantham	Councilmember
	Noah Smukler	Councilmember
	Betty Winholtz	Councilmember
STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney
	Bridgett Kessling	City Clerk
	Eric Endersby	Harbor Operations Manager
	Susan Lichtenbaum	Harbor Business Manager
	Rob Livick	Public Services Director
	Tim Olivas	Police Chief
	Mike Pond	Fire Chief
	Susan Slayton	Administrative Services Director
	Joe Woods	Recreation & Parks Director

I. ESTABLISH QUORUM AND CALL TO ORDER
II. MOMENT OF SILENCE
III. PLEDGE OF ALLEGIANCE
IV. PUBLIC COMMENT:
Members of the audience may address the Council only on items described in the Special Meeting Agenda. (Government Code § 54954.3(a).)

David Weisman thanked Councilmember Winholtz for her years of service to the City.

Patricia Willmar, representative from PG&E, referred to Item VII (Adoption of Resolution Establishing a Temporary Moratorium on the Installation of SmartMeters by PG&E) and reviewed the technology of the SmartMeter Program.

Judy Vick requested the City Council consider a temporary moratorium on the SmartMeter Program based on overbilling, health hazards, interference with household electronics, privacy and security risks, and fire risks. She reviewed information Assembly Bill information on the SmartMeter Program.

Jeremiah O'Brien, President of the Commercial Fishermen's Association, thanked the outgoing and incoming City Council for their support of the commercial fishing organization.

Melody DeMeritt addressed the outgoing Councilmembers and thanked them for their service to the City.

Samantha Roche from Merced stated they have been affected by the SmartMeter Program with huge spikes in their electric bills, and encouraged the City to contact other cities before proceeding with this program.

Cathy Novak addressed the outgoing Councilmembers and thanked them for their service to the City.

Ken Vesterfelt addressed the outgoing Councilmembers and thanked them for their service to the City. He also thanked the citizens for coming out to vote on November 2nd.

Cory Rafferty, PG&E, made points of clarification on the SmartMeter Program noting the CPUC would not allow moratoriums on the SmartMeter Program.

John Barta addressed the outgoing Councilmembers and thanked them for their service to the City.

V. APPROVAL OF MINUTES FOR THE REGULAR CITY COUNCIL MEETING OF NOVEMBER 8, 2010

Councilmember Smukler referred to the motion on page 9 and made the following amendment:

> MOTION: Councilmember Smukler moved the City Council: 1) award RFP No. MB 10-T1 to MV Transportation with a three-year contract and one year option; 2) direct staff continue engagement in the Transit Efficiencies Group evaluating and developing the concept of the Estero Sub-Regional Transit Plan; 3) ~~**Council**~~ **direct staff to** further develop support and partnership of alternative community transit opportunities such as the "friendly ride" program and the potential to share a calling support center with the Senior Citizens Center. The motion was seconded by Councilmember Winholtz and carried unanimously. (5-0)

MOTION: Councilmember Smukler moved the City Council approve the minutes of the November 8, 2010 City Council meeting as amended. The motion was seconded by Councilmember Winholtz and carried unanimously. (5-0)

VI. ADOPTION OF RESOLUTION RECITING THE FACT OF THE GENERAL MUNICIPAL ELECTION HELD ON NOVEMBER 2, 2010, AND DECLARING THE RESULTS THEREOF

MOTION: Mayor Peters moved the City Council adopt Resolution No. 62-10 reciting the fact of the General Municipal Election held on November 2, 2010, and declaring the results thereof. The motion was seconded by Councilmember Grantham and carried unanimously. (5-0)

VII. ADOPTION OF RESOLUTION ESTABLISHING A TEMPORARY MORATORIUM ON THE INSTALLATION OF SMART METERS BY PG&E

City Attorney Robert Schultz stated the California Public Utilities Commission (CPUC) is the agency charged with regulating utility companies in California including the activities of PG&E; local governments do not have any direct regulatory control over utility companies. Much interest has been expressed in recent weeks regarding an undertaking by PG&E to install "Smart Meters" at their residential customer's homes. A number of residents have urged the City Council to take action to suspend the installation of these devices. This agenda item is intended to provide background and information regarding this matter. Mr. Schultz recommended the City Council adopt Resolution No. 63-10 declaring concerns regarding the installation of PG&E "Smart Meters" in Morro Bay.

Councilmember Winholtz stated this is an important issue because of the possible consequences to the residents both financially and health-wise, loss of jobs, and privacy issues. She said she would like to amend #1 in the resolution as follows:

1. The City of Morro Bay urges PG&E not to install, **~~for a period not less than one hundred eighty (180) days~~**, any Smart Meters, repeaters, antennas and any related wireless equipment in Morro Bay **<u>until AB 37 are addressed by the State Legislature</u>** and PG&E has provided local residents additional information on the planned installation.

Councilmember Grantham stated it appears there are more benefits than drawbacks with the SmartMeter Program.

Councilmember Smukler stated it is important that the residents know that the City is aware of their concerns and is taking action to help protect them. He requested to add a condition #4 to the resolution as follows:

4. The City Council of Morro Bay urges PG&E to incorporate strict privacy protections for Smart Meter customer data.

Councilmember Borchard had no comment.

Mayor Peters stated she is concerned with the SmartMeter Program based on cost and privacy issues.

MOTION: Councilmember Winholtz moved the City Council adopt Resolution No. 63-10 declaring concerns regarding the installation of PG&E "Smart Meters" in Morro Bay with amendments to conditions #1 and #4 as stated above. The motion was seconded by Councilmember Smukler and carried with Councilmember Borchard and Councilmember Grantham voting no. (3-2)

VIII. COMMENTS BY CURRENT MAYOR AND COUNCILMEMBERS

IX. PRESENTATION OF PLAQUES TO MAYOR JANICE PETERS, COUNCILMEMBER RICK GRANTHAM AND COUNCILMEMBER BETTY WINHOLTZ

X. OATH OF OFFICE AND PRESENTATION OF CERTIFICATES OF ELECTION TO MAYOR WILLIAM YATES AND COUNCILMEMBER NANCY JOHNSON AND COUNCILMEMBER GEORGE LEAGE

XI. COMMENTS BY NEW MAYOR AND COUNCILMEMBERS

XII. ADJOURNMENT

The meeting adjourned at 7:32 p.m.

Recorded by:

Bridgett Kessling
City Clerk

AGENDA NO: A-1

MEETING DATE: 01/11/11

MINUTES - MORRO BAY CITY COUNCIL
CLOSED SESSION – DECEMBER 13, 2010
CITY HALL CONFERENCE ROOM - 5:00 P.M.

Mayor Yates called the meeting to order at 5:00 p.m.

PRESENT:	William Yates	Mayor
	Carla Borchard	Councilmember
	Nancy Johnson	Councilmember
	George Leage	Councilmember
	Noah Smukler	Councilmember
STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney

CLOSED SESSION

MOTION: Councilmember Borchard moved the meeting be adjourned to Closed Session. The motion was seconded by Councilmember Smukler and unanimously carried. (5-0)

Mayor Yates read the Closed Session Statement.

CS-1 **GOVERNMENT CODE SECTION 54956.8; REAL PROPERTY TRANSACTIONS**. Instructing City's real property negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property as to two (2) parcels.

- Property: Vacant Lot/Corner of Coral/San Jacinto.
  Negotiating Parties: Potential Buyers and City of Morro Bay.
  Negotiations: Voluntary Purchase and Sale.

- Property: Surf Street Parking Lot
  Negotiating Parties: Maritime Museum and City of Morro Bay
  Negotiations: Terms and Conditions of Lease.

The meeting adjourned to Closed Session at 5:00 p.m. and returned to regular session at 5:30 p.m.

MOTION: Councilmember Borchard moved the meeting be adjourned. The motion was seconded by Councilmember Smukler and unanimously carried. (5-0)

The meeting adjourned at 5:30 p.m.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – DECEMBER 13, 2010
VETERANS MEMORIAL HALL - 6:00 P.M.

Mayor Yates called the meeting to order at 6:00 p.m.

PRESENT:	William Yates	Mayor
	Carla Borchard	Councilmember
	Nancy Johnson	Councilmember
	George Leage	Councilmember
	Noah Smukler	Councilmember
STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney
	Jamie Boucher	Deputy City Clerk
	Eric Endersby	Harbor Operations Manager
	Susan Lichtenbaum	Harbor Business Manager
	Rob Livick	Public Services Director
	Tim Olivas	Police Chief
	Mike Pond	Fire Chief
	Susan Slayton	Administrative Services Director
	Kathleen Wold	Planning Manager
	Joe Woods	Recreation & Parks Director

ESTABLISH QUORUM AND CALL TO ORDER
MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE
MAYOR AND COUNCIL MEMBERS REPORTS, ANNOUNCEMENTS & PRESENTATIONS
CLOSED SESSION REPORT - City Attorney Robert Schultz reported the City Council met in Closed Session, and no reportable action under the Brown Act was taken.

PUBLIC COMMENT

Keith Taylor requested City Council support moving forward with Phase II of the Fire Department Renovation Project.

Wally McCray, Street Tree Committee, encouraged citizens to vote for their favorite "Morro Bay" City tree.

Taylor Newton, Street Tree Committee, stated citizens have until January 1st to vote for their favorite "Morro Bay" City tree; ballots are available at City Hall, Spencers Market and Farmers Market. He described the various trees available to vote on and noted the City Council will make it official after the first of the year.

Marshall Ochylski, President of the Los Osos Community Services District, stated Los Osos and Morro Bay are two developed communities that both serve on the National Estuary Program and the Water Resource Advisory Committee. He would like to see our mutual cooperation continue. He said since the County Planning Department is redoing their County area plans, it is important that Los Osos and Morro Bay work together since Morro Bay has no sphere of influence and the County prepares Los Osos' land use plans.

Garry Johnson expressed the importance of supporting the Business Community in Morro Bay.

John Barta addressed Item D-4 (Discussion Regarding Moving City Council Meeting Dates From the 2nd and 4th Monday of Each Month to the 2nd and 4th Wednesday of Each Month) stating moving the meetings off Monday is a good idea; however, he would suggest moving it to a Tuesday because there are many regional meetings held on Wednesdays. He also referred to the staircase at the end of Surf Street, which is City-owned property, and recommended Council consider reworking the hill and placing an ADA ramp at this prime property.

Craig Schmidt introduced himself as the new Chief Executive Officer of the Chamber of Commerce and he looks forward to working with the City.

Kevin Rice congratulated the City Council on their election process, and explained the current selection process in San Luis Obispo; he is running for its vacant seat.

Ken Vesterfelt requested everyone get involved in the Police Department K-9 Dog efforts in order to raise funds. He also wished all a Merry Christmas.

Mayor Yates closed the public comment hearing.

A. CONSENT CALENDAR

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion.

A-1 APPROVAL OF RESOLUTION AUTHORIZING THE CITY OF MORRO BAY TO ENTER INTO BOATING SAFETY AND ENFORCEMENT GRANT CONTRACT WITH THE DEPARTMENT OF BOATING AND WATERWAYS; (HARBOR)

A-2 STATUS REPORT ON WATER USAGE; (PUBLIC SERVICES)

MOTION: Councilmember Borchard moved the City Council approve the Consent Calendar.

The motion was seconded by Councilmember Johnson and carried unanimously. (5-0)

B. PUBLIC HEARINGS, REPORTS & APPEARANCES

B-1 REVIEW OF ANNUAL REPORT AND APPROVAL OF THE BUSINESS LICENSE RENEWAL FOR THE "FAMILY FUN ZONE" ARCADE LOCATED AT 725 EMBARCADERO SUITE 105; (POLICE)

Police Chief Tim Olivas stated on October 6, 2010, the City Council adopted Resolution No. 53-09 in conformance with Morro Bay Municipal Code 5.04.330 approving a Business License for Rose's Landing "Family Fun Zone" Arcade located at 725 Embarcadero, with conditions. Pursuant to Morro Bay Municipal Code Section 5.04.330, the application for the annual renewal of the business license shall be considered at a public hearing, with a report from the Chief of Police as to compliance with conditions of approval and any law enforcement problems experienced in the past year. A records check was conducted for Police Department "Calls for Service" related to the Arcade at 725 Embarcadero. No calls for service were recorded for incidents related to the Arcade's operation. The Harbor Department and Public Services Department also reported they had no incidents that would give cause for the Arcade business license to be suspended or revoked. Chief Olivas recommended the City Council approve the renewal of the business license for the "Family Fun Zone" Arcade with the existing conditions listed in Resolution No. 53-09 and Minor Use Permit (UPO-286 & AD0-051).

Mayor Yates opened the hearing for public comment; there were no comments, and the public comment period was closed.

MOTION: Councilmember Borchard moved the City Council approve the renewal of the business license for the "Family Fun Zone" Arcade with the existing conditions listed in Resolution No. 53-09 and Minor Use Permit (UPO-286 & AD0-051). The motion was seconded by Councilmember Smukler and carried unanimously. (5-0)

B-2 AMENDMENT TO USE PERMIT AND COASTAL DEVELOPMENT PERMIT (UP0-042/CP0-064) FOR 555 MAIN STREET TO MODIFY THE PROJECT TO CHANGE THE COMMERCIAL COMPONENT OF THE PROJECT TO RESIDENTIAL AND REQUEST FOR AFFORDABLE HOUSING ASSISTANCE; (PUBLIC SERVICES)

Planning Manager Kathleen Wold stated the applicant requests an amendment to the Use Permit and Coastal Development Permit to modify the project in order to eliminate the commercial component of the project, increase the number of residential units, convert the project to an all residential senior affordable housing project, and modify a portion of the units from one bedroom units to three bedroom units. The applicant also requests a residual receipts loan request of $600,000. The applicant requests the monies to cover

entitlement, permitting and impact fees as well as to finance a portion of the development. Ms. Wold recommended Council authorize staff to begin negotiations with the applicant on the specific terms of a loan and return to Council with a more specific loan agreement. She noted the applicant is also requesting the City sponsor the project for an allocation of HOME Investment Partnership Program (HOME) funds from the State of California Department of Housing and Community Development (HCD) from monies made available by the U.S. Department of Housing and Urban Development. Ms. Wold recommended approving this request subject to the applicant being responsible for composing the application with the City's responsibility limited to review of the application and sponsorship.

Mayor Yates opened the hearing for public comment.

Marshall Ochylski, representing Coast National Bank (applicant), stated the applicant agrees with the City's revisions as mentioned in the staff report. He said this location is perfect for senior affordable housing. Mr. Ochylski noted the inclusion of a third bedroom was from a previous developer when this development was proposed as a family project; it was requested the third bedroom be removed from the plans once this project was made a senior affordable housing project (which would remove Condition of Approval #8.) He said energy-efficiency will be a priority when building this project.

Robert Lang, President of Pacific Southwest Community Development Corporation, introduced himself and reviewed the properties owned by Pacific Southwest Community Development Corporation for Council information.

Mayor Yates expressed his support for this project as a senior affordable housing project, and he is in favor of changing the commercial zoning in this area to residential.

Councilmember Borchard stated she is supportive of this project and welcomes low and very-low housing opportunities to assist the housing requirements that fit well into the community of seniors, and she also supports granting a relief in the zoning as it is a benefit to the City.

Councilmember Johnson stated she is also supportive of the revisions to the project and the elimination of the commercial uses, and also the time spent regarding transportation for seniors at this location.

Councilmember Leage stated he supports moving along with this project as proposed.

Councilmember Smukler stated he is supportive of the project and appreciative of the applicant's interest in resource efficiency and transportation. He said this will fill an important niche in our community since we are behind in fulfilling our Housing Element in our low and very low income bracket.

MOTION: Councilmember Smukler moved the City Council: 1) conditionally approve an amendment to Use Permit UP0-042 and Coastal Development Permit CP0-064 to allow the elimination of the commercial component of the project, increase residential units from 16 to 18 and with the changes made to Exhibit "B", Item 7, as recommended by staff; and removal of Condition #8; 2) authorize staff to begin negotiations with the applicant regarding a residual receipts loan and return to City Council once specific terms have been determined; and 3) authorize City sponsorship of a request for HOME funds for the project subject to the City's responsibilities being limited to review of the application and sponsorship. The motion was seconded by Councilmember Leage and carried unanimously. (5-0)

C. UNFINISHED BUSINESS – None.

D. NEW BUSINESS

D-1 PRESENTATION FROM SAN LUIS OBISPO COUNCIL OF GOVERNMENTS INCLUDING SB375 (SUSTAINABLE COMMUNITIES STRATEGY)

The City Council received a presentation from Steve DeVencenzi, Planning Director for the San Luis Obispo Council of Governments regarding Senate Bill 375, the 2010 Regional Transportation Plan and Preliminary Sustainable Communities Strategy, which is a comprehensive plan and transportation policy for the region and makes recommendations concerning improvements to the existing transportation network of highways, transit, air and water, rail and bicycling.

D-2 REQUEST FOR REFUND OF CONDITIONAL USE PERMIT/COASTAL DEVELOPMENT PERMIT FEES FOR 160 ANCHOR ST. - KLEINHAMMER; (PUBLIC SERVICES)

Public Services Director Rob Livick stated the subject proposal was submitted on July 27, 2009 and various files were made associated with the applicant's request for a tentative parcel map, abandonment of right-of-way, Conditional Use Permit, Coastal Development Permit and the Environmental Review. The project was not targeted for tracking therefore staff time was not tracked. The project submitted was substantially deficient and a letter was sent informing the applicant and their representative of the situation. There were various meetings concerning the project issues and eventually the applicant made the decision to remove their architect from the project. Staff had additional meetings with the applicant including one with a new agent to discuss options, requirements and various conditions that would be imposed on the project. The project stayed active within the Planning Division for one year. Eventually, the applicant submitted a letter to withdraw the project and requested a refund of fees. Staff reviewed

the City's policies on refunds and issued a refund of $3,808 dollars based on the refund policies in place within the Subdivision Ordinance. The applicants met once again with staff to request additional money be refunded and eventually submitted a request to the Mayor when staff was unable to accommodate them. Mr. Livick recommended the City Council grant a refund of $1,625 and authorize staff to establish a refund policy within the Master Fee Schedule.

MOTION: Councilmember Borchard moved the City Council grant a refund of $1,625, and authorizes staff to establish a refund policy within the Master Fee Schedule. The motion was seconded by Councilmember Johnson and carried unanimously. (5-0)

D-3 DISCUSSION ON THE CREATION AND FUNDING OF A FACILITY REPAIR FUND FROM THE PROCEEDS OF CITY PROPERTY LOCATED AT 781 MARKET STREET; (RECREATION & PARKS)

Recreation & Parks Director Joe Woods stated the City's management of real property assets has lacked the resources to adequately support a deferred maintenance account for all scheduled property. The volume of deferred maintenance has increased and potential property loss and/or significant devaluation are certainly possible should this practice continue. The establishment of a deferred maintenance account would give immediate relief to the General Fund and satisfy the required maintenance for the current City owned real property. The City is in need of a funding source to address the City's infrastructure, and the most ready source of funding at this time is the surplus revenue from the sale of 781 Market Street. A deferred maintenance account could be setup as a capital account allowing any balance to carry over to the following fiscal year if not used in its entirety. Access and use of the funds would be subject to City Council's approval. Mr. Woods recommended the City Council review and direct staff to return with a resolution to establish a deferred maintenance account for the maintenance and management of City owned real property.

MOTION: Councilmember Smukler moved the City Council direct staff to return with a resolution recommending the details and management plan of a deferred maintenance account, a recommended financial management plan for that account including repayment of parking in-lieu funds and suggested priorities for Exhibit "A". The motion was seconded by Councilmember Johnson.

Councilmember Smukler amended his motion to include the initial lump sum payment of approximately $210,000; Councilmember Johnson accepted the amendment to her second.

VOTE: The motion carried unanimously. (5-0)

D-4 DISCUSSION REGARDING MOVING CITY COUNCIL MEETING DATES FROM THE 2ND AND 4TH MONDAY OF EACH MONTH TO THE 2ND AND 4TH WEDNESDAY OF EACH MONTH; (COUNCIL)

City Manager Andrea Lueker stated in the past there has been informal discussion about changing the City Council meeting date from Monday to an alternative day. The benefits of a Tuesday/Wednesday meeting include the following:

- Monday conflicts with several holidays and as a result the meeting is occasionally set on another day.
- Currently the agenda packets are available by 5:00 p.m. on Wednesday, leaving Thursday, Friday and Monday for questions of staff. With staff scheduling Friday and Monday, often those days are difficult to arrange a meeting, leaving little time for the Mayor and Council to read and formulate questions on the agenda packet. Tuesday/Wednesday meetings would provide two extra days for staff availability.
- A Monday meeting following a weekend, may limit the amount of time the Mayor and City Council members have to review the packet prior to the meeting.

Should the City Council determine to move forward with changing the meeting day, staff will bring back an ordinance to amend the Morro Bay Municipal Code Section 2.08.010. As the City Council is aware an addition/amendment to the Municipal Code is not immediate and will not take effect until 30 days after the second reading. As a result, Ms. Lueker recommended the City Council take action tonight to reschedule the January 10, 24, February 14, 28 and the March 14 meeting dates if Council chooses to change these meeting dates.

MOTION: Councilmember Borchard moved the City Council move its regularly scheduled meetings from the 2nd and 4th Monday of each month to the 2nd and 4th Tuesday of each month beginning in January 2011. The motion was seconded by Councilmember Johnson and carried unanimously. (5-0)

D-5 APPOINTMENT OF VICE-MAYOR AND APPOINTMENT OF REPRESENTATIVES ON DISCRETIONARY BOARDS, COUNCIL LIAISON ASSIGNMENTS AND COUNCIL SUB-COMMITTEES; (ADMINISTRATION)

Based on Council Policies and Procedures Section 3.2, Councilmember Smukler was appointed to serve as Vice-Mayor for a one-year term.

The following appointments were made on Discretionary Boards:

INTEGRATED WASTE MANAGEMENT AUTHORITY

Carla Borchard	Designee
Nancy Johnson	Alternate

COUNTY WATER RESOURCES ADVISORY COMMITTEE

Noah Smukler	Delegate
City Manager (or her designee)	Alternate

SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY (SLOTA) &
SAN LUIS OBISPO AREA COORDINATING COUNCIL (SLOCOG)

Bill Yates	Delegate
Carla Borchard	Alternate

CMC CITIZENS' ADVISORY COMMITTEE (2-year term)

Carla Borchard	Member

AIR POLLUTION CONTROL DISTRICT

Noah Smukler	Member

COMMUNITY ACTION PARTNERSHIP OF SAN LUIS OBISPO COUNTY, INC.
(formerly EOC) - (3-year term)

Carla Borchard	Member

ECONOMIC VITALITY CORPORATION

George Leage	Member
Nancy Johnson	Alternate

NATIONAL ESTUARY PROGRAM

Noah Smukler	Member
Carla Borchard	Alternate

CITY SELECTION COMMITTEE (as needed)

Bill Yates	Member
Noah Smukler	Alternate

LEGISLATIVE DELEGATE (as needed)

Bill Yates	Member
Noah Smukler	Alternate

The following City Council Liaison Assignments were made to City Committees and Boards:

HARBOR ADVISORY BOARD

Carla Borchard	Liaison

RECREATION AND PARKS COMMISSION

Nancy Johnson	Liaison

PUBLIC WORKS ADVISORY BOARD

Noah Smukler	Liaison

COMMUNITY PROMOTIONS COMMITTEE

George Leage	Liaison

MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT BOARD

Bill Yates	Liaison

The following appointments were made on City Council Sub-Committees:

COUNCIL SUBCOMMITTEE ON EMPLOYEE GRIEVANCES

Nancy Johnson	Member
Carla Borchard	Member

JPA SUB-COMMITTEE

Bill Yates	Member
George Leage	Member

MEDICAL MARIJUANA DISPENSARY (MMD) SUB-COMMITTEE

Bill Yates	Member
Noah Smukler	Member

SAN LUIS OBISPO COUNTY HOUSING TRUST FUND

George Leage	Member

GOVERNING BODY OF THE SAN LUIS OBISPO COUNTY 10-YEAR PLAN TO END HOMELESSNESS

Nancy Johnson	Member
George Leage	Alternate

MOTION: Councilmember Johnson moved the City Council approve the appointments made to the various County/Regional Discretionary Boards, Council Liaison Assignments and Sub-Committees. The motion was seconded by Councilmember Borchard and carried unanimously. (5-0)

D-6 SCHEDULE A DATE FOR INTERVIEWS OF COMMISSIONER/ADVISORY BOARD VACANCIES; (ADMINISTRATION)

The City Council scheduled interviews to fill vacancies on the above-stated Commissions and Advisory Boards for Monday, January 24, 2011 beginning at 5:00 p.m., to be held in the Veterans' Memorial Building.

E. DECLARATION OF FUTURE AGENDA ITEMS

Mayor Yates requested the following:

1) simplify the arcade licensing located at 725 Embarcadero Suite 105 by removing the condition requiring annual review and approval by the City Council;
2) simplify the taxi business requirements;
3) remove City Council and Planning Commission Policies and Procedures from the Municipal Code;
4) clarification on City Council Policies and Procedures 1.1.2 – Placing an Item on the Agenda;

(Mayor Yates received Council consensus on the above items)

5) place the Sign Ordinance on the top of the Planning Division's agenda;

(Mayor Yates will prepare a report on this item.)

Councilmember Borchard requested to bring back the Parking Ordinance for North Main Street for non-conforming or grandfathering parking requirements;

(Councilmember Borchard received Council consensus for this item.)

Councilmember Johnson requested a discussion on waiving fees for building impact fees for the next five years for commercial buildings in the downtown area, Morro Bay Boulevard from the roundabout to Market Street to Main Street north of the City limits and Quintana Road;

(Councilmember Johnson received Council consensus for this item.)

Councilmember Leage requested a discussion on a marketing position to market Morro Bay;

(Councilmember Leage received Council consensus for this item.)

ADJOURNMENT - The meeting adjourned at 8:35 p.m.

Recorded by:

Jamie Boucher
Deputy City Clerk

AGENDA NO: A-2

MEETING DATE: 01/11/2011

Staff Report

TO: **Honorable Mayor and City Council** **DATE:** **December 28, 2010**

FROM: **Susan Slayton, Administrative Services Director/City Treasurer**

SUBJECT: **Resolution No. 01-11 to Reaffirm Investment of Monies in the Local Agency Investment Fund (LAIF) and Designate Transaction Officers**

RECOMMENDATION:
Staff recommends that Council adopt Resolution No. 01-11.

SUMMARY:
This Resolution reaffirms the City's desire to invest with the LAIF, and updates the information currently on file with them.

BACKGROUND:
In accordance with State law, the City Council must adopt a Resolution to authorize changes to designated transaction officers with the Local Agency Investment Fund (LAIF). Resolution No. 05-09 is the current Resolution on file with the State Treasurer's Office, and it is obsolete due to the elimination of the Accountant position.

Prepared By: _____ **Dept Review:**_____

City Manager Review: _____

City Attorney Review: _____

RESOLUTION NO. 01-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA TO REAFFIRM INVESTMENT OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND (LAIF) AND DESIGNATE TRANSACTION OFFICERS

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, Resolution No. 05-09, dated February 9, 2009, authorized the City of Morro Bay to continue investing funds with the State of California's Local Agency Investment Fund (LAIF); and

WHEREAS, the officers, then authorized to order deposit and withdrawal of monies, and affect changes to the account, have changed.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, that the City will continue investing with LAIF, and designates the following officers to deposit and withdraw funds, and affect changes to the account:

Andrea Lueker	City Manager
Susan Slayton	Administrative Services Director/Treasurer
Laurie Goforth	Senior Accounting Technician
Cristie Brazzi	Senior Accounting Technician

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

AYES:

NOES:

ABSENT:

_____
WILLIAM YATES, Mayor

ATTEST:

_____
JAMIE BOUCHER, Deputy City Clerk

AGENDA NO: A-3

MEETING DATE: 01/11/2011

Staff Report

TO: **Honorable Mayor and City Council** **DATE:** **December 28, 2010**

FROM: **Susan Slayton, Administrative Services Director/City Treasurer**

SUBJECT: **Resolution No. 02-11 Designating and Authorizing Investment Transaction Officers**

RECOMMENDATION:
Staff recommends that Council adopt Resolution No. 02-11.

FISCAL IMPACT:
None

SUMMARY:
In order to invest money with financial institutions, a corporate resolution, identifying authorized transaction officers, is required. The City will meet this requirement by adopting this Resolution, which formalizes the officers and their ability to invest the City's money based on the annually-adopted Investment Policy.

BACKGROUND:
In the past, the City of Morro Bay had limited its use of investments to Treasury notes, such as Federal Home Loan Bank debentures. The 2006 change in the Finance Director position brought a new investment style, one that believes in portfolio diversity within the confines of the adopted Investment Policy. One of those approved investment instruments is a Certificate of Deposit (CD). A CD is a restricted account whereby the bank agrees to pay a higher level of interest for a commitment from the investor to leave the money in the account for a stated period of time. CDs can be purchased at various amounts and for varying lengths of time. Deposits in any one banking institution of less than $250,001 are insured by the Federal Deposit Insurance Corporation (FDIC). Larger amounts are collateralized by the banking institution with other cash deposit accounts. Early withdrawal from a CD results in stiff penalties based on the length of the time commitment and amount deposited.

Prepared By: _____ **Dept Review:**_____

City Manager Review: _____

City Attorney Review: _____

Since September 11, 2001, banking regulations have become increasingly stringent. More forms of identification are required prior to opening accounts, especially when the account is opened for an entity. Since 2003, the Corporate Authorization Resolution has been a prerequisite for opening an account with a financial institution, but has not been consistently required. More and more banks are insisting on this information, some to the point of requesting a certification from the entity's attorney that the names on the Resolutions are valid. This Resolution annually designates investment transaction officers and empowers them to invest money with any sound financial institution; these are the same transaction officers that are listed in the Investment Policy. This Resolution is renewed annually as part of the Investment Policy.

RESOLUTION NO. 02-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA DESIGNATING AND AUTHORIZING INVESTMENT TRANSACTION OFFICERS

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, the City of Morro Bay has cash in its possession that exceeds the amount needed for day-to-day transactions; and

WHEREAS, the City of Morro Bay has an obligation to its citizens to effectively and safely manage that money while optimizing its earning potential; and

WHEREAS, it is necessary to designate, via Resolution, the transaction officers who have the authority to invest the City's funds.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, that the individuals listed below are designated as transaction officers who are authorized to open and close investment accounts within the scope of the City's Investment Policy:

Andrea Lueker	City Manager
Susan Slayton	Administrative Services Director/City Treasurer
Laurie Goforth	Senior Accounting Technician
Cristie Brazzi	Senior Accounting Technician

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

AYES:
NOES:
ABSENT:

_____
WILLIAM YATES, Mayor

_____
JAMIE BOUCHER, Deputy City Clerk

AGENDA NO: A-4

MEETING DATE: 01/11/2011

Staff Report

TO: **Honorable Mayor and City Council** **DATE: December 28, 2010**

FROM: **Susan Slayton, Administrative Services Director/City Treasurer**

SUBJECT: **Resolution No. 03-11 Adopting the City of Morro Bay Investment Policy and Delegating Authority to the City Treasurer to Invest Idle Funds**

RECOMMENDATION:

Staff recommends that Council adopt Resolution No. 03-11.

FISCAL IMPACT:

None.

SUMMARY:

Presented for Council's review is the City of Morro Bay's Investment Policy. Two changes have been made to the transaction officers that were in the policy that was adopted in January 2010: 1) the Accountant position was eliminated; and 2) Cristie Brazzi, Senior Accounting Technician, has been added. Staff recommends that Council review the policy, and adopt Resolution No. 03-11, with any amendments made at this meeting.

BACKGROUND:

Since 1985, the City Council of Morro Bay has been annually presented with the City's Investment Policy to review and adopt. Each year, the Treasurer (Administrative Services Director) reviews the existing policy for recommended changes from the State of California and other governmental agencies, and implements them.

Prepared By: _____ **Dept Review:** _____

City Manager Review: _____

City Attorney Review: _____

RESOLUTION NO. 03-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, ADOPTING THE CITY OF MORRO BAY INVESTMENT POLICY AND DELEGATING AUTHORITY TO THE CITY TREASURER TO INVEST IDLE FUNDS

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, the City Council of the City of Morro Bay desires to prudently invest the idle funds of the City to maximize the use of taxpayer funds; and

WHEREAS, the California Government Code Section 53600.3 states that "all governing bodies of local agencies, or persons authorized to make investment decisions on behalf of those local agencies, investing public funds, pursuant to this chapter, are trustees, and therefore, fiduciaries subject to the prudent investor standard;" and

WHEREAS, per California Government Code Section 53646(a)(2), all local agency governing boards may render, to the legislative body of that local agency, a statement of investment policy, which the legislative body of the local agency shall consider at a public meeting, and shall also consider any change in the policy.

WHEREAS, per California Government Code Section 53607, the legislative body may delegate investment authority and responsibility to the Treasurer, and/or designated staff, for a period of one year subject to annual review and monthly review of transactions initiated by the designee.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay that the Statement Policy, attached hereto, is adopted, and that the City Treasurer is hereby authorized to carry out this policy on behalf of the City Council.

PASSED AND ADOPTED by the City Council of the City of Morro Bay, on the 11th day of January, 2011, by the following vote:

AYES:
NOES:
ABSENT:

_____
WILLIAM YATES, Mayor

_____
JAMIE BOUCHER, Deputy City Clerk

AGENDA NO: A-5

MEETING DATE: 01/11/2011

Staff Report

TO: **Honorable Mayor and City Council** **DATE: December 28, 2010**

FROM: **Susan Slayton, Administrative Services Director/City Treasurer**

SUBJECT: **Resolution No. 04-11 Establishing Transaction Officers for Doing Business with Rabobank**

RECOMMENDATION:

Council to approve Resolution No. 04-11.

FISCAL IMPACT:

None

SUMMARY:

The City of Morro Bay has an established relationship with Rabobank for its primary banking operations. With the November elections, transaction officers changed, and now need to be updated. This Resolution meets that need.

DISCUSSION:

Rabobank requires a corporate Resolution, with Rabobank specifically named in the Resolution, establishing authorized transaction officers for the City of Morro Bay. With the November election and 2010/11 layoffs, there have been changes to the existing list of officers. The new list of transaction officers is:

William Yates	Mayor
Andrea Lueker	City Manager
Susan Slayton	Administrative Services Director/City Treasurer
Laurie Goforth	Senior Accounting Technician
Cristie Brazzi	Senior Accounting Technician
Bonnie Johnson	Account Clerk III, Confidential

Resolution No. 04-11 will satisfy Rabobank's requirement.

Prepared By: _____ **Dept Review:**_____

City Manager Review: _____

City Attorney Review: _____

RESOLUTION NO. 04-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, ESTABLISHING TRANSACTION OFFICERS FOR DOING BUSINESS WITH RABOBANK

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, the City of Morro Bay has an ongoing banking relationship with Rabobank, a Dutch corporation, for its primary banking needs; and

WHEREAS, Rabobank requires a corporate Resolution that establishes transaction officers.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, that the following individuals are designated as transaction officers for doing business with Rabobank:

William Yates	Mayor
Andrea Lueker	City Manager
Susan Slayton	Administrative Services Director/City Treasurer
Laurie Goforth	Senior Accounting Technician
Cristie Brazzi	Senior Accounting Technician
Bonnie Johnson	Account Clerk III - Confidential

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

AYES:
NOES:
ABSENT:

_____
WILLIAM YATES, Mayor

_____
JAMIE BOUCHER, Deputy City Clerk

AGENDA NO: A-6

MEETING DATE: 1/11/2011

Staff Report

TO: **Honorable Mayor and City Council** **DATE:** **December 28, 2010**

FROM: **Susan Slayton, Administrative Services Director**

SUBJECT: **Resolution of Intention to Approve an Amendment to Contract between the Board of Administration California Public Employees' Retirement System and the City of Morro Bay (Firefighters)**

RECOMMENDATION:

Per the terms and conditions of the approved side letter with the Morro Bay Firefighters, City Council adopt Resolution No. 05-11 authorizing an amendment to the City's PERS contract in accordance with Government Code Section 20475 (Different Level of Benefits), Section 21363.1 (3% at 55 Full Formula), and Section 20037 (Three Year Final Compensation) for all new sworn hires in the Fire Department.

FISCAL IMPACT:

While there won't be a significant fiscal impact at the outset, by virtue of the change of retirement formula, the City will see substantial savings as we hire new employees to replace our existing employees who either retire or move on to other agencies. It is known that the new employer contribution rate for the new hires will be 15.592% of reportable earnings as opposed to the current rate of 35.173%.

DISCUSSION:

At their November 8, 2010 meeting, the City Council approved the Side Letter with the Morro Bay Firefighters, IAFF Local 3725. As a condition of that side letter, there was agreement on both sides to begin the process to amend the City's current contract with PERS regarding both the retirement formula, as well as the final compensation formula for new sworn hires in the Fire Department. As such, staff has scheduled the necessary actions required by PERS to complete this amendment process. This action begins with the Resolution of Intention to amend the current PERS contract. This will be followed up at the January 25, 2011 City Council meeting with an Introduction and

Prepared By: JBoucher_____ **Dept Review:_____**

City Manager Review: _____

City Attorney Review: _____

First Reading of the required Ordinance and finalized at the February 8, 2011 City Council meeting, where staff will bring the Ordinance back for adoption.

CONCLUSION:

Per the terms and conditions of the current side letter with the Morro Bay Firefighters, staff is requesting that Council adopt Resolution No. 05-11 which will start the process of amending the current retirement formula and final compensation formula for new sworn hires at the Fire Department.

RESOLUTION NO. 05-11

**RESOLUTION OF INTENTION TO APPROVE
AN AMENDMENT TO CONTRACT BETWEEN
THE BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
AND THE CITY OF MORRO BAY FIREFIGHTERS**

**THE CITY COUNCIL
CITY OF MORRO BAY, CALIFORNIA**

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which the City of Morro Bay may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the City Council of the City of Morro Bay a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

> To provide Section 20475 (Different Level of Benefits); Section 21363.1 (3% @ 55 Full formula); and Section 20037 (Three-Year Final Compensation) applicable to local fire members entering membership for the first time in the fire classification after the effective date of this amendment to contract.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morro Bay does hereby give notice of intention to approve an amendment to the contract between the City of Morro Bay and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

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

AYES:
NOES:
ABSENT:

_____
WILLIAM YATES, Mayor

ATTEST:

_____
JAMIE BOUCHER, Deputy City Clerk

AGENDA NO:	**A-7**
MEETING DATE:	**1/11/2011**

Staff Report

TO: **Honorable Mayor and City Council** **DATE: January 11, 2011**

FROM: **Harbor Business Manager**

SUBJECT: **Approval of a Sublease Agreement between M&M Refrigeration and Morro Bay Oyster Company for a Portion of Lease Site 144/144W Located at 1287 Embarcadero**

RECOMMENDATION:

Staff recommends that the City Council adopt Resolution No. 06-11 approving the sublease agreement between M&M Refrigeration and Morro Bay Oyster Company.

FISCAL IMPACT:

None

BACKGROUND:

Lease Site 144/144W is held by M&M Refrigeration. The lease agreement for this site requires City Council approval of any subleases on the leased property. Chuck and Sandra Marciel, owners of M&M Refrigeration operate a marine repair/refrigeration business on the site. M&M Refrigeration is not using all the floor space within the building for day-to-day operations.

DISCUSSION:

Neal Maloney of Morro Bay Oyster company is proposing to sublease a portion of the building on Lease Site 144/144W for refrigerated storage units used for oysters that are farmed in Morro Bay under a lease agreement with California Department of Fish & Game. No public retail sales will be associated with this storage area. The Lease is in the Measure D area that requires uses be primarily for commercial or recreational fishing activities. Marine refrigeration is an approved use for the Lease. Newer City Master Leases allow for administrative approval of subleases. The lease agreement for Lease Site 144/144W requires approval of all subleases by the City Council and states that the "City shall not unreasonably nor arbitrarily withhold its consent to one who is qualified and financially reliable". Mr. Maloney provided the attached Statement of Qualifications relating to the sublease that outlines his background and the proposal for use of the site along with the completed application form and fee. The Marciels are incompliance with the terms of the master lease agreement.

CONCLUSION:

Staff recommends that the City Council adopt Resolution No. 06-11 approving the sublease agreement between M&M Refrigeration and Morro Bay Oyster Company.

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

RESOLUTION NO. 06-11

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING A SUBLEASE AGREEMENT BETWEEN M&M REFRIGERATION
AND MORRO BAY OYSTERS FOR A PORTION OF LEASE SITE 144/144W,
LOCATED AT 1287 EMBARCADERO**

**T H E C I T Y C O U N C I L
City of Morro Bay, California**

WHEREAS, the City of Morro Bay is the lessor of certain property on the Morro Bay waterfront described as Lease Site 144/144W, located at 1287 Embarcadero; and,

WHEREAS, M & M Refrigeration, owned by Charles and Sandra Marciel, is the lessee of said property; and

WHEREAS, M&M Refrigeration has requested City Council approval of a sublease agreement for a portion of Lease Site 144/144W with Morro Bay Oyster Company, operated by Neal Maloney. The Consent to Sublease has been signed by both parties and a copy of the sublease agreement has been provided to the City along with a statement of qualifications from Neal Maloney of Morro Bay Oyster Company; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, that the sublease agreement for a portion of Lease Site 144/144W between M&M Refrigeration, Charles and Sandra Marcial owners, and Morro Bay Oyster Company, Neal Maloney, operator is hereby approved, and that the Mayor is hereby authorized to execute the Consent to Sublease document on behalf of the City.

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

AYES:
NOES:
ABSENT:

_____
William Yates, Mayor

ATTEST:

_____
Jamie Boucher, Deputy City Clerk

AGENDA NO:	**A-8**
MEETING DATE:	**January 11, 2011**

Staff Report

TO: **Honorable Mayor and City Council** **DATE: January 6, 2011**

FROM: **Rob Schultz, City Attorney**

SUBJECT: **Approval of Memorandum of Understanding between the City and the Central Coast Maritime Museum Association for the Design and Permitting Process for a Maritime Museum in the Front Street Parking Lot**

RECOMMENDATION:

Staff recommends that the City Council approve the attached Memorandum of Understanding between the City and the Central Coast Maritime Museum Association for the Design and Permitting Process of a Maritime Museum in the Front Street Parking Lot.

FISCAL IMPACT:

None at this time. However, the Central Coast Maritime Museum Association (CCMMA) has requested that once the project moves forward, the City contribute monies to the In-Lieu Parking Fund, provide funding for maintenance of the proposed public restrooms, provide funding for maintenance of the portion of the parking lot where the museum would be located, and finance necessary liability insurance for the proposed museum. These issues are currently not in front you but would come back during project approval.

BACKGROUND:

The concept of establishing a Maritime Museum within the City of Morro Bay was first presented to the City Council in 1995. On June 12, 1995, City Council adopted Resolution No. 65-95 in support of the Central Coast Maritime Museum Association's (CCMMA) establishment of a Maritime Museum in the City of Morro Bay. Subsequently, in 1998 the City of Morro Bay entered into an agreement with the CCMMA to identify a potential site for construction of a maritime museum in the City of Morro Bay. The agreement identified two potential sites, one of which was a portion of the Front Street parking lot. The CCMMA now wants to move forward with a Maritime Museum at the Front Street Parking Lot location.

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

DISCUSSION:

The proposed project seeks to locate three historic boats, viewing platforms, and a building that would contain a display area, public restrooms and an office loft within a portion of the Front Street Right Of Way and the Front Street parking lot. Staff certainly supports a Maritime Museum within the City of Morro Bay. However, the current proposed location has some challenges associated with it.

First, the proposed project is located on public Right Of Way. Public ROWs are utilized for public utilities, vehicular and pedestrian occupation (i.e. parking and placement of benches) and travel, and do not contain permanent structures that impede the flow of travel. The standard process that would need to occur in order for the project to develop in the existing public ROW would be the abandonment of the public ROW via necessary findings including that the public ROW is not needed for its intended use. The MOU sets forth a timeline of the duties and responsibilities of both the CCMMA and the City for the abandonment of the ROW to allow the project to move forward. In addition, the MOU provides that City will waive all processing fees for the abandonment of the ROW.

Second, the project site is governed by the Waterfront Master Plan and is located within the Visitor Serving/Special Design Criteria Overlay (C-VS/S.4) zone district, where the establishment of an indoor museum is permitted with the approval of a Minor Use Permit. Due to the outdoor nature of the proposed Maritime Museum, a CUP is required. In addition, since the project site is located within the Original Jurisdiction of the California Coastal Commission (CCC) the project is also required to obtain a Coastal Development Permit from the CCC subsequent to obtaining a CUP from the City. The MOU sets forth a timeline of the duties responsibilities of the CCMMA and the City for the permit requirements to allow the project to move forward. In addition, the MOU provides that City will waive all processing fees and development fees for the permits.

Finally, the MOU allows the CCMMA to immediately establish a temporary display at the Front Street Parking Lot for the intention of gathering public and financial support. This display would include one or two vessels on display cradles with architectural grade signage describing the project.

CONCLUSION:

Staff recommends that the City Council approve the attached Memorandum of Understanding between the City and the Central Coast Maritime Museum Association for the Design and Permitting Process for a Maritime Museum in the Front Street Parking Lot.

MEMORANDUM OF UNDERSTANDING
MARITIME MUSEUM DESIGN AND PERMIT PROCESSING

This Memorandum of Understanding ("MOU") is entered into by and between the City of Morro Bay, a Municipal Corporation formed under the laws of the State of California, hereinafter referred to as the "City"; and Central Coast Maritime Museum Association, a 501(c)(3) non-profit organization hereinafter referred to as "CCMMA." Collectively, the City and CCMMA are referred to herein as the "Parties."

WHEREAS, the Central Coast Maritime Museum Association (CCMMA) was incorporated as a non-profit California corporation in 1991 for the purpose of preserving the maritime history of the Central Coast; and

WHEREAS, CCMMA is a 501(c)(3) non-profit organization committed to establishing a Maritime Museum within Morro Bay, including but not limited to the design, development, operation, and maintenance of the Maritime Museum; and

WHEREAS, CCMMA has raised funds for the design and permitting of the Maritime Museum and has caused to be prepared preliminary plans for the Maritime Museum to be constructed on the property known as the Front Street Parking Lot; and

WHEREAS, the preliminary plans for the Maritime Museum in the Front Street Parking Lot include an Interpretive Center just under 1500 square feet in size and incorporate an outdoor small craft display; and

WHEREAS, The Front Street Parking Lot is governed by the Waterfront Master Plan and is located within the Visitor Serving/Special Design Criteria Overlay (C-VS/S.4) zone district, where the establishment of an indoor museum is permitted with the approval of a Minor Use Permit. Due to the outdoor nature of the proposed Maritime Museum, a CUP is required. In addition, since the project site is located within the Original Jurisdiction of the California Coastal Commission (CCC) the project is also required to obtain a Coastal Development Permit from the CCC subsequent to obtaining a CUP from the City; and

WHEREAS, the City Council of the City of Morro Bay (City) strongly supports the CCMMA and desires to assist CCMMA in the permitting and constructing of a maritime museum in Morro Bay but has made it clear that it has no financial resources at this time to commit to the design, development, operation, or maintenance of the Maritime Museum; and

WHEREAS, CCMMA expects that it can raise funds and secure other commitments for the development, operation, and maintenance of the Maritime Museum; and

WHEREAS, the City Council has reviewed the preliminary plans submitted by CCMMA and has consented to the processing of any and all permits and abandonment of rights of way in order to accommodate the Maritime Museum at the Front Street Parking Lot; and

WHEREAS, the Parties desire a Memorandum of Understanding to document their mutual commitment to proceed in good faith with the permitting process for the Maritime Museum, including consideration of permits and abandonment of right of way, subject to one or more future public hearings and the discretion of the City Council in its ultimate approval or disapproval of the Maritime Museum.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the Parties agree as follows:

1. CCMMA will proceed expeditiously as follows:

    a. Prepare all design documents and plans required for approval of any and all permits and abandonment of the Front Street Right of Way (collectively, the "Permits") for the Maritime Museum as required by the City.

    b. Apply for the Permits as required by the City.

    c. Submit all documents and provide all plans, prepared by appropriate professionals, required by the City for the Abandonment of the Front Street Right of Way and the Permits.

    d. Perform, by appropriate professionals, all environmental analysis and review for the abandonment of Front Street Right of Way and the Permits as required by the City.

2. The City will proceed as follows:

    a. Advise CCMMA in writing within 45 days of all requirements for a complete abandonment of the Front Street Right of Way application.

    b. Advise CCMMA in writing within 45 days of all other Permits that will be required by the City and of all requirements for complete applications for such Permits.

c. Advise CCMMA in writing within 45 days of any other Permits that, to the knowledge of the City, will be required by any other governmental agency, and, to the knowledge of the City, all requirements for complete applications for such Permits.

d. Process the Front Street Right of Way application and all Permit applications at a staff level expeditiously and advise CCMMA of the status of such processing upon request.

e. Schedule all required hearings at the earliest possible date convenient to CCMMA.

f. Upon request of CCMMA, provide all pertinent information necessary for CCMMA to fulfill its responsibilities under this MOU.

3. The City will waive all Front Street Right of Way abandonment and Permit processing fees and development fees, normally charged applicants by the City, including fees for environmental review by City staff. Within 30 days of request by the City, CCMMA will pay all other fees and costs charged by any third party associated with the preparation and submittal of plans and documents required for the Front Street Right of Way and Permits.

4. The City shall permit CCMMA to establish a temporary display at the Front Street Parking Lot for the intention of gathering public and financial support. This display would be subject to City approval and include one or two vessels on display cradles with architectural grade signage describing the project. CCMMA agrees to maintain its own liability insurance and indemnify the City for the temporary display.

5. Each party to this MOU will at all times act in good faith in the performance of its duties and responsibilities under this MOU, will use its best efforts to assist the other party, and will be courteous, helpful, cooperative with, and appreciative of the other party.

6. The Parties agree that in the event of approval of the Front Street Right of Way and Permits, they will enter into a long term Lease Agreement regarding the development (construction), operation, and maintenance of the Maritime Museum. CCMMA shall negotiate with City staff a mutually agreeable lease which shall be presented to the City Council for review and/or approval subsequent to the City Council's approval of all permits. The City reserves the right to negotiate a fair land rental and all other terms of any future lease agreement.

7. CCMMA will furnish to the City the names and telephone numbers of two representatives of CCMMA, each with authority to act alone on behalf of CCMMA, and who will act as the contacts with the City concerning the subject matter of this MOU. CCMMA will notify the City in writing if a representative can no longer serve and will provide the name and telephone number of a replacement.

   The City will furnish CCMMA the names and telephone numbers of two representatives of the City, each with the authority to act alone on behalf of the City, and who will act as the contacts with CCMMA concerning the subject matter of this MOU. The City will notify CCMMA in writing if a representative can no longer serve and will provide the name and telephone number of a replacement.

8. Written notice to the respective parties will be provided as follows:

   To the City:

   City of Morro Bay
   Department of Recreation & Parks
   Attention: Director
   Morro Bay, CA 93442

   To CCMMA:

   Central Coast Maritime Museum Association
   P.O. Box 1775
   Morro Bay, CA 93443

9. This MOU shall be effective upon approval by the City Council and execution by the Parties. The persons executing this MOU represent that they are duly authorized by the party they represent to execute and bind that party. This MOU is the final, complete, and exclusive statement of the terms of the understanding between the Parties, supersedes all previous understandings between the Parties as to its subject matter, and may be amended only in a further writing executed by both Parties.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed at Morro Bay, California, on the dates written below.

CITY OF MORRO BAY	CCMMA
_____ William Yates, Mayor Date:_____ ATTEST: _____ Bridget Kessling, City Clerk	By:_____ Larry Newland, President Date:_____

AGENDA NO: B-1

MEETING DATE: January 11, 2011

Staff Report

TO: **City Council** **DATE: January 4, 2011**

FROM: **Kathleen Wold, Planning Manager**

SUBJECT: **Appeal of the Planning Commission's decision to approve Coastal Development Permit CP0-322 to allow the installation of 9 solar arrays with the associated structures and mechanical equipment. The project as proposed also includes the trimming of major vegetation.**

RECOMMENDATION:

Staff recommends the City Council deny the appeal and uphold the Planning Commission's conditional approval of Coastal Development Permit CP0-322.

FISCAL IMPACT:

The original project, installation of the solar arrays, has no fiscal impact to the City. There will be no collection of fees associated with the installation of the arrays as all permits except for the Coastal Development Permit will be obtained through state offices (Division of the State Architect). The processing of the appeal is not covered by a fee and because staff time is not covered it results in a minor negative fiscal impact.

SUMMARY:

The main issues surrounding this project are the proposed tree trimming, the view of the solar arrays from the beach area and Highway One and the California Environmental Quality Act (CEQA) analysis.

BACKGROUND:

Located within the California Coastal Commission's Appeal Jurisdiction this property requires a Coastal Development Permit to allow for installation of the solar arrays, the associated mechanical equipment including the inverters and meters and the associated structures. No other City permits are required due to the project proponent being a superior governmental agency (state agency) a subdivision of the State.

On December 9, 2009 the San Luis Coastal Unified School District applied for a Coastal Development permit (CP0-322) to allow the installation of nine solar arrays including the associated structures and mechanical equipment. A public hearing was held on October 4, 2010 before the Planning Commission at which the project was considered. It was the decision of the Planning

Prepared By: _____ **Dept Review:**_____

City Manager Review: _____

City Attorney Review: _____

Commission to conditionally approve the Coastal Development Permit. Subsequent to this approval staff determined that the required noticing of the project had not been satisfied. After new noticing of the project an additional public hearing was held on November 1, 2010. At this meeting the Planning Commission conditionally approved the project.

On November 12, 2010 an appeal was filed with the City of Morro Bay requesting that the City of Morro Bay assume the CEQA jurisdiction, perform an Initial Study to identify the environmental impacts and incorporate mitigation measures via a Mitigated Negative Declaration.

ENVIRONMENTAL DETERMINATION:

The San Luis Coastal United School District took the role as the lead agency, and conducted the CEQA review and determined that the project qualified for the following categorical exemptions under Class 2 (c), 3 (e) and 14.

The following explanation of the categorical exemption was provided by the district:

The San Luis Coastal Unified School District considered the proposed project characteristics, the physical characteristics of the site, previous environmental documents prepared for the named school site and find the project incorporates measures to trim vegetation and avoid impacts on biotic, cultural and visual resources and determines no significant effects on the environment. The Project Description includes trimming of trees, no trimming of trees during nesting season (Feb to Aug) if nests are present, and qualified biologist and archaeologist to monitor project construction. Summary reports shall be submitted following monitoring of project construction.

The school district included in their proposal the following commitments:

1. San Luis Coastal United School District shall perform pre-construction monitoring for nesting birds prior to any trees being trimmed.
2. San Luis Coastal United School District shall have cultural monitoring performed during construction.

The school district included these as project parameters so that the project in their opinion would qualify for an exemption from CEQA.

DISCUSSION:

The appellant is appealing the school district as the Lead Agency responsibilities under CEQA Section 15051. The relief the appellant is seeking is to have the City of Morro Bay assume the CEQA jurisdiction and perform an Initial Study to identify environmental impacts and incorporate mitigation measures via a Mitigated Negative Declaration.

As the lead agency, as defined under CEQA section 15051, the school district is well within their rights to assume the CEQA jurisdiction. The Criteria for identifying the lead Agency is as follows:

Where two or more public agencies will be involved with a project, the determination of which agency will be the Lead Agency shall be governed by the following criteria:

> *If the project will be carried out by a public agency, that agency shall be the Lead Agency even if the project would be located within the jurisdiction of another public agency.*

This is the situation with this project. Both the School District and the City of Morro Bay are public agencies. The school district will be responsible for carrying out the project including obtaining the necessary building permits from the State Office of Architecture. The City of Morro Bay's responsibilities begin and end at the issuance of the Coastal Development Permit.

There is no question that the San Luis Coastal Unified is compliance with section 15051 of the California Environmental Quality Act in assuming Lead Agency responsibilities.

The appeal letter also contains statements concerning the City of Morro Bay's Local Coastal Plan and the project's consistency with the document. There are various policies referred to within the appeal document followed by the statement that the project is inconsistent with this policy. However missing from the document is any substantiation as to how the project is inconsistent. There is one statement concerning minimum buffer strips from streams. The appellant indicates that array #8 appears to be within the minimums from the riparian vegetation. Neither the San Luis Obispo County Department of Planning and Building's Interactive GIS mapping countywide creeks map nor the water and mineral map indicate the presence of a stream adjacent to the northern boundary of the school site. In addition there is no Environmental Sensitive Habitat designation on the City's Zoning or General Plan maps in this area.

The appeal document also contains information regarding the deficiencies of the Categorical Exemption filed by the School District. Since the school district is the Lead Agency on the CEQA analysis pursuant to Section 15051 it would appear that the appellant's issues concerning the Categorical Exemption should have been addressed at the time the school district filed the Categorical Exemption with the County Clerk.

Finally, the appellant requests that an alternative to the project proposed be explored. There is no requirement under CEQA for alternative analysis unless an Environmental Impact Report is required. In addition, the appellant has not provided any evidence to document any inconsistencies with the City of Morro Bay's planning documents therefore no modification of the project is required.

CONCLUSION:

Staff has reviewed the appeal and determined that there was no evidence submitted into the record via the appeal document which substantiated that the San Luis Obispo Coastal Unified School district could not assume Lead Agency status under CEQA or that the project as conditionally approved is inconsistent with the City of Morro Bay's General Plan/Local Coastal Plan. Therefore it is staff's recommendation that the City Council uphold the Planning Commission conditional approval.

ATTACHMENTS:

Attachment 1 – Appeal from Julie Tacker dated November 12, 2010
Attachment 2 – November 1, 2010 Planning Commission Staff Report with exhibits.
Attachment 3 – Letter from David Foote, project agent, regarding appeal, dated December 14, 2010
Attachment 4 – San Luis Obispo County Department of Planning and Building, Interactive GIS Mapping map of identified streams
Attachment 5 – The SLO Coast Journal article, *MB high School Solar Carport Project*, by Julie Tacker published December 2010

ATTACHMENT 1

NOV 12 2010

CITY OF MORRO BAY
PUBLIC SERVICES DEPARTMENT
APPEAL FORM

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

Morro Bay City Planning Commission

APPEAL OF SPECIFIC DECISION OR ACTION:

CPO-322
9 Solar array at Morro Bay High School

DATE DECISION OR ACTION RENDERED: November 11, 2010

APPELLANT (PLEASE PRINT): Julie Tacker

SIGNATURE: Juliana M. Tacker

ADDRESS: P.O. Box 6070, Los Osos CA 93412 *TELEPHONE NUMBER:* 528-3569

GROUNDS FOR THE APPEAL (ATTACH SHEETS AS NECESSARY):

See Attached

REQUESTED RELIEF OR ACTION:

Assume CEQA jurisdiction, perform Initial Study to identify environmental impacts and incorporate mitigation measures via an M.N.D.

FOR OFFICE USE ONLY	
DATE APPEAL FILED:	ACCEPTED BY:
APPEAL BODY:	
DATE OF APPEAL HEARING:	

S:\Planning\Samples & Stocks\Form\Appeal.doc

RE: San Luis Coastal Unified School District Solar Array Project
File Number: CPO-322
Site Address: 235 Atascadero Road
APN: 065-182-011

November 12, 2010

Dear Morro Bay City Council:

By way of introduction, my name is Julie Tacker, I am a long time resident of Los Osos and have been following the above referenced project for some time. While the project is to be applauded in its attempt to save the School District money as well as its efforts to teach a "green alternative" to the youth of the District and the community at large it raises a number of concerns. I wish to appeal the Planning Commission's approval of the above referenced project on November 1, 2010. I understand that an appeal to your Council will be a de novo review, whereby all aspects of the project are able to be discussed including alternatives.

Inconsistencies with the City of Morro Bay's LCP

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

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

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

12.09 a. *Develop clearer requirements, standards, and criteria for installation of landscaping and* ***retention of existing specimen trees as part of new developments, parking lots, etc.***
The trees impacted by this project may meet the definition of "specimen trees."

The proposed project is also inconsistent with:

Program VR-1.4 b. *Screen unattractive views (Morro Bay High School) and* ***c.*** *Accentuate entrances to the City (Hwy 1 at Hwy 41).*
A goal for City Entryways states "the City should exercise strict design control over new development along these corridors to improve architectural coordination and quality."

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

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

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

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

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

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

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

Section 30251: *The scenic and visual qualities of coastal areas shall be permitted considered and protected as a resource of public importance. Development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.*

Policy 11.14 *A minimum buffer strip along all streams shall be required as follows:*

(1) a minimum buffer strip of 100 feet in rural areas;
(2) a minimum buffer strip of 50 feet in urban areas.

It is unclear from the project description how far Array #8 is from the stream separating the high school from the Cloisters neighborhood. It appears to be within the minimums from riparian vegetation. A wetland delineation from a qualified biologist will determine the extent of ESHA in this area and the necessary setbacks required by the LCP. Further supporting the need to conduct an Initial Study and perform necessary environmental review.

Categorical Exemption is Inadequate

At the School Board's October 20, 2009 meeting their consultants recommended a Mitigated Negative Declaration be pursued for the project (see attached staff report, page 5.2). A Mitigated Negative Declaration (MND) is the statement of a local government that a limited number of significant environmental impacts have been identified and that these impacts can be readily mitigated if the prescribed measures are implemented. With no explanation for change in course, the consultant provided the School Board a Categorical Exemption (CE) at their November 17, 2009 meeting. This 'Notice of Exemption' was subsequently approved by the School Board and filed with the SLO County Clerk Recorder. In large part, the CE used data collected as part of the Measure A improvements some 10+ years ago and asserts an unsubstantiated number of 290,000 mature trees planted offsets the project as calculated by the solar company representative. The representation was made to the State of California that the project was "self mitigating by virtue of the total environmental benefit provided". This mitigation formula fails to recognize other impacts of the project including, visual, archeological, and biological, etc.

The Categorical Exemption (CE) for the above referenced project is inadequate. The CE cites exemptions that stretch the definitions when the project is viewed as a whole. The project description has been fluid and remains undefined. My understanding of the project description at this time is the installation of nine (9) solar arrays totaling 32,000 square feet with associated carport structures, fencing and mechanical equipment. The project as proposed also includes the trimming of major vegetation and landscape screening.

School District **asserted** Categorical Exemptions.

1. **Class # 2 (c), replacement of existing utility systems.**
   The proposed structures are entirely ***new*** *utility systems, not replacements.*

2. **Class #3 (e), new construction of small structures (i.e. carports)**
   The proposed structures are not only carports they are solar array supports, housing electrical components for electricity generation. These carport structures are not ***small*** *structures; the project footprint is in excess of 32,000 square feet. (Equivalent to the Albertson's super market at 730 Quintana Road, Morro Bay, CA).*

3. **Class #14, minor additions to schools**
   The 32,000 square foot footprint and subsequent impacts of the project can not be defined as "minor additions."

When considering use of a Categorical Exemption the project must be considered in its entirety, it appears the school district has separated the project description into pieces and attempted to use individual exemptions to qualify the respective project components as exempt. This is a misplaced and incorrect use of a CE.

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

Two pertinent paragraphs:

15300.2—Exceptions

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

Both of these apply to MBHS. Paragraph (d) specifically applies to MBHS since Highway 1 is designated as a Scenic Highway.

Additionally, Class 4 and Class 8:

"15304. Minor Alterations to Land Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes."

"15308. Actions by Regulatory Agencies for Protection of the Environment
Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environ- mental degradation are not included in this exemption."

Class 4, particularly, describes the MBHS impact.

Please consider theses citations as part of my concerns for the CE and consider the school district or the City of Morro Bay should perform an Initial Study and prepare a proposed Negative Declaration or Mitigated Negative Declaration for the proposed project.

Alternatives Must be Explored

The MND process would likely reveal alternative projects that may in fact be less environmentally damaging. The consultant has not preformed engineering analysis

necessary to determine if rooftop installation of the solar arrays at a given school site is feasible. The consultant instead speculates that the age of the buildings on various sites would require expensive retrofitting, yet suggests a "Phase II Solar Project" be considered on rooftops in the future (citation October 20, 2009 School District staff report). Please note the Google photo on page 5.8 depicting Morro Bay High School project at that time. Also notice the "alternate" project impacts on the photo. Notice the placement of arrays would be on the west side of the school, near the bus barn, where very few mature Cypress trees grow. The loss of some parking lot trees are of lesser importance than those trees planted some 50+ years ago along Scenic Highway 1. Alternatively, rooftop installation would likely eliminate the need to remove over 150 trees at the various school sites (as identified in the Notice of Exemption dated November 17, 2009) or the need to prune/trim some 19 trees at Morro Bay High School (as identified in the pending Notice of Exemption *mistakenly dated* September 21, 2001 and filed September 24, 2010).

These structures cover a large footprint in this case; the visual impacts have been diminished by the consultant. Limited photo simulations have been produced; no simulations of trees *after* pruning from the perspective of the neighborhood to the north (Cloisters) or the beach area (a concern raised by your staff) and none from Scenic Highway 1 or the neighborhood of North Main Street are provided -- likely the most visually impacting. An MND process would provide in depth analysis associated with these and other aspects of the project and mitigation measures could be incorporated into the proposal to further reduce environmental impacts.

New Technologies are Emerging

Technology in the solar field is rapidly changing, for the project to move forward building unnecessary carports and removing/pruning trees to accomplish it, is akin to buying an 8 ft. household television satellite dish in the early 1990's as compared to the 18 in. dish TV available today. These solar facilities will likely be obsolete in 10 years; nowhere near the 25 yr. expected lifecycle of the project or the extended contract "as long as 50 years" as suggested by the District.

Rooftop Installation Available

Also of interest, a District produced School Accountability Report Cards states "We recently completed rehabilitation of many of our facilities as part of our Measure A Building Program which began in 1996. Our facilities are in very good shape." It is well known that nearly all the school sites have been upgraded with new libraries, gymnasiums, etc.; as part of the $130 million Measure A projects, these newer and improved buildings would likely be good candidates for solar arrays.

In reviewing the Planning Commission staff report there are inconsistencies related to environmental studies. The April 16, 2010 letter to the District from Genene Lehotsky, Associate Planner, states "the City will prepare an Initial Study and prepare its own environmental determination." This analysis is appropriate, but is not included. The

project description appears to have been morphing in an attempt to avoid permitting requirements; this is another reason to require an MND.

City Should Assume Lead Agency Status

It is my belief that the City could be the lead agency for this project. The evidence cited in Public Resources Code 15051 *"Where two or more public agencies will be involved with a project, the determination of which agency will be the Lead Agency shall be governed by the following criteria: (1) The Lead Agency will normally be the agency with general governmental power, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which shall provide a public service or public utility to the project."*

San Luis Coastal Unified School District is a single purpose quasi-public agency. On the other hand the City of Morro Bay is responsible for land use, parks and recreation, libraries, fire protection, etc. Clearly, the City has broader governmental powers and is better qualified to carry out the necessary analysis for projects such as this.

I urge the City to assume Lead Agency status before being compelled to process the Environmental Determination pursuant to CEQA. An Environmental Determination likely would include an alternatives analysis. The project description appears to have been morphing in an attempt to avoid permitting requirements; this is another reason to have an MND. I submit that alternatives may be less damaging to the environment exist while achieving project objectives.

Recommendations

Send the project back to staff assuming CEQA jurisdiction; perform an Initial Study to identify environmental impacts and incorporate mitigation measure via an MND.

If you have any questions feel free to contact me at julietacker@charter.net or 805.528.3569.

Thank you for your time and attention to this very important matter.

Sincerely,

Attachment

See alternative for MBHS on page 5.8

SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT
BOARD MEETING AGENDA
October 20, 2009

ITEM NO.: 5

TOPIC: Solar Photovoltaic Project and Shading

PREPARED BY: Brad Parker,Director of Facilities, Operations and Transportation

WILL BE PRESENTED BY: Brad Parker

TYPE OF ITEM: Report

DESCRIPTION OF AGENDA ITEM:

REC Solar's engineering team has been evaluating each school to determine where solar arrays could be placed. Some of the design constraints encountered include bus and fire lanes, the number of double loaded parking stall layouts, distances from property line setbacks and school buildings, sunlight orientation, and shading. Del Mar Elementary, Hawthorne Elementary, Los Ranchos Elementary, Sinsheimer Elementary, C.L. Smith Elementary and Pacific Beach High School all have site constraints which inhibit the economics of parking lot canopy photovoltaic (PV) installations. Staff recommends these schools be re-evaluated for possible rooftop PV installation as a Phase II Solar Project.

As we narrow our site options, it has become apparent that, at some schools, there will be quite a lot of tree trimming or tree removal required to prevent shading of the PV arrays. This is a necessary environmental tradeoff to realize the benefits of solar generated electricity. The importance of solar PV and the problem of shading have taken statewide importance as evidenced by the relatively new law the state legislature has enacted protecting solar panels from shading by neighboring tree growth and future building construction. We are faced with a similar problem—trimming or removing existing trees in order to realize the benefits of solar electric generation.

To help put into perspective the comparative environmental benefits of solar PV versus the environmental drawbacks of tree removal, consider the following cumulative environmental benefits of the solar project we are planning:

ADDITIONAL INFORMATION:
Attached: Yes 4 No _____
Available: Yes 4 No _____

Greenhouse Gas Reductions in Tons of Carbon Dioxide	76,800 Ton
or	1,350 Acres
Equivalent Quantity of Trees Planted Equivalent	
or	18,560 Cars
Number of Cars Removed from the Road for 1 Year	

The relative benefits are compelling. However, no one will conclude that the proposed solar arrays are as attractive as the trees recommended for removal. Re-planting in other areas and adding lower shrubs will help but not replace the removal of mature trees.

The attached exhibits for Baywood Elementary, Bishop's Peak/Teach Elementary, Monarch Grove Elementary, Pacheco Elementary, Laguna Middle, Los Osos Middle, Morro Bay High, and San Luis High Schools show in detail those trees which would be affected.

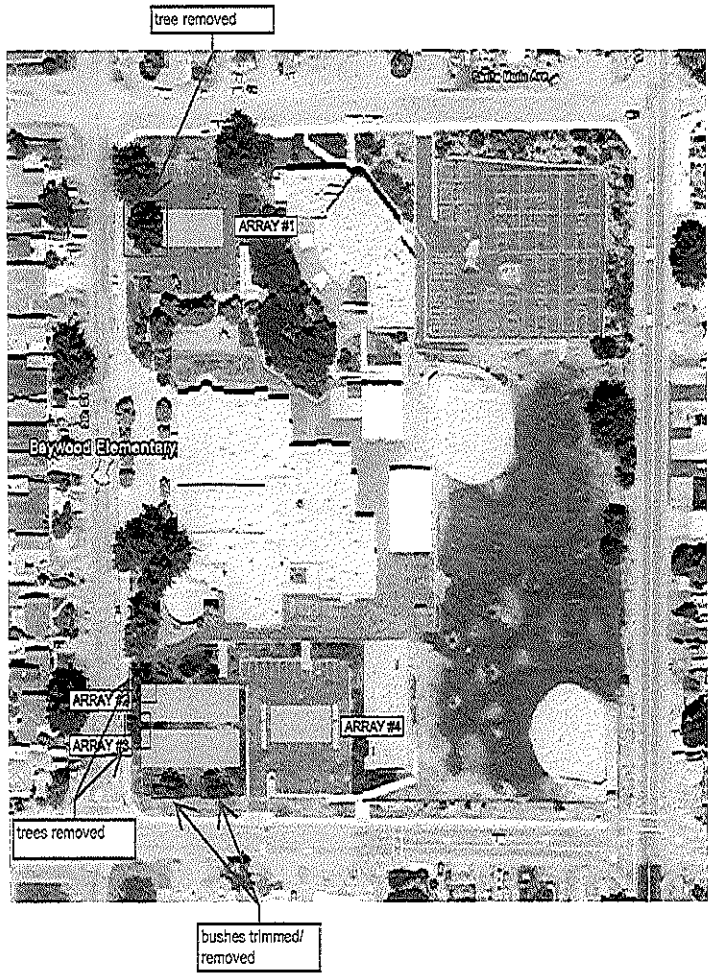
Staff has discussed the potential impacts of multiple tree removals at multiple sites with our California Environmental Quality constultant, FIRMA, who recommends we undertake a Mitigated Negative Declaration on this districtwide project. This environmental analysis and recommendation will be presented at a future Board meeting.

FISCAL IMPACT:

None at this time.

RECOMMENDATION:

That Staff continue to proceed with the project, recognizing the changes in scope, and with an understanding of the relative environmental benefits versus the negative effects of the required tree trimming and removal.



ARRAY #	DC POWER
1	27.72 KW
METER 1 TOTAL	27.72 KW

ARRAY #	DC POWER
2	46.20 KW
3	46.20 KW
4	27.72 KW
METER 2 TOTAL	120.12 KW

REC

CONSULTANT

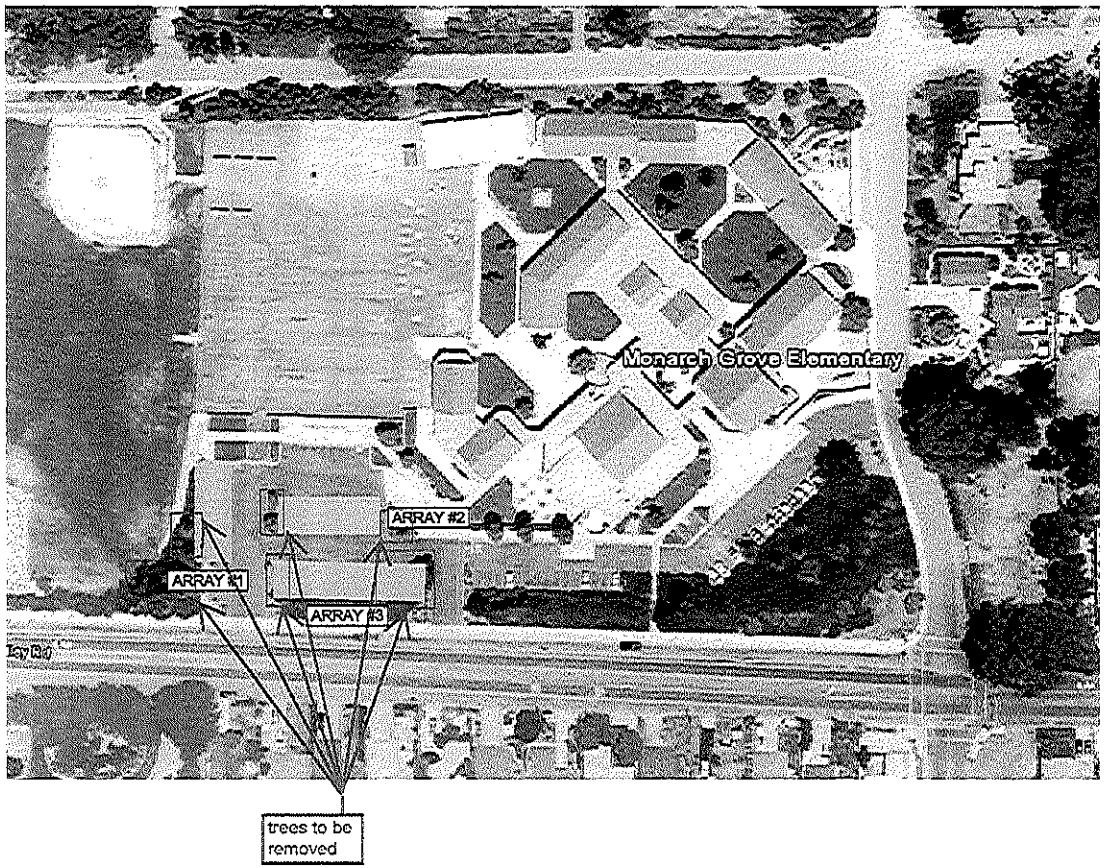
BLYMYER ENGINEERS, INC.

SITE ADDRESS:

SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT
BAYWOOD ELEMENTARY SCHOOL
1330 9TH ST.
LOS OSOS, CA

PHOTOVOLTAIC ARRAYS PRELIMINARY DESIGN

DRAWN BY: LW
ENGINEER: GM
SCALE: 1" = 100'-0"
REV: 2
DATE: 09-30-09
DRAWING NUMBER:
G-100



ARRAY #	DC POWER
1	36.96 KW
2	36.96 KW
3	55.44 KW
TOTAL	129.36 KW

REC

CONSULTANT

BLYMYER ENGINEERS INC

SITE ADDRESS:

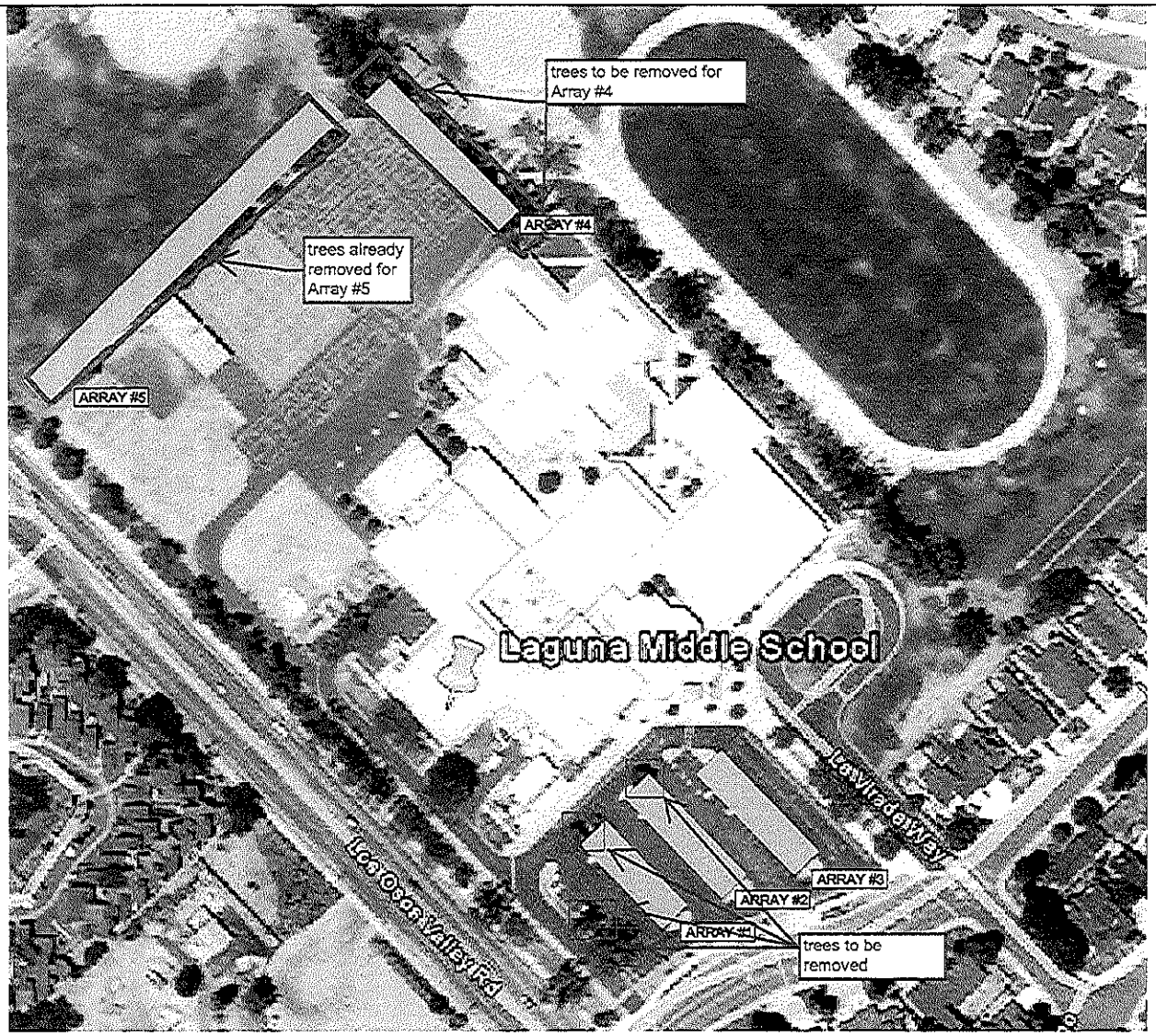
SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT
MONARCH GROVE ELEMENTARY SCHOOL
348 LOS OSOS VALLEY RD.
LOS OSOS, CA

PHOTOVOLTAIC ARRAYS PRELIMINARY DESIGN

DRAWN BY: LW
ENGINEER: CM
SCALE: 1" = 100'-0"
REV: 2
DATE: 09-30-09

DRAWING NUMBER: G-108

L:\Acad\2009dwg\209028 Rec Solar San Luis CUSD\google photo site plans\ROUND 3 V1 V2\VERSION 2\G-108 monarch grove elementary V2.dwg September 30, 2009 - 4:46PM LWillstock



ARRAY #	DC POWER
1	46.20 KW
2	55.44KW
3	55.44 KW
4	73.92 KW
5	166.32 KW
TOTAL	397.32 KW

REC

CONSULTANT

BLYMYER ENGINEERS INC

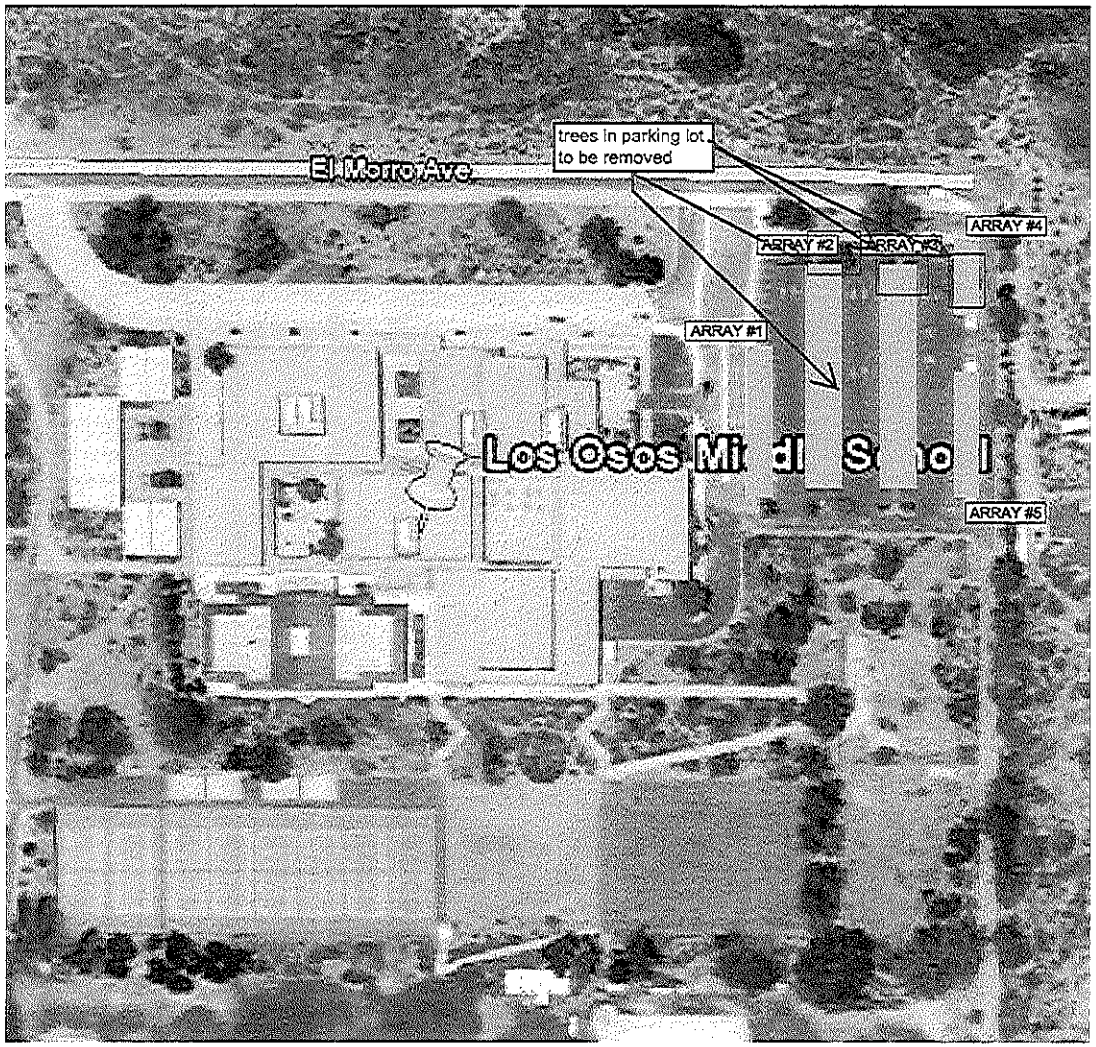
SITE ADDRESS:

SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT
LAGUNA MIDDLE SCHOOL
11050 LOS OSOS VALLEY RD.
SAN LUIS OBISPO, CA

PHOTOVOLTAIC ARRAYS PRELIMINARY DESIGN

DRAWN BY: LW
ENGINEER: GM
SCALE: 1" = 100'-0"
REV: 3
DATE: 09-30-09
DRAWING NUMBER:
G-105

L:\Acad\2009dwg\209028 Rec Solar San Luis OUSD\$google photo site plans\ROUND 3 V1 V2\VERSION 3\G-105 laguna middle V3.dwg September 30, 2009 - 4:31PM LWittstock



ARRAY #	DC POWER
1	36.96 KW
2	83.16 KW
3	83.16 KW
4	18.30 KW
5	30.80 KW
TOTAL	252.38 KW

NOTE:
ARRAYS #1, 4 and 5 ARE ALL "XL" STRUCTURES

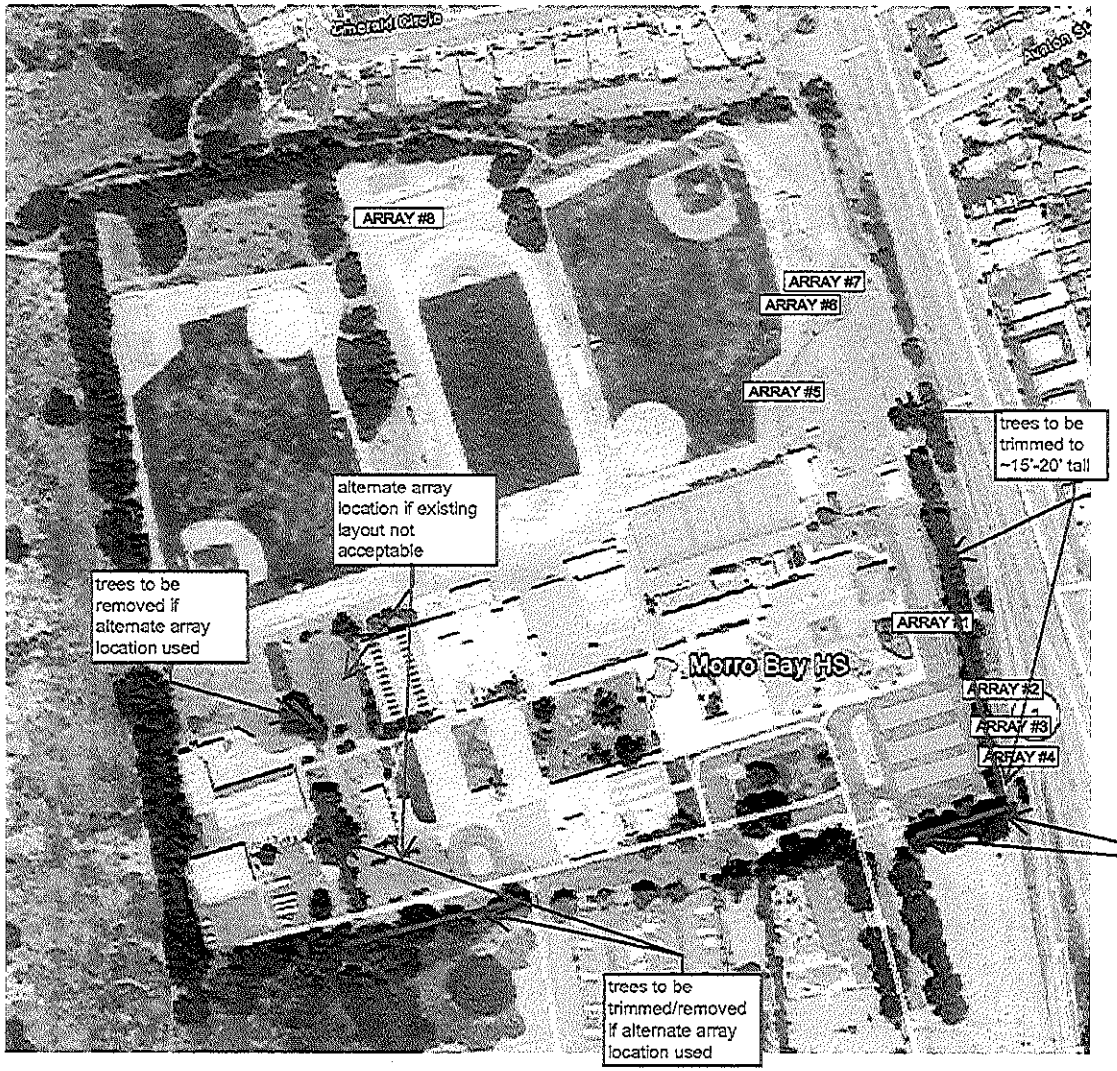
CONSULTANT
BLYMYER ENGINEERING INC

SITE ADDRESS:
SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT
LOS OSOS MIDDLE SCHOOL
1555 EL MORRO AVE.
LOS OSOS, CA

PHOTOVOLTAIC ARRAYS PRELIMINARY DESIGN

DRAWN BY: LW
ENGINEER: GM
SCALE: 1" = 100'-0"
REV: 2
DATE: 09-30-09
DRAWING NUMBER: G-106

L:\Acad\2009dwg\009028 Rec Solar San Luis OBSP\google photo site plan\ROUND 3 VI V2\VERSION 2\0-109 los osos middle V2.dwg September 30, 2009 - 4:47PM LWilstrock



ARRAY #	DC POWER
1	64.68 KW
2	55.44 KW
3	46.20 KW
4	46.20 KW
5	92.40 KW
6	92.40 KW
7	83.16 KW
METER 1 TOTAL	480.48 KW

ARRAY #	DC POWER
8	27.72 KW
METER 2 TOTAL	27.72 KW

CONSULTANT

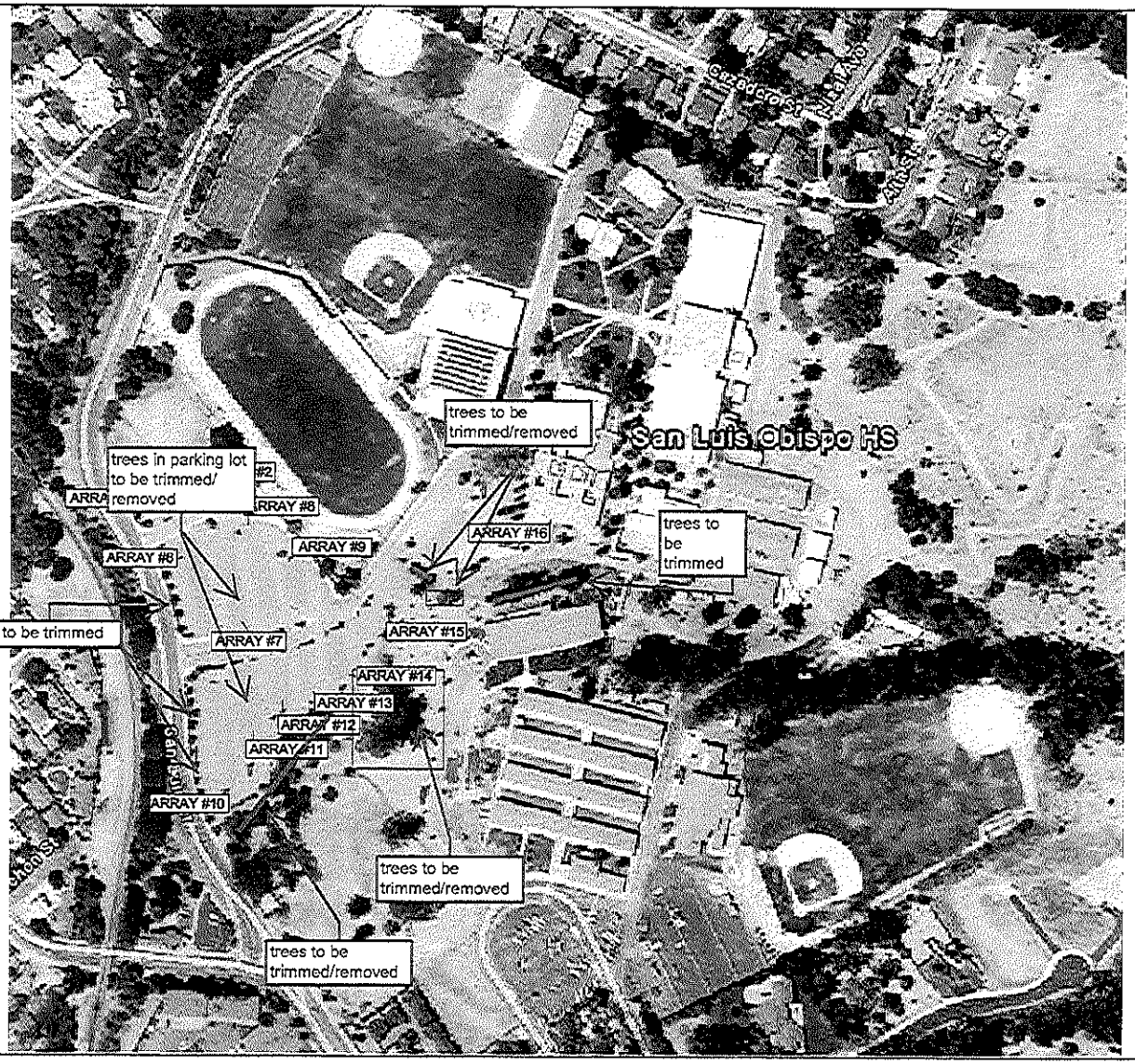
BLYMYER ENGINEERING INC

SITE ADDRESS:

SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT
MORRO BAY HIGH SCHOOL
235 ATASCADERO RD.
MORRO BAY, CA

PHOTOVOLTAIC ARRAYS PRELIMINARY DESIGN

DRAWN BY: LW
ENGINEER: GM
SCALE: 1" = 200'-0"
REV: 2
DATE: 09-30-09
DRAWING NUMBER:
G-109



ARRAY #	DC POWER
1	36.96 KW
2	18.48 KW
7	73.92 KW
8	73.92 KW
9	73.92 KW
10	36.96 KW
11	83.16 KW
12	55.44 KW
13	36.96 KW
14	36.96 KW
15	36.96 KW
16	27.72 KW
17	46.20 KW
TOTAL	637.56 KW

REC

CONSULTANT

BLYMYER ENGINEERS INC

0

SITE ADDRESS:

SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT
SAN LUIS OBISPO HIGH SCHOOL
1350 CALIFORNIA BLVD.
SAN LUIS OBISPO, CA

PHOTOVOLTAIC ARRAYS PRELIMINARY DESIGN

DRAWN BY: LW
ENGINEER: GM
SCALE: 1" = 200'-0"
REV: 2
DATE: 09-30-09
DRAWING NUMBER:
G-111

ATTACHMENT 2

Memorandum

TO: PLANNING COMMISSION **DATE:** NOVEMBER 1, 2010

FROM: SIERRA DAVIS, ASSISTANT PLANNER

SUBJECT: 235 ATASCADERO ROAD, MORRO BAY HIGH SCHOOL – ADDENDUM TO STAFF REPORT

STAFF RECOMMENDATION

Staff recommends that the Planning Commission conditionally approved CP0-322 by adopting a motion including the following action(s):

A. Adopt the Findings for Approval included as "Findings of Approval" included in Exhibit "A"; and

B. Approve Coastal Development Permit, subject to the "Conditions of Approval" included in Exhibit "A" and site plans dated June 29, 2010, on record with the Public Services Department.

DISCUSSION

The proposed project located at 235 Atascadero Road, Morro Bay High School for the installation of 9 photovoltaic units, support structures, and associated mechanical equipment was heard before the Planning Commission on October 4, 2010. Due to circumstances out of staff's control the legal noticing requirement was not met. The applicant submitted mailing labels from a service that attested that the mailing labels submitted contained all the addresses within 300 feet of the subject site. A member of the public brought the issue to staff's attention when asked if any properties on the east side of Highway One and Main Street were noticed. Further investigation revealed that properties on the east side of Highway One and Main Street within 300 feet of the property were not noticed due to the omission of these addresses by the label service.

In order to meet the legal noticing requirement it was necessary to re-notice the project to include the people that were not previously noticed due to the insufficient labels.

EXHIBITS

1. Exhibit A: Findings and Conditions of Approval

2. Exhibit B: Planning Commission Packet from October 4, 2010.
3. Exhibit C: Letter from Brad Parker, October 27, 2010
4. Exhibit D: Letter from Julie Tacker, October 18, 2010
5. Exhibit E: Letter from Julie Tacker, October 20, 2010

EXHIBIT A

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

I. FINDINGS OF APPROVAL

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

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

II. CONDITIONS OF APPROVAL

STANDARD CONDITIONS

1. This permit is granted for the land described in the staff report referenced above, dated October 4, 2010 for the project depicted on the attached plans labeled "Exhibit G", dated June 29, 2010, on file with the Public Services Department, as modified by these conditions of approval, and more specifically described as follows:

2. Inaugurate Within Two Years: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this approval and is diligently pursued thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Said extensions may be granted by the Director of Public Services, upon finding that the project complies with all applicable provisions of the Morro Bay Municipal Code, General Plan and Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.

3. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Director of Public Services. Any changes to this approved permit determined not to be minor by the Director shall require the filing of an application for a permit amendment subject to Planning Commission review.

4. Compliance with the Law: (a) All requirements of any law, ordinance or regulation of the State of California, City of Morro Bay, and any other governmental entity shall be complied with in the exercise of this approval (b) This project shall meet all applicable requirements under the Morro Bay Municipal Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use Plan and General Plan for the City of Morro Bay.

5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or

from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicants failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.

6. Compliance with Conditions: The applicant's establishment of the use and/or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed here on shall be required prior to obtaining final building inspection clearance through the state, the applicant shall call for an inspection from the City of Morro Bay's Public Services Department, Planning and Building Division. Deviation from this requirement shall be permitted only by written consent of the Director of Public Services and/or as authorized by the Planning Commission. Failure to comply with these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the Morro Bay Municipal Code and is a misdemeanor.

7. Acceptance of Conditions: Prior to obtaining a building permit through the Division of the State Architect, the applicant shall file with the Director of Public Services written acceptance of the conditions stated herein.

PLANNING CONDITIONS

1. Archaeological monitoring shall occur for all ground disturbing activities in the development area by a qualified archaeologist and qualified local indigenous cultural monitor. Collection of historic and prehistoric cultural remains deemed significant shall occur, and if necessary, analysis of any features encountered including but not limited to historic refuse dumps and diagnostic prehistoric habitation deposits shall occur. Selection and processing of prehistoric marine shell for radiocarbon dating shall also occur.

2. The applicant/property owner shall provide an archaeological monitoring evaluation plan prepared by a qualified archaeologist for all construction excavations associated with demolition activity. The plan shall identify all the ground disturbance activity monitored including dates the archaeologist and culturally affiliated, indigenous individual recognized by the Native American Heritage Commission were present. The evaluation report shall describe all the densities or features of artifacts associated with a particular activity encountered. Any isolated human remains encountered during construction shall be protected and their disposition be undertaken consistent with Public Resources Code 5097.98.

3. The following actions must be taken immediately upon the discovery of human remains: Stop immediately and contact the County Coroner. The coroner has two working days to examine human remains after being notified by the responsible person. If the remains are Native American, the Coroner has 24 hours to notify the Native American Heritage Commission. The Native American Heritage Commission will immediately notify the person it believes to be the most likely descendent of the deceased Native American. The most likely descendent has 48 hours to make recommendations to the owner, or representative, for the treatment or disposition, with proper dignity, of the human remains and grave goods. If the descendent does not make recommendations within 48 hours the

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

4. A preconstruction survey to determine if there are any nesting birds within the trees proposed for trimming shall be conducted prior to any work being performed.

5. This permit provides for the trimming of trees as delineated in the project as follows: Trees 1, 3 through 6 will be trimmed to a height of a minimum of 50 feet and no lower. Tree 2 will be side trimmed. Trees 24-29 will be pruned to a height of 35-40 feet and no lower. Trees 30-37 will be trimmed to 39'6" or 45 feet in height and no lower. All measurements will be taken from the finished grade near the base of the tree. Removal of more than 40% of the live crown or reducing the height beyond the limits noted above shall require an amendment to this permit. A certified arborist shall supervise all tree trimming activities.

6. The solar array structures and panels shall be adequately screened from view from the Highway one corridor by the inclusion of new landscaping along with the tree trimming. If tree trimming results in lack of screening additional landscaping shall be planted.

7. The solar arrays installed shall be the REC type Solar Arrays with anti-reflective coating. Prior to receiving a final inspection the applicant shall submit documentation indicating that the arrays are indeed REC type Solar Arrays.

FIRE CONDITIONS

1. Fire Department field inspection is required.

PUBLIC WORKS CONDITIONS

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

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

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

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

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

PLANNING COMMISSION CONDITIONS

1. Any Monterey Cypress tree that dies shall be replaced by a Monterey cypress tree, unless otherwise determined by the Public Services Director it will result in overcrowding.

2. No tree trimming shall occur on the east side of the school boundary on trees number 1 through 29 for one calendar year to determine if solar production is adequate. If solar production is not adequate after one year the school district may appeal to the planning commission for appropriate tree trimming and shall provide relevant supportive data.

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.

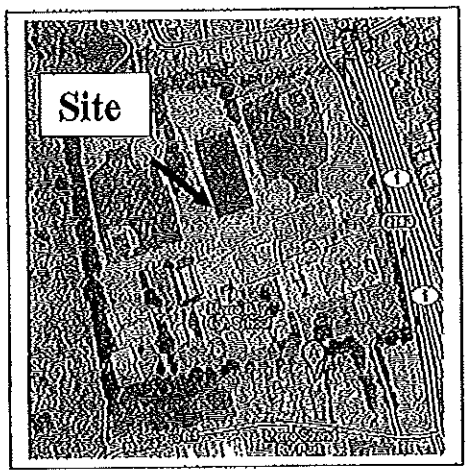
EXHIBIT B

AGENDA ITEM: XI-A
ACTION: _____

CITY OF MORRO BAY PLANNING COMMISSION

October 4, 2010

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



Vicinity Map

FILE NUMBERS
CP0-322

SITE ADDRESS
235 Atascadero Road

APN(S)
065-182-001

APPLICANT:
San Luis Coastal Unified School District

ATTACHMENTS
1. Findings, Exhibit A
2. Conditions, Exhibit B
3. Reduced Plans/Graphics, Exhibit C
4. California Solar Rights Act, Exhibit D
5. Correspondence and Submitted Reports, Exhibit E
6. San Luis Coastal Unified School District's CEQA Exemption, Exhibit F
7. Plans, Exhibit G

ISSUE SUMMARY
The main issues surrounding this project is the proposed tree trimming and the view of the solar arrays from the beach area and Highway One.

STAFF RECOMMENDATION
Staff recommends that the Planning Commission conditionally approved CP0-322 by adopting a motion including the following action(s):

A. Adopt the Findings for Approval included as Exhibit "A" of the staff report for the Coastal Development Permit

B. Approve Coastal Development Permit, subject to the Conditions included as exhibit "B" and site plans dated June 29, 2010, on record with the Public Services Department.

PERMITTING REQUIREMENTS:

Located within the California Coastal Commission Appeal Jurisdiction this property requires a Coastal Development Permit to allow for installation of the solar arrays, the associated mechanical equipment including the inverters and meters and the associated structures.

ENVIRONMENTAL DETERMINATION:

The San Luis Coastal United School District took the role as the lead agency, and conducted their own CEQA review and determined that the project qualified for the following categorical exemptions under Class 2 (c), 3 (e) and 14. The lead agency is the public agency tasked with carrying out the project even if the project is located within the jurisdiction of another public agency (CEQA section 15051).

The following explanation of the categorical exemption was provided by the district:

The San Luis Coastal Unified School District considered the proposed project characteristics, the physical characteristics of the site, previous environmental documents prepared for the named school site and find the project incorporates measures to trim vegetation and avoid impacts on biotic, cultural and visual resources and determines no significant effects on the environment. The Project Description (see attached exhibits 1-3) includes trimming of trees, no trimming of trees during nesting season (Feb to Aug) if nests are present, and qualified biologist and archaeologist to monitor project construction. Summary reports shall be submitted following monitoring of project construction.

The school district included in their proposal the following commitments:

1. San Luis Coastal United School District shall perform pre-construction monitoring for nesting birds prior to any trees being trimmed.
2. San Luis Coastal United School District shall have cultural monitoring performed during construction.

The school district included these as project parameters so that the project in their opinion would qualify for an exemption from CEQA.

Biology Report

A report submitted by from Mike McGovern, a consulting biologist, was submitted for review by the city. This report documents the type of birds and butterflies observed in this area. The observation were conducted on February 25, 2010 from 8:30 to 10:30 in the morning. There were three birds species observed on site. The Monterey cypress were used by ravens (Corvus Corvax) and Anna's hummingbirds (Calypte anna) for roosting and an unidentified raptor

thought to be a white tailed kite(Elanus Leucurus) was observed sitting in a tree top. There were other birds observed in the area but they were not observed utilizing the trees. It was noted in the report that the monarch butterflies utilize these trees. The report also states that there are eleven bird species listed (on the endangered species list) including one species in the Morro Bay north quadrangle, the western snowy plover and that the habitat provided by the trees on site are not suitable or optimal for any of these listed species. The report does note that the trees serve as a roosting site for a variety of bird species. The trimming of the trees would not eliminate the opportunity for birds to nest however; it does make the trees less attractive for nesting.

Arborist Reports

An arborist report from JTS Inc. was submitted on March 15, 2010. The report addresses the management of the trees which are blocking solar penetration to the proposed solar panels. Although the report indicates trees were considered for removal the proposal has now been revised to eliminate all tree removals. The report concludes that Monterey Cypress trees can be heavily pruned and will likely survive if the trees are not overly mature or suffering from other problems. The Cypress trees on site can be pruned (if done by a professional or certified arborist) to leave enough live foliage to sustain the life of the tree. The pruning volume is approximately 25-40% of the live crown. No more than 40% of the live crown is to be removed on this species.

On July 22, 2010 an addendum to the original arborist report was submitted. This report was written by Jeremy Lowney Arboriculture & Landscaping. This report indicates that the project can go forward without the removal of any trees by modifying the location of the solar rays and specific pruning.

There was also a report prepared by Senior Landscape Architect, Karyl M. Vierra which indicated that on Monday, November 30, 2009 the trees were observed and evaluated. This report indicates that the Monterey Cypress trees were planted in 1956/1958 as a barrier between Highway One and the high school and that these trees have been limbed-up to allow for safe parking of cars and travel of pedestrians. The typical maturity in a coastal environment is 50 to 70 years. The trees in question show signs of having reached maturity: branch die-off and the flat-topped crown of maturity but there is no evidence of coryneum canker or root rot.

Glare Documents

The applicant submitted information regarding REC solar modules which indicates that the use of an anti-reflective treatment on the module glass increases energy production, performance ratio and reduces the reflectivity of the glass surface significantly. Reducing the reflectivity helps to reduce glare and also allows more light to reach the solar cell.

Archaeological Surface Survey Report

The applicant has submitted an Archaeological Surface report prepared by Thor Conway Heritage Discoveries Inc. dated May 31, 2010. The conclusion of this report was to recommend that archaeological monitoring be required for this project due to the sensitivity of the area.

BACKGROUND

The San Luis Coastal Unified School District has applied for and become eligible for Federal Recovery Zone Bonds. The project in its entirety consists of solar photovoltaic projects proposed for the following schools: Baywood, Bishop's Peak/Teach, Pacheco, Manarch Grove, Laguna Middle, Los Osos Middle, Morro Bay High, San Luis high, and the San Luis Corporation yard. Each one of these projects was required to get all necessary permits from the appropriate jurisdiction, in this particular case Morro Bay High is required to get a Coastal Development Permit from the City of Morro Bay.

PROJECT DESCRIPTION

Solar Arrays

The project proposes to install a maximum of 397.32KW solar photovoltaic system, including 9 solar arrays and 2 inverters at locations shown on the accompanying site plan as supplement electrical supply system through the service equipment. The table below provides details on each array.

Array	No of strings	Power (KW)	Area (SQ. ft)
2	18	55.4	4517.5
3	15	4620	3770
4	15	16.20	3770
5	18	55.44	4517.5
6	24	73.92	6012.5
7	15	46.20	3770
8	8	18.48	1495
9	9	27.72	2242.5
10	9	27.72	2242.5

The inverters are located at two electric service points, one at Array 5 and one at Array 8. The enclosures around these inverters will be a chain link fence with privacy slats. The enclosure around Array 5 is proposed to be 16'6" wide by 8'5" in depth by 8'6" in height. The enclosure around Array 5 is proposed to be 13'1" wide by 7'8" in depth by 8' in height.

The location of each one of these arrays is clearly delineated on the site plan included in your packet as exhibit "G"

The plans submitted by the applicant indicate that the height of these arrays will range from 9 feet to 16 feet in height.

Trees and landscaping

The School district has modified their original proposal and has eliminated all tree removals. The revised proposal includes tree trimming of trees 1 through 6 and 24 through 37. These numbers correspond to the numbers shown on the tree photographs and the associated site plan which are part of the packet and labeled exhibit "C & G". The applicant's proposal specifically indicates that all tree trimming will be conducted by a certified arborist using direction pruning

methods with no more than 40% of the live crown to be removed. Trees 1 and 3 through 6 will be trimmed to a height of 50 feet. Tree 2 will be side trimmed. Trees 24-29 will be pruned to a height of 35-40 feet. Trees 30-37 will be trimmed to 39'6" or 45 feet in height. All measurements will be taken from the finished grade near the base of the tree.

New landscaping is proposed. This landscaping includes low growing plants and will be maintained at a height of no more than 12 feet to provide screening as well as solar access to the solar arrays.

Local Coastal Plan Consistency

The City's Local Coastal Land Use Plan indicates that protection and preservation of coastal scenic resources is one of the primary goals of the Coastal Act of 1976. Section 30251 states that "The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, and to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas". New development in highly scenic areas such as those designed in the California Coastline Preservation and Recreation Plan prepared by local government shall be subordinate to the character of its setting. The City's LCP recognizes visual quality concerns from State Highway One.

Photos submitted by the applicant show that the proposed arrays and their support structures will be adequately screened from view from Highway One. The screening proposed will fill in the areas between ground level and twelve feet. The placement of the arrays and their structures have been sited to blend in with the existing development of site and not created additional disruptions to the view from Highway One or from the beach area. Therefore the project as conditioned will be consistent with the City's LCP.

Adjacent Zoning/Land Use			
North	R-1, Single Family residential (Cloisters)	South	Zoned C-VS (PD) and M-1 (PD) (I) various commercial uses
East	U.S. Hwy 1	West	Coastline

Site Characteristics	
Site Area	54+ acres
Existing Use	Morro Bay High School
Terrain:	Virtually flat
Vegetation/Wildlife	Urbanized site, Trees and landscaping
Archaeological Resources	Study conducted recommended monitoring during construction
Access	Atascadero Road

General Plan, Zoning Ordinance & Local Coastal Plan Designations	
General Plan/Coastal Plan Land Use Designation	SH, School
Base Zone District	SCH
Zoning Overlay District	N/A
Special Treatment Area	N/A
Combining District	N/A
Specific Plan Area	N/A
Coastal Zone	Yes, and Within Appeal Jurisdiction

PUBLIC NOTICE

Notice of this item was published in the San Luis Obispo Tribune newspaper on September 24, 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

With the incorporation of the conditions contained in Exhibit "B" the project will address all issues previously identified including trimming of the trees, view from Highway One and the beach and therefore should be approved.

Report prepared by: Kathleen Wold, Planning Manager

EXHIBIT A
Findings

Coastal Development Permit

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

EXHIBIT B

CONDITIONS

STANDARD CONDITIONS

1. This permit is granted for the land described in the staff report referenced above, dated October 4, 2010 for the project depicted on the attached plans labeled "Exhibit G", dated June 29, 2010, on file with the Public Services Department, as modified by these conditions of approval, and more specifically described as follows:

2. Inaugurate Within Two Years: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this approval and is diligently pursued thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Said extensions may be granted by the Director of Public Services, upon finding that the project complies with all applicable provisions of the Morro Bay Municipal Code, General Plan and Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.

3. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Director of Public Services. Any changes to this approved permit determined not to be minor by the Director shall require the filing of an application for a permit amendment subject to Planning Commission review.

4. Compliance with the Law: (a) All requirements of any law, ordinance or regulation of the State of California, City of Morro Bay, and any other governmental entity shall be complied with in the exercise of this approval (b) This project shall meet all applicable requirements under the Morro Bay Municipal Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use Plan and General Plan for the City of Morro Bay.

5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicants failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.

6. Compliance with Conditions: The applicant's establishment of the use and/or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed here on shall be required prior to obtaining final building inspection clearance through the state, the applicant shall call for an inspection from the City of Morro Bay's Public Services Department, Planning and Building Division. Deviation from this requirement shall be permitted only by written

consent of the Director of Public Services and/or as authorized by the Planning Commission. Failure to comply with these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the Morro Bay Municipal Code and is a misdemeanor.

7. Acceptance of Conditions: Prior to obtaining a building permit through the Division of the State Architect, the applicant shall file with the Director of Public Services written acceptance of the conditions stated herein.

PLANNING CONDITIONS

1. Archaeological monitoring shall occur for all ground disturbing activities in the development area by a qualified archaeologist and qualified local indigenous cultural monitor. Collection of historic and prehistoric cultural remains deemed significant shall occur, and if necessary, analysis of any features encountered including but not limited to historic refuse dumps and diagnostic prehistoric habitation deposits shall occur. Selection and processing of prehistoric marine shell for radiocarbon dating shall also occur.

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4. A preconstruction survey to determine if there are any nesting birds within the trees proposed for trimming shall be conducted prior to any work being performed.

5. This permit provides for the trimming of trees as delineated in the project as follows: Trees 1, 3 through 6 will be trimmed to a height of a minimum of 50 feet and no lower. Tree 2 will be side trimmed. Trees 24-29 will be pruned to a height of 35-40 feet and no lower. Trees 30-37 will be trimmed to 39'6" or 45 feet in height and no lower. All measurements will be taken from the finished grade near the base of the tree. Removal of more than 40% of the live crown or reducing the height beyond the limits noted above shall require an amendment to this permit.

6. The solar array structures and panels shall be adequately screened from view from the Highway one corridor by the inclusion of new landscaping along with the tree trimming. If tree trimming results in lack of screening additional landscaping shall be planted.

7. The solar arrays installed shall be the REC type Solar Arrays with anti-reflective coating. Prior to receiving a final inspection the applicant shall submit documentation indicating that the arrays are indeed REC type Solar Arrays.

FIRE CONDITIONS

1. Fire Department field inspection is required.

PUBLIC WORKS CONDITIONS

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

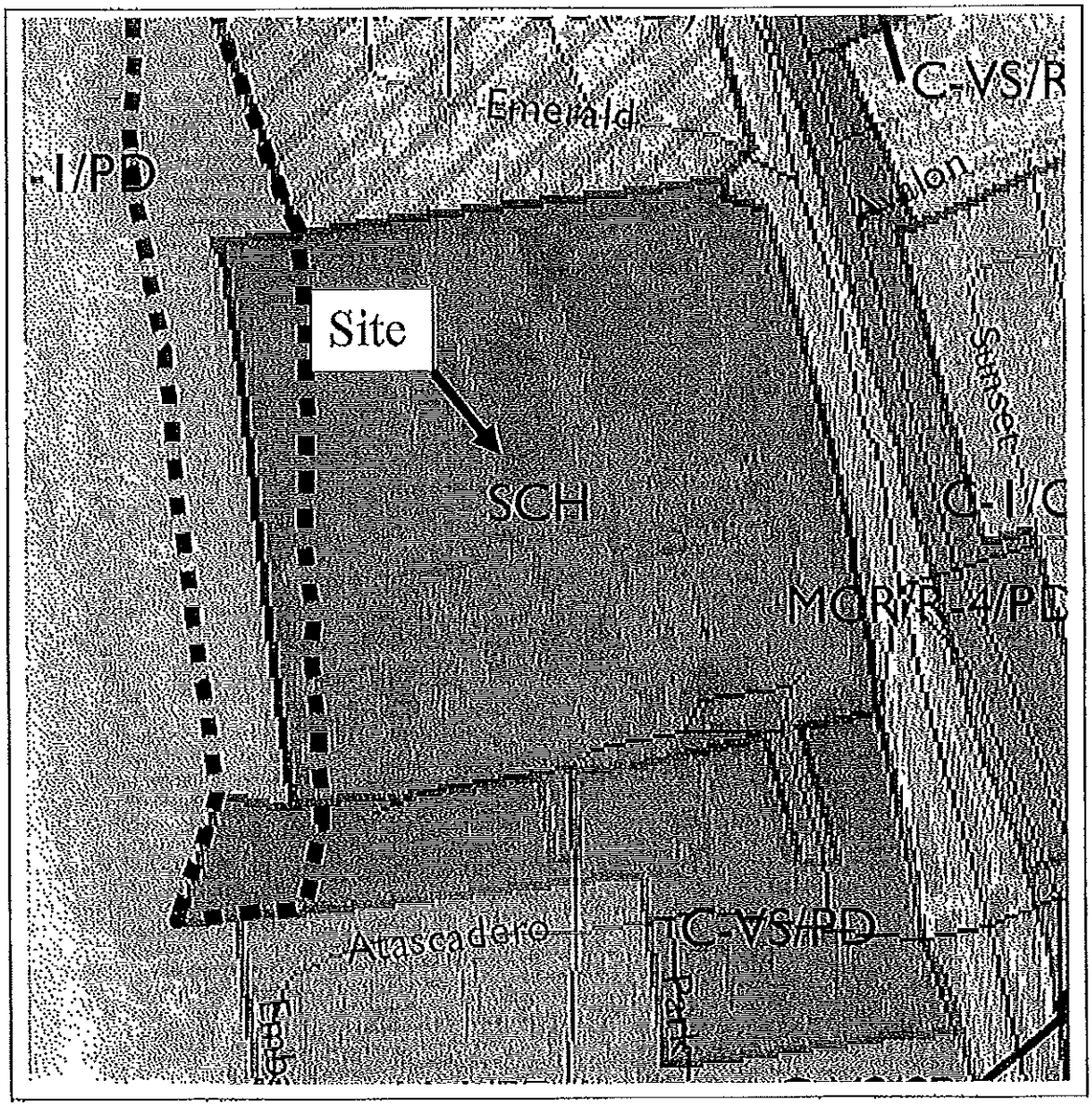
   Additionally, these same development or redevelopment projects that drain to a natural creek, swale or City storm drain either directly or indirectly will be required to provide peak runoff rate control for the runoff resulting from the two, ten and one- hundred year rainfall events. For the purposes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

   Drainage analysis, runoff calculations, design and justification of drainage facilities shall be performed by a Registered Civil Engineer and submitted with the building permit application. The responsible Soils Engineer shall review all proposed infiltration or storage systems for site suitability.

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

EXHIBIT C

GRAPHICS/PLAN REDUCTIONS



Planning Commission
235 Atascadero Road
Morro Bay High School

ZONING MAP

EXHIBIT C

Overview Trees

Removals

No trees will be removed.

Trimming

Trees #1 through #3, #24 through #37

Trimming shall be performed in accordance with the removal arborists report.

- Trimming shall be performed by a certified arborist.
- Arborist shall use "directional" pruning methods.
- Arborist shall remove no more than 25% of live crown.

Tan trees #1, #2, #3 to 37' height, trees #25 & #26 to 35'.

Tan trees #24 – #29 to 30' or 40' height and trees #30 – #37 to 30' or 40' height from their grade near base of tree.

New Planting

See sheet C3 for planting and irrigation plan

All hedgerows shall be maintained at a height of no more than 12' to provide screening as well as solar access to the solar arrays.

Should there be any discrepancy between the NOC Color Photo Views and the Arborists Report, the Arborist's Report shall prevail.

Biological Monitoring

Coastal Unified School District shall perform pre-construction monitoring for nesting birds.

See report by Mike McDonald, Consulting Biologist, dated April, 2010

Archeological Monitoring

No significant resources were observed at the proposed array locations. However, the Coastal Unified School District shall perform monitoring for cultural resources during construction.

See report by Thor Conroy, Consulting Archeologist, May 04, 2010

Zoning Data

TABLE 17.24.210 SCHOOL DISTRICT

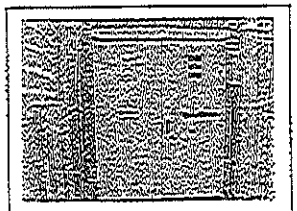
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Proposed Project					[illegible]	[illegible]	[illegible]	[illegible]			[illegible]

TOTAL CAMPUS AREA [illegible] Acres*

TOTAL ARRAY AREA [illegible] s.f. ([illegible] acres) 1.40% of total site

TOTAL EXISTING BUILDING AREA [illegible] s.f. ([illegible] acres) 7.27% of total site

* Area provided by CUSD



Typical Inverter

Inverters are located at two Central Service Pads: Array 8 (larger inverter) and Array 6 (smaller inverter)

See Detail 2/C-0.1, Sheet C for inverter dimensions

Enclosure shall be chain link fence with sweep slats.

Enclosure @ Array 8 shall be 10'-0"W x 8'-0"D x 6'-0"H

Enclosure @ Array 6 shall be 12'-0"W x 7'-0"D x 6'-0"H

Scope of Work

Install a nominal 300 kW solar photovoltaic system, including nine (9) solar arrays and two (2) inverters at locations shown on this plan, as a supplemental electrical supply system through the net metering program.

Inverter	Array Number	Panels	Array Area
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
TOTAL		[illegible]	[illegible]

Array Tilt was estimated from Site Isolines. See NOC Color Photo Views for additional map details.

Visual Simulation Legend

Viewpoint/Height of View

90" tall Target

Nine nominal array sections & array rows

North

Scale: 1"=87'-0"

RECEIVED

JUN 29 2010

City of Morro Bay

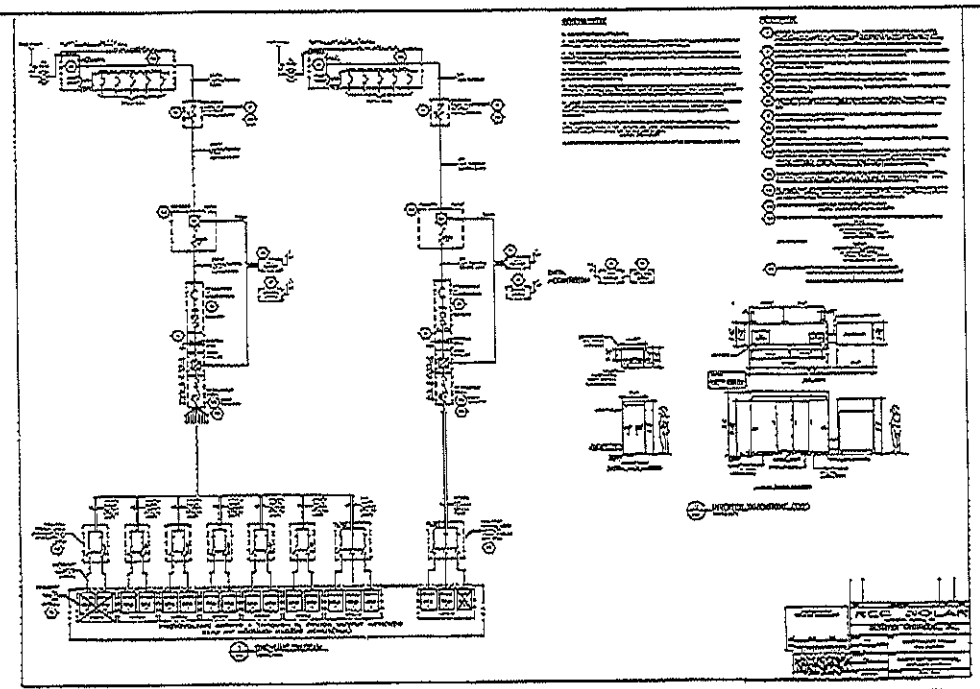
Public Services Department

Site Plan

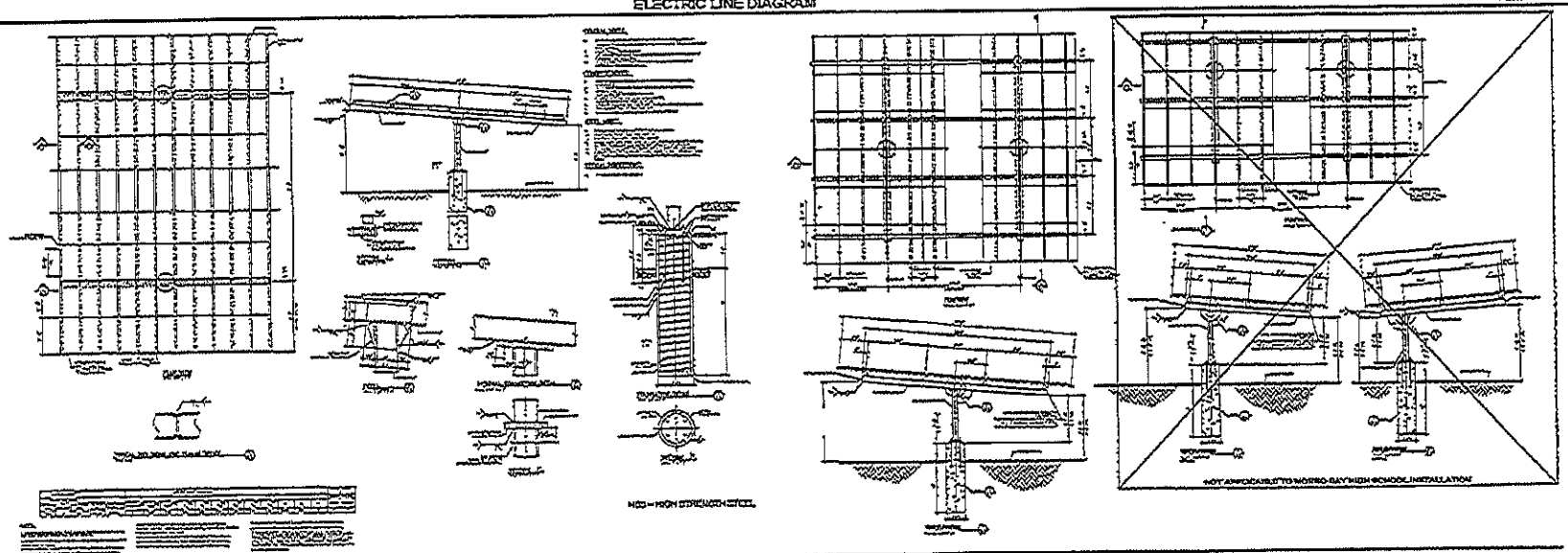
1

Electrical System Notes

[illegible]



ELECTRIC LINE DIAGRAM



PHOTOVOLTAIC ARRAY DESIGN

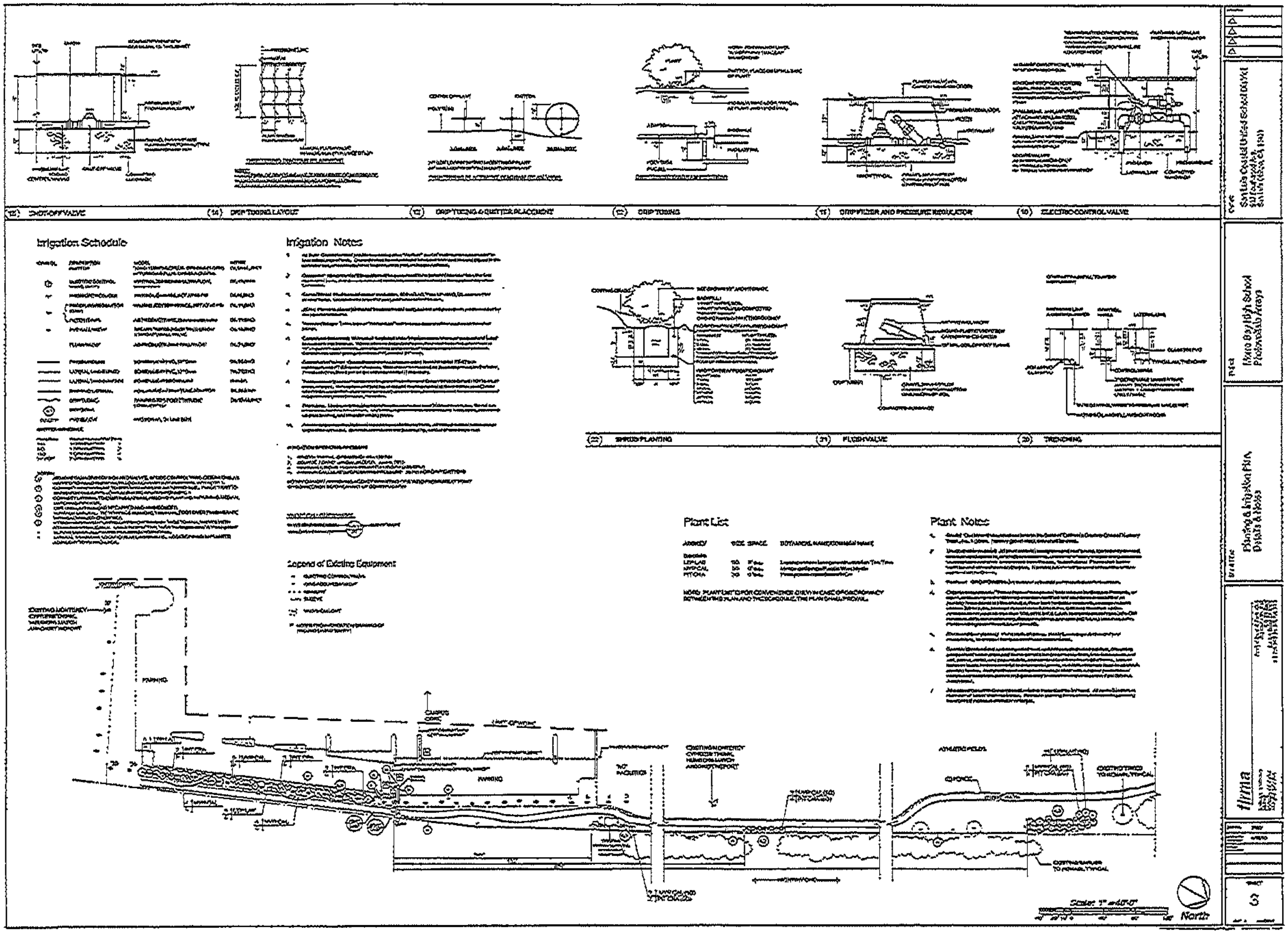
Project: Santa Cruz Coastal Unified School District
[illegible]
Santa Cruz, CA 95001

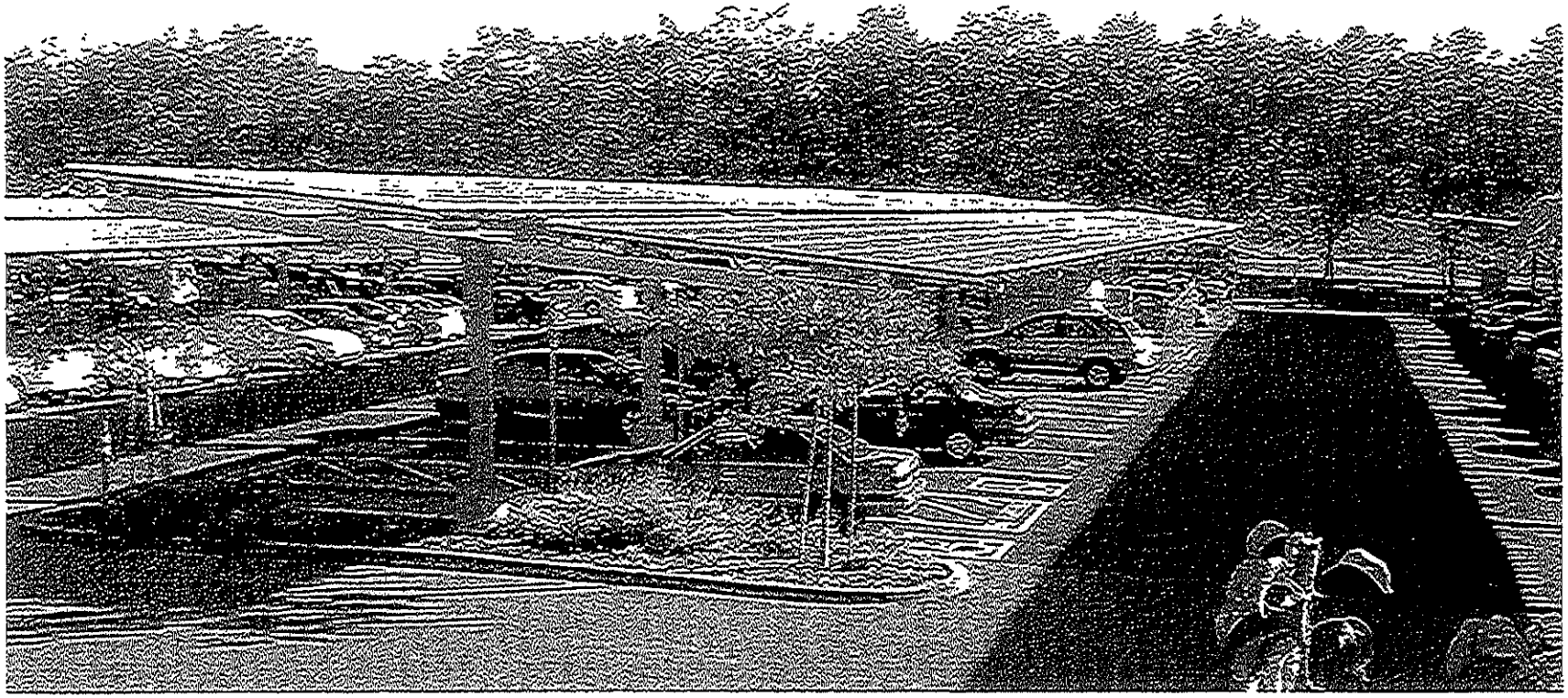
Project: Morro Bay High School
Photovoltaic Arrays

Sheet Title: Array Design and Electric Line Diagram

Engineering Consultants:
REC Solar, San Luis Obispo, CA, 805 610 6527
Oyster Engineers, Inc., Alameda, CA

SHEET 2


SHUT-OFF VALVE
DRIP TUBING LAYOUT
DRIP TUBING & EMITTER PLACEMENT
DRIP TUBING
DRIP FILTER AND PRESSURE REGULATOR
ELECTRIC CONTROL VALVE
Irrigation Schedule
Irrigation Notes
SHRUB PLANTING
FLUSH VALVE
TRENCHING
Plant List
Plant Notes
Legend of Existing Equipment
PARKING
ATHLETIC FIELDS
North
Scale: 1" = 40'-0"
San Luis Coastal Unified School District
Morro Bay High School
Photovoltaic Arrays
Planting & Irrigation Plan,
Details & Notes
firma
3



firma

Photovoltaic Project
San Luis Coastal Unified School District

Appearance of Carports

firma

Photovotaic Project
San Luis Coastal Unified School District

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

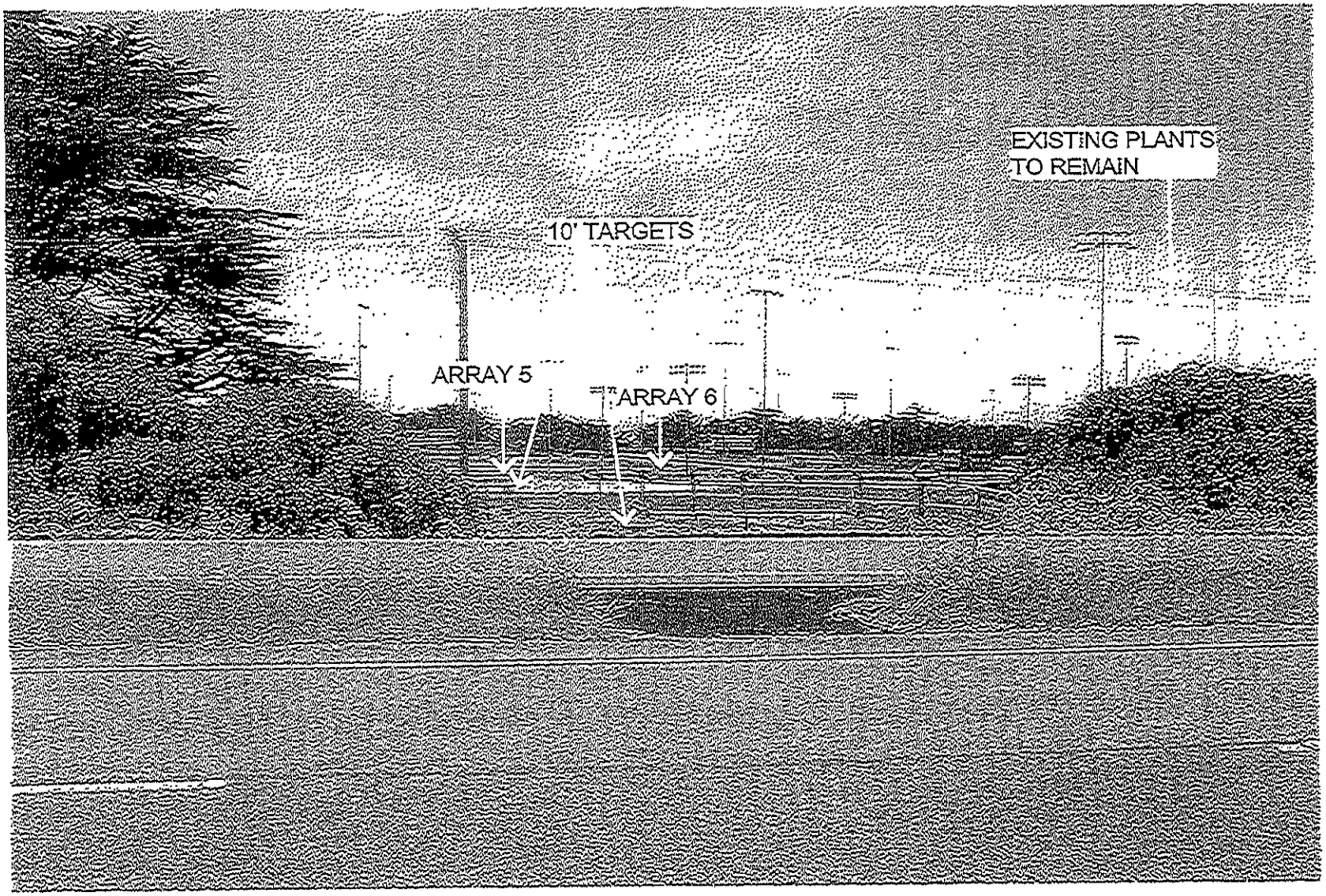
Figure 1a

firma

Photovotaic Project
San Luis Coastal Unified School District

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

Figure 1b



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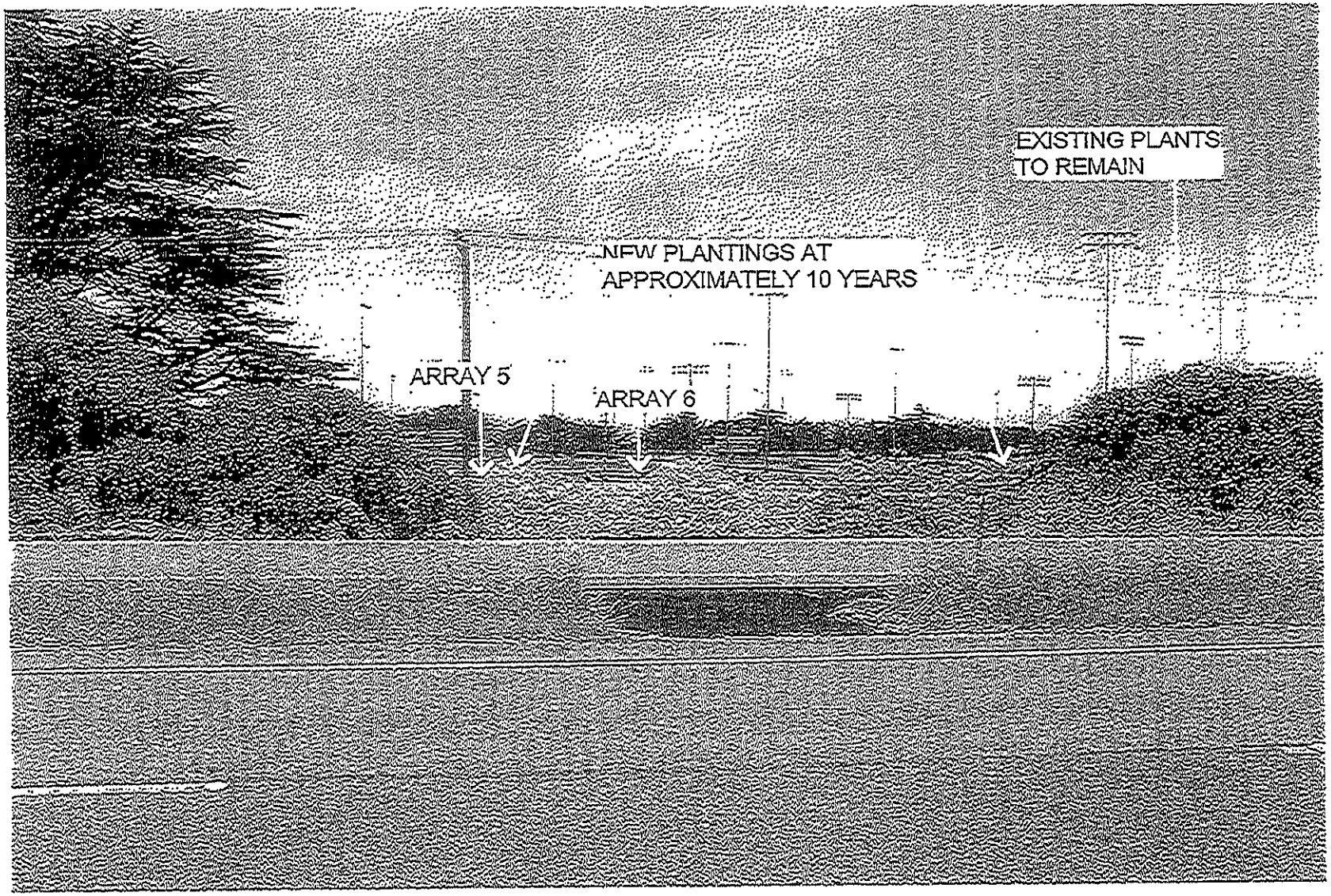
Photovotaic Project
San Luis Coastal Unified School District

View with No Screen
Morro Bay High School
View #2, looking West from
Northbound Hwy One

Figure 2a



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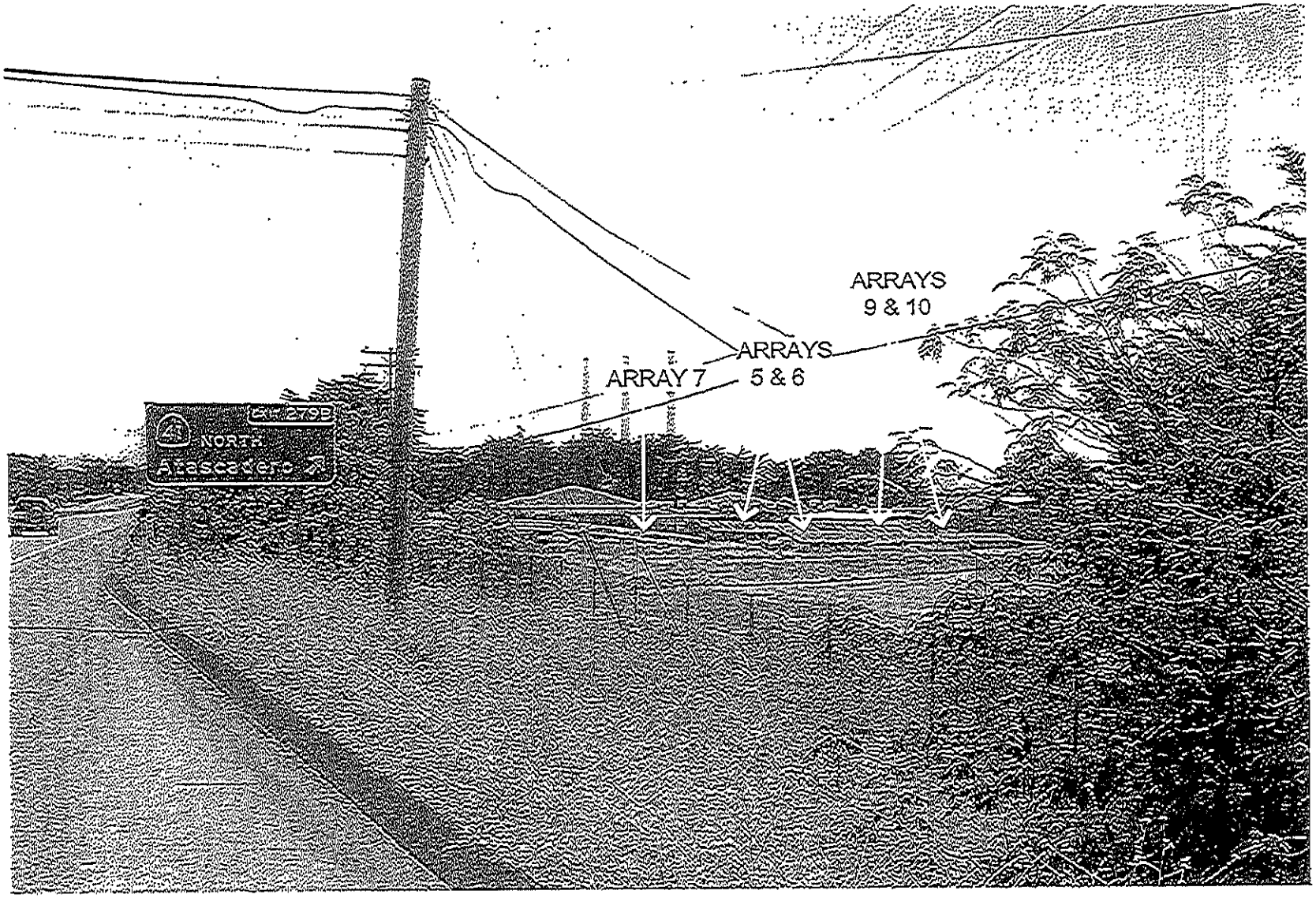
Photovotaic Project
San Luis Coastal Unified School District

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

Figure 2b



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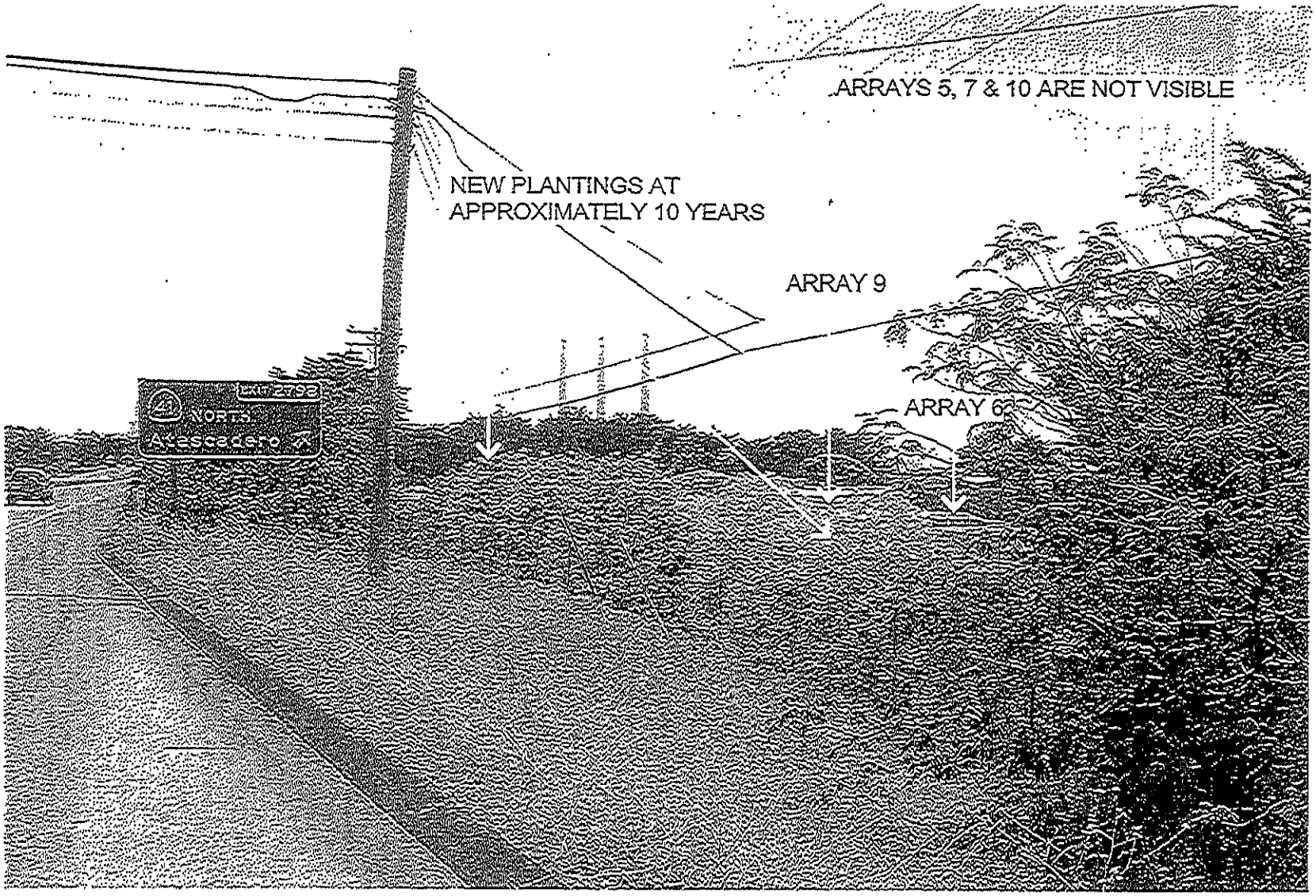
Photovotaic Project
San Luis Coastal Unified School District

View with No Screen
Morro Bay High School
View # 3, looking South from
Southbound Hwy One

Figure 3a



firma

Photovotaic Project
San Luis Coastal Unified School District

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

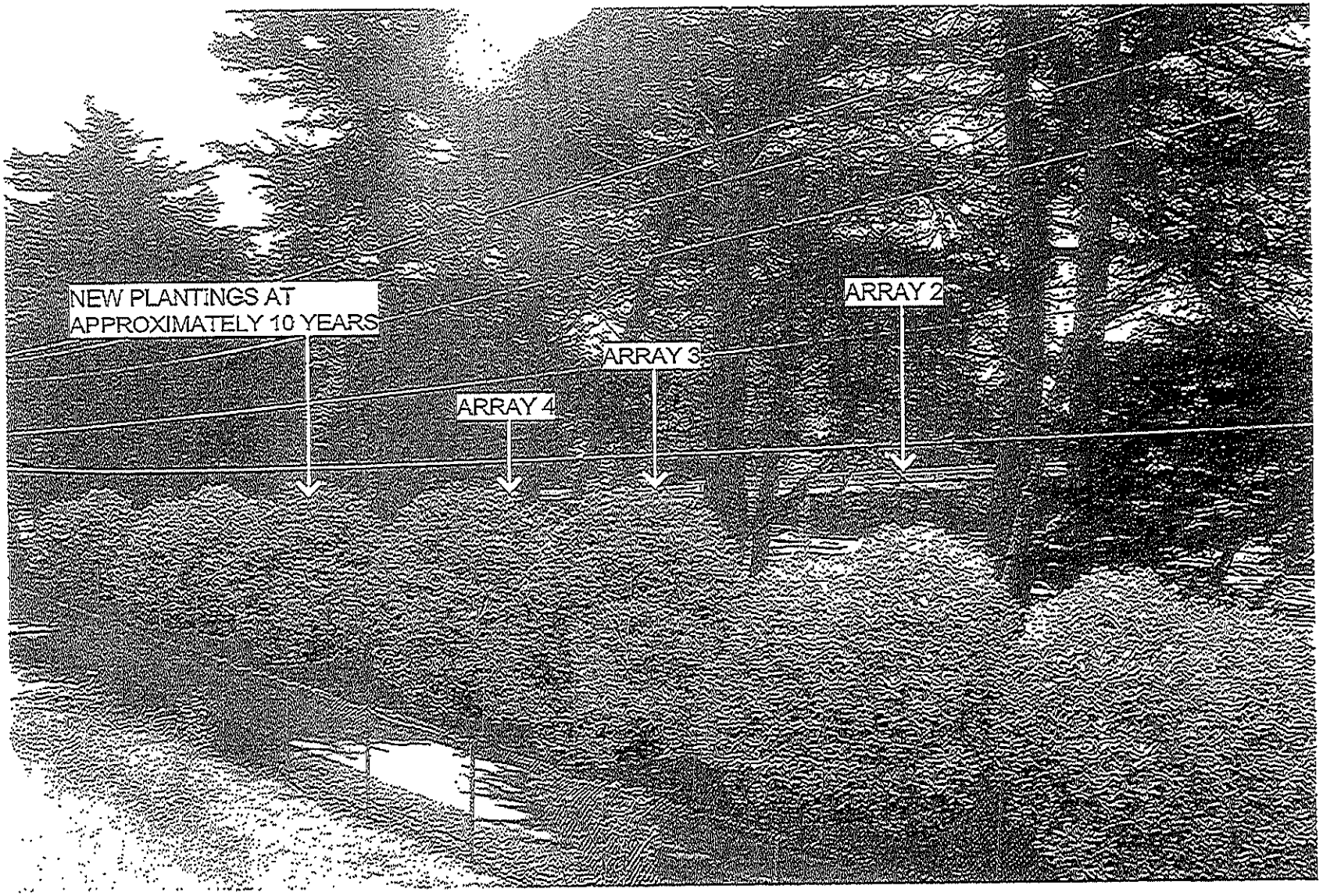
Figure 3b

firma

Photovotaic Project
San Luis Coastal Unified School District

View with No Screen
Morro Bay High School
View #4 , looking South-Southwest from
Southbound Hwy One

Figure 4a



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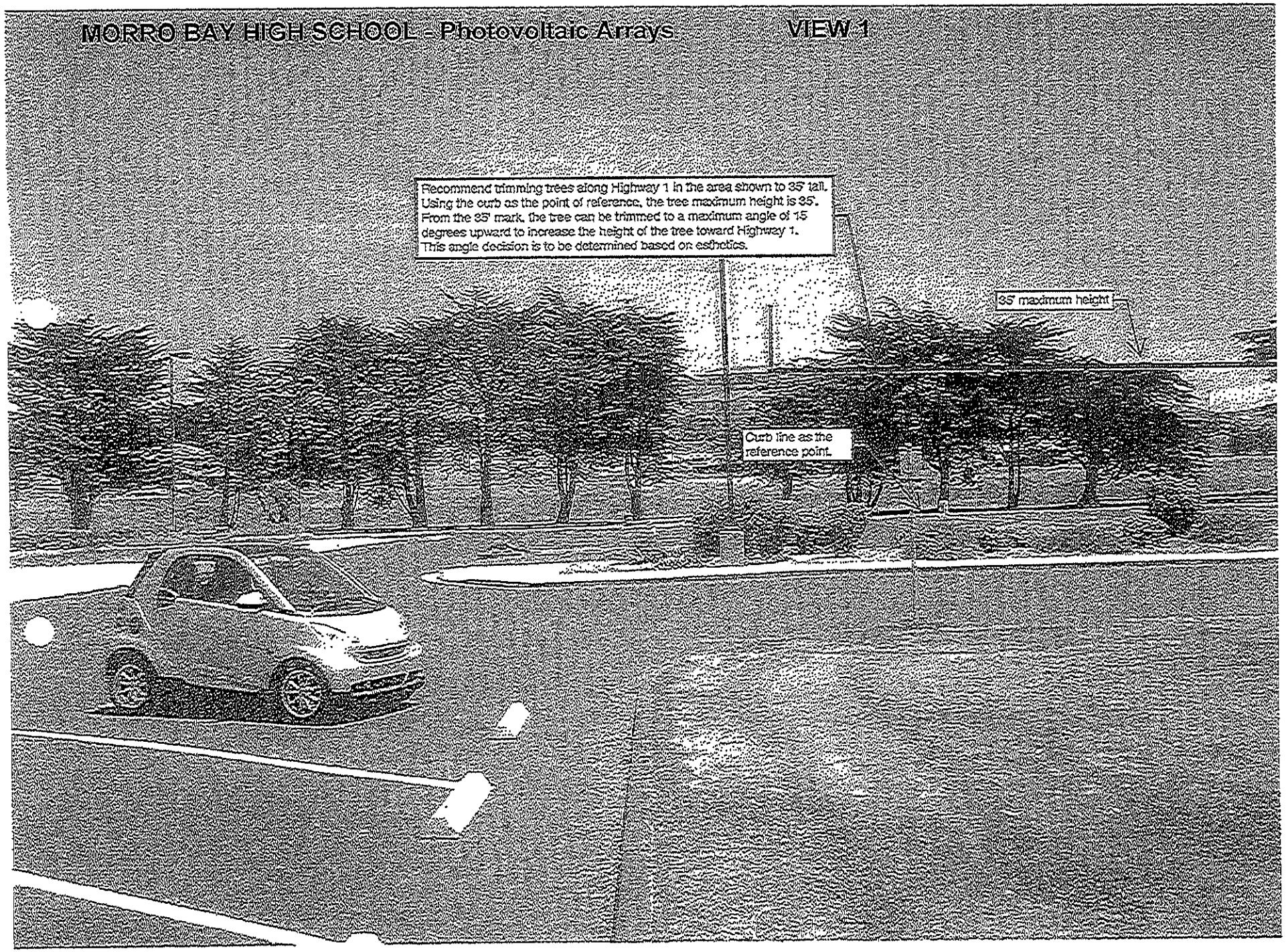
Photovotaic Project
San Luis Coastal Unified School District

Artist Rendering
Morro Bay High School
View #4 , looking South-Southwest from
Southbound Hwy One

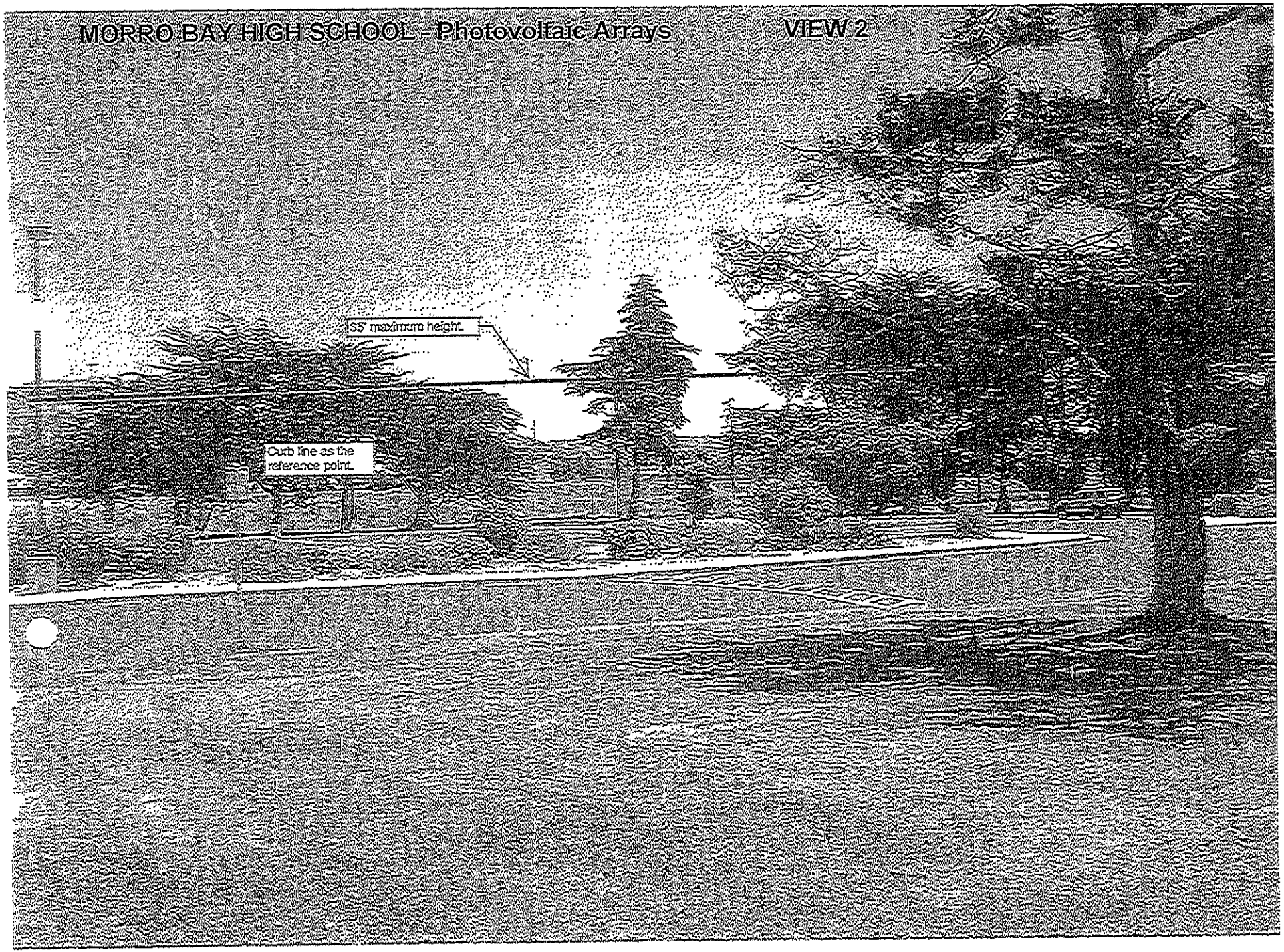
Figure 4b

MORRO BAY HIGH SCHOOL - Photovoltaic Arrays

VIEW 1

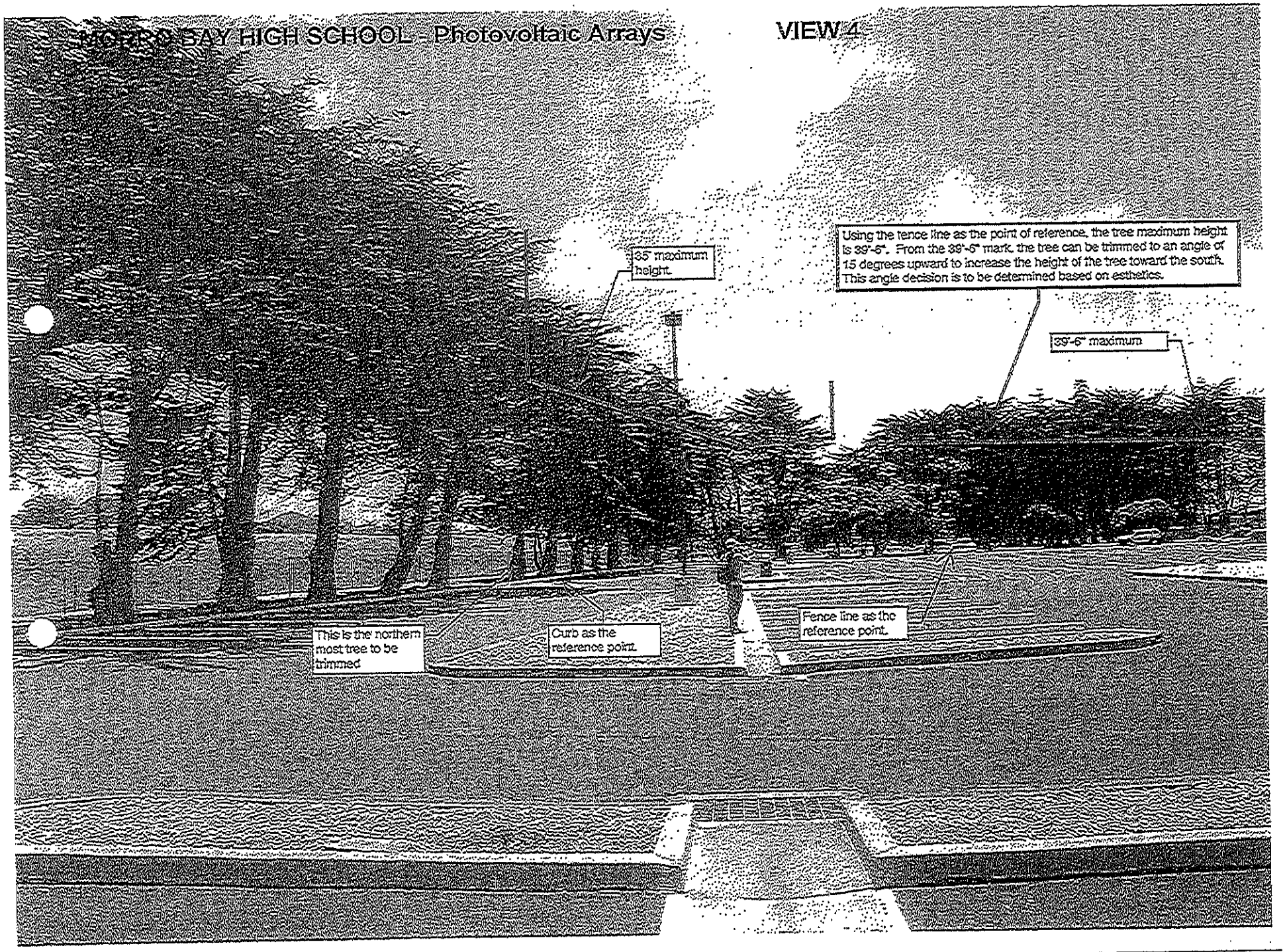


MORRO BAY HIGH SCHOOL - Photovoltaic Arrays VIEW 2

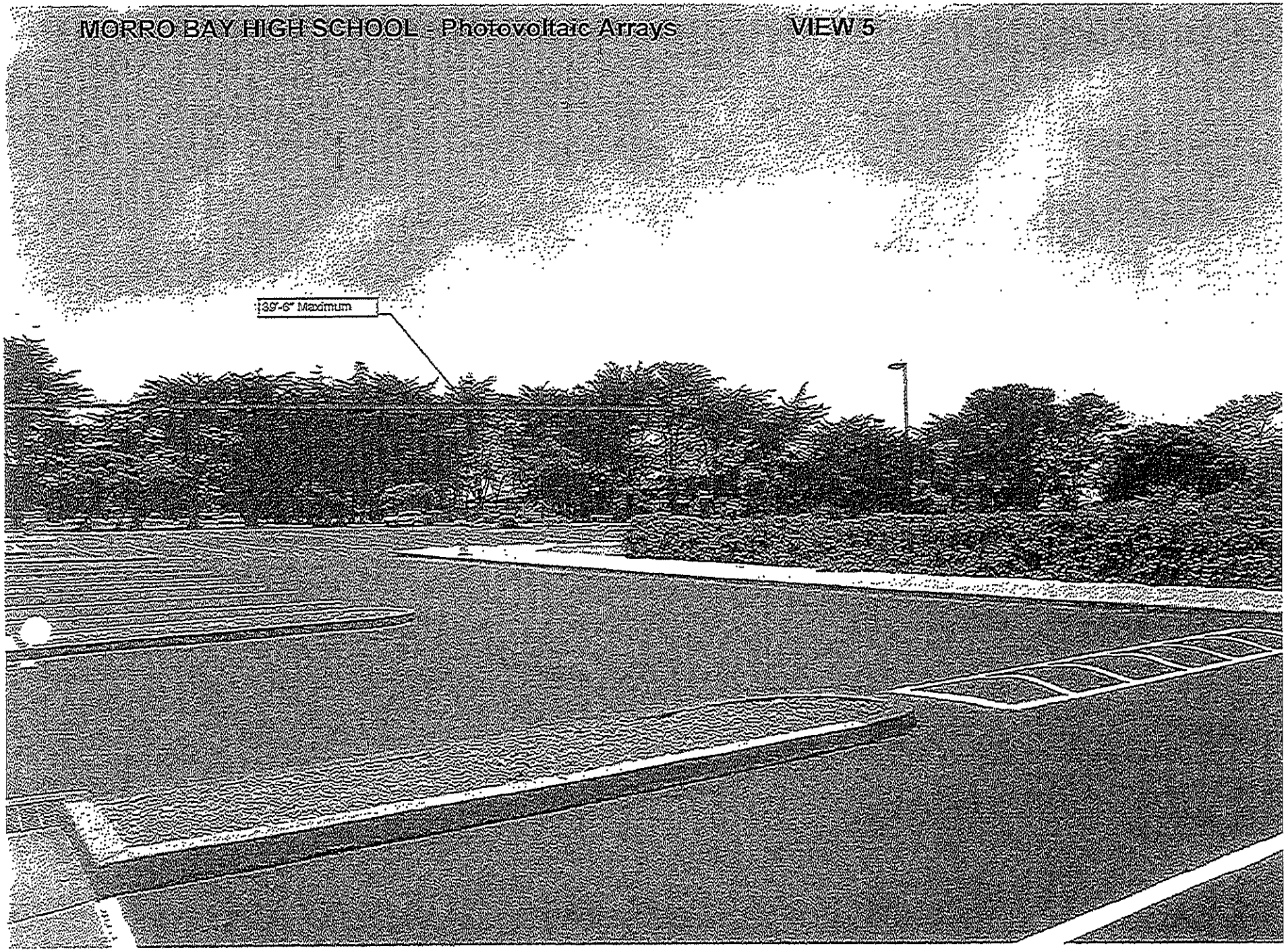


MORRO BAY HIGH SCHOOL - Photovoltaic Arrays

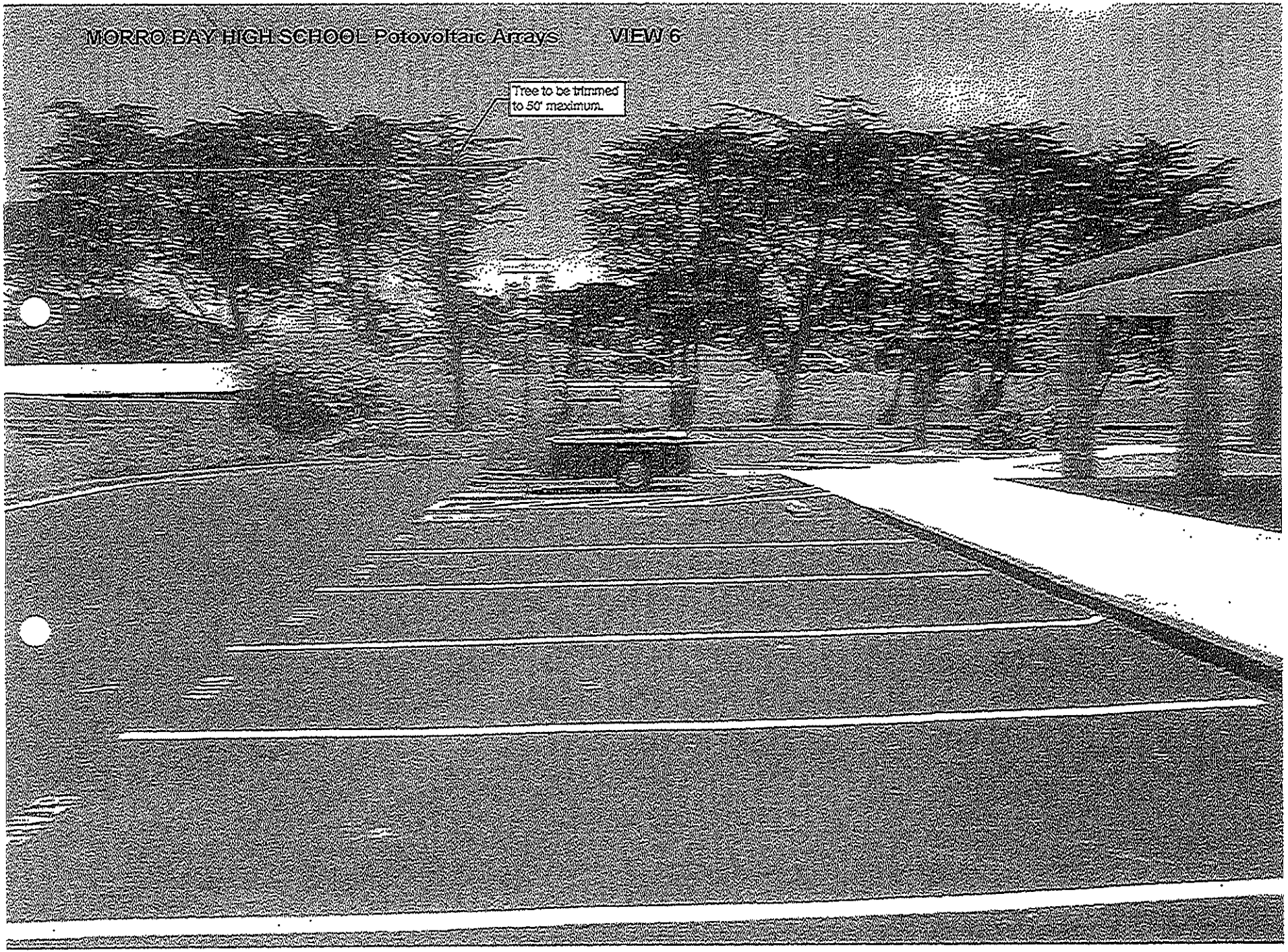
VIEW 4



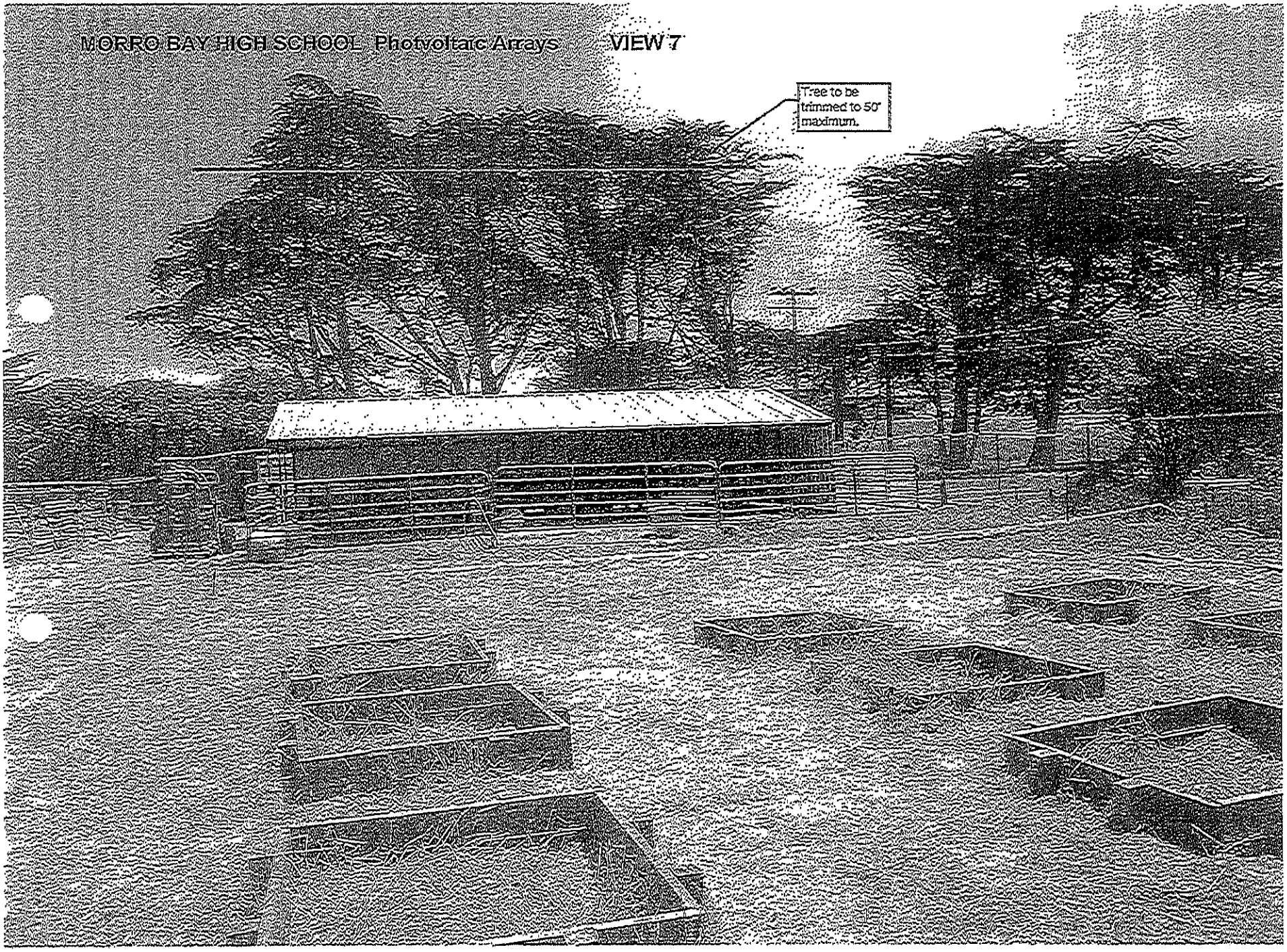
MORRO BAY HIGH SCHOOL - Photovoltaic Arrays VIEW 5



MORRO BAY HIGH SCHOOL Potovoltaic Arrays VIEW 6



MORRO BAY HIGH SCHOOL Photovoltaic Arrays VIEW 7



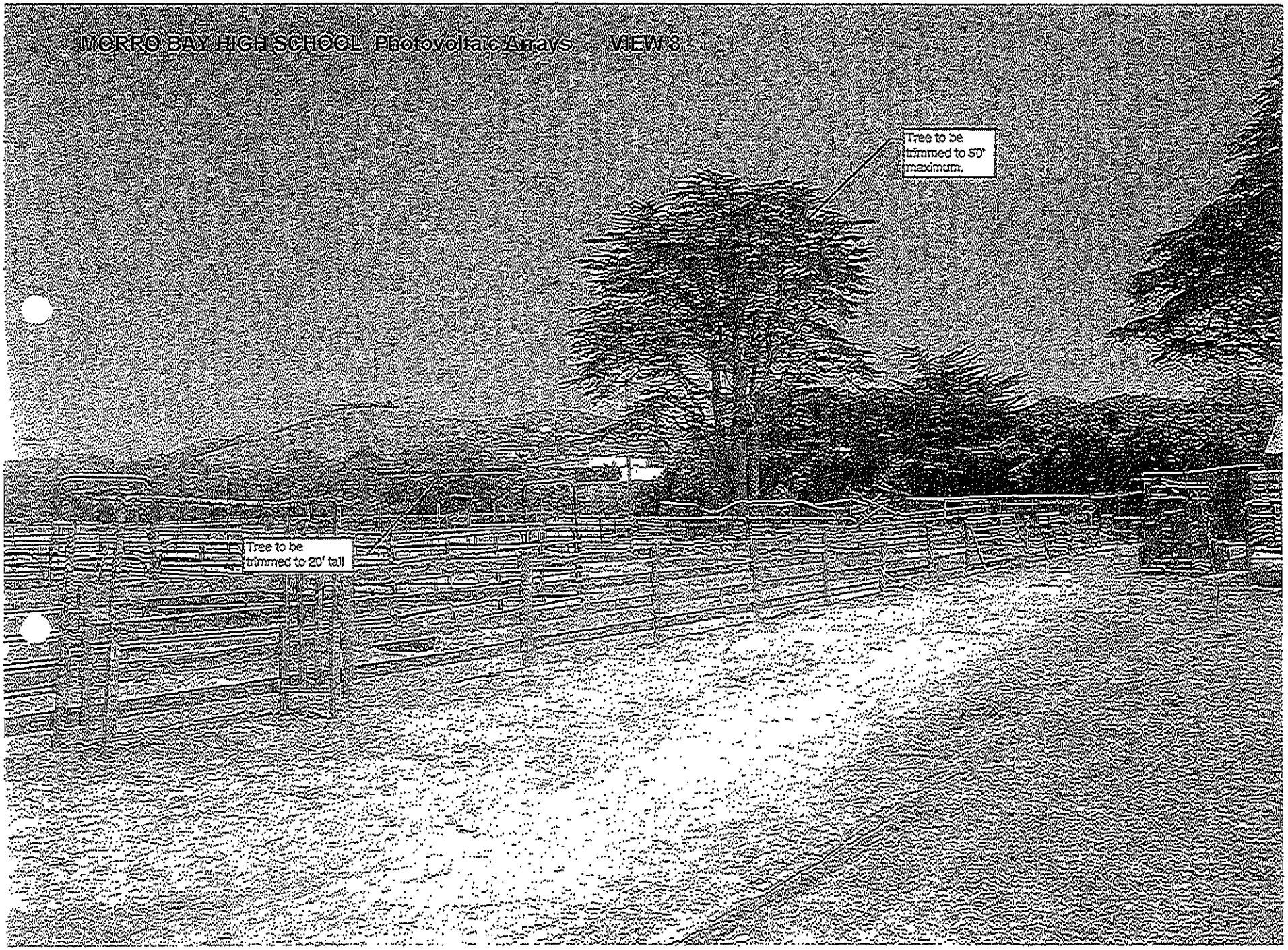

MORRO BAY HIGH SCHOOL Photovoltaic Arrays VIEW 3
Tree to be trimmed to 50' maximum.
Tree to be trimmed to 20' tall

EXHIBIT D

California's Solar Rights Act

A Review of the Statutes and Relevant Cases

Scott Anders
Kevin Grigsby
Carolyn Adi Kuduk

January 2007

Energy Policy Initiatives Center
University of San Diego School of Law

University of San Diego School of Law, 5998 Alcala Park, San Diego, CA 92110
(619)260-4589 • www.sandiego.edu/epic

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The Energy Policy Initiatives Center (EPIC) is a nonprofit academic and research center of the USD School of Law that studies energy policy issues affecting the San Diego region and California. EPIC integrates research and analysis, law school study, and public education, and serves as a source of legal and policy expertise and information in the development of sustainable solutions that meet our future energy needs.

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Table of Contents

1 Introduction 1

1.1 Organization of the Paper 2

2 Overview of the Solar Rights Act 3

2.1 Components of the Solar Rights Act 3

3 Limits on Covenants, Conditions, and Restrictions to Restrict Solar Installations 5

3.1 What are Covenants, Conditions, and Restrictions? 5

3.2 Does The Solar Rights Act Prohibit all CC&Rs from Restricting Solar Installations? 5

3.2.1 Cost and Performance Criteria for Reasonable Restrictions 6

3.2.2 Alternative Comparable System 6

3.2.3 Other Restrictions Permitted under the Solar Rights Act 6

3.3 Definition of a Solar Energy System 7

3.3.1 Further Criteria to Supplement the Definition of a Solar Energy System 8

3.4 Fair Approval Process for Solar Energy Systems 8

3.5 Violation of California Civil Code Sections 714 9

3.6 Relevant Cases 9

3.6.1 Palos Verdes Home Association v. Rodman 9

3.6.2 Garden Lakes Community Association v. Madigan 10

4 Local Government's Ability to Restrict Solar Installations 11

4.1 Non-Discretionary Permitting of Solar Energy Systems 11

4.1.1 Solar as a Statewide Affair 11

4.1.2 Legislative Intent Language 11

4.1.3 Permitting Standards 12

4.1.4 Adverse Impact on Health or Safety 13

4.1.5 Definition of a Solar Energy System 13

4.2 Local Government Compliance with Section 714 13
4.3 Relevant Cases 14
4.3.1 Larsen v. Town of Corte Madera 14
5 Solar Easements 16
5.1 What is an Easement? 16
5.2 What is a Solar Easement? 16
5.3 Requirements to Establish a Solar Easement 17
5.4 Limitations of Solar Easements 17
5.5 California Government Code Section 66475.3 17
5.6 Relevant Case: Zipperer v. County of Santa Clara 18
6 Preserving Passive Solar Opporunities in Subdivision Developments 20
6.1 California Government Code Section 66473.1 20
7 Conclusion 21
8 Appendix 22
8.1 Other Resources 22
9 Full Text of Statutes 23
9.1 California Civil Code Section 714 23
9.2 California Civil Code Section 714.1 24
9.3 Callornia Civil Code Section 801 24
9.4 California Civil Code Section 801.5 25
9.5 California Government Code Section 65850.5 26
9.6 California Health & Safety Code Section 17591 27
9.7 California Government Code Section 66475.3 28
9.8 California Government Code Section 66473.1 29

1 INTRODUCTION

California has been a leader in promoting solar energy since 1976, when it began to provide financial incentives for investment in solar energy technologies.[1] One legacy of California's early interest in solar energy is a series of laws designed to protect a consumer's right to install and operate solar energy technology on a home or business, including access to sunlight, or solar access. Although California's solar energy laws have been around for nearly 30 years, we now examine this groundbreaking legislation for two reasons. Consumers and businesses often misunderstand the provisions and application of these laws. And, California law makers and regulators recently approved the California Solar Initiative (CSI), which allocated over $3 billion to provide financial incentives to residential and non-residential customers to install photovoltaics and solar water heaters on their homes and businesses.[2] As of October 2006, there were about 23,000 photovoltaic systems operating in California representing approximately 180 megawatts (MW) of electric generating capacity.[3,4] The CSI has established a goal of encouraging Californians to install 3,000 MW of photovoltaics by 2016, sufficient to power more than 600,000 homes.[5] Such a dramatic increase in the number of operating solar energy systems could multiply solar access questions arising from these installations.

This paper examines the sections of California law known collectively as the Solar Rights Act (or "the Act"), and reviews lawsuits brought under the Act.[6] Through the Act, which was enacted in 1978, the legislature sought to balance the needs of individual solar energy system owners with other property owners by developing solar access rights.[7] The Act limits the ability of covenants, conditions, and restrictions, typically enforced by homeowner associations (HOA), and local governments to restrict solar installations. These are perhaps the most well known and

---

[1] California created a solar energy tax credit in 1976; it was codified in Cal. Rev. & Tax. Code § 23601.

[2] Cal. Pub. Util. Comm'n Decision D.06-01-024. (This decision also provides for a pilot solar water heating program for the San Diego region.)

[3] See "Grid Connected PV Capacity (kW) Installed in California" available at http://www.energy.ca.gov/renewables/emerging_renewables/GRID-CONNECTED_PV.PDF (December 14, 2006).

[4] One megawatt (MW) equals 1,000,000 watts, or 1,000 kilowatts (kW). In the case of photovoltaics, 1 MW could generate enough energy to power approximately 200-225 homes, depending on solar resources and average residential consumption levels.

[5] SB 1 allocates up to over $100 million for solar water heating incentives. At the time of writing there were no estimates on how many solar water heaters this might encourage but the CPUC was considering a pilot solar water heating program.

[6] The Solar Rights Act comprises the following California codes of law: California Civil Code Sections 714 and 714.1, California Civil Code Section 801, California Civil Code Section 801.5, California Government Code Section 65850.5, California Health and Safety Code Section 17959.1, California Government Code Section 66475.3 and California Government Code Section 66473.1.

[7] Assembly Bill 3250.

important provisions.[8] But the Act also creates the legal right to a solar easement and requires local governments to preserve passive cooling and heating opportunities to the extent feasible in new development projects. The extent to which the Act protects solar energy system owners from restrictions by HOAs and local governments is frequently misunderstood and the subject of many disputes. This paper is intended to provide solar energy users, HOAs, and local governments more information about the content and application of California's main solar access law.

1.1 ORGANIZATION OF THE PAPER

The paper is organized into the following sections.

- Section 2 provides a brief overview of the key provisions of the Act.
- Section 3 discusses the ability of covenants, conditions, and restrictions, such as those enforced by homeowners associations, to restrict the solar energy installations.
- Section 4 discusses how provisions of the Act limit the ability of local governments to restrict solar energy installations.
- Section 5 provides information about the definition and use of solar easements, which are provided for in the Act.
- In Section 6, we examine solar easements in new developments, as required and permitted by the Act.
- In Section 7, we provide general conclusion.
- The Appendix, Sections 8 and 9, includes other resources regarding the Act and the full text of the codes comprising the Act.

[8] While not all common interest developments associations are called homeowner associations (HOAs), for simplicity we use HOA throughout this paper to denote all associations.

2 OVERVIEW OF THE SOLAR RIGHTS ACT

The Solar Rights Act creates a legal framework for "solar access." It includes limited protections to allow consumers access to sunlight and to limit the ability of homeowner associations (HOA) and local governments from preventing installation of solar energy systems.

The Act was adopted in1978 and went into effect on January 1, 1979.[9,10] Its enactment contributed to California's strong policy commitment to solar energy. According to the original legislation, the purpose of the Act is "to promote and encourage the widespread use of solar energy systems and to protect and facilitate adequate access to the sunlight which is necessary to operate solar energy systems." The Act further states that the "use of solar energy systems will reduce the state's dependence on nonrenewable fossil fuels, supplement existing energy sources, and decrease the air and water pollution which results from the use of conventional energy sources. It is ... the policy of the state to encourage the use of solar energy system." This policy rationale is relevant today and continues to drive California's solar energy policy initiatives.

2.1 COMPONENTS OF THE SOLAR RIGHTS ACT

For the purposes of this paper, we focus on the following six key provisions of the Act that remain in California law today.

1. Limits on Covenants, Conditions, and Restrictions to Restrict Solar Installations – The Act prohibits covenants, conditions, and restrictions (CC&Rs), like those enforced by HOAs, which would unreasonably restrict use or installation of solar energy systems. (California Civil Code Sections 714 and 714.1)

2. Solar Easements – The Act establishes the legal right to a solar easement, which protects access to sunlight across adjacent properties. (California Civil Code Section 801). It also describes the minimum requirements needed to create a solar easement. (California Civil Code Section 801.5)

3. Definition of a Solar Energy System – The Act defines which solar energy systems are covered by its provisions, including active solar devices and passive solar design strategies. (California Civil Code Section 801.5)

4. Limits to Local Government Restrictions on Solar Installations – The Act discourages local governments from adopting an ordinance that would unreasonably restrict the use of solar energy systems. (California Government Code Section 65850.5) It also requires local governments to use a non-discretionary permitting process for solar energy

---

[9] Robert L. Thayer, Solar Access: "It's the Law!," ASLA Environmental Quality Series, no. 34 Institute of Governmental Affairs, Institute of Ecology, University of California, Davis. (January 1981.)

[10] The Solar Rights Act was amended twice in recent years: AB 1407 (Wolk) was signed into law on September 3, 2003; and AB 2473 (Wolk) was signed into law on September 24, 2004.

systems. (California Government Code Section 65850.5 and California Health and Safety Code Section 17959.1). Provisions of the Act also require local governments seeking state-sponsored incentives for solar energy systems to demonstrate compliance with certain provisions of the Act. (California Civil Code Section 714)

5. Passive Solar Opportunities in Subdivisions -- The Act requires certain subdivisions to provide for future passive and natural heating and cooling opportunities to the extent feasible. (California Government Code Section 66473.1)

6. Allowance for Requiring Solar Easements -- The Act allows cities and counties to require by ordinance the dedication of solar easements in certain subdivision developments as a condition of tentative map approval. (California Government Code Section 66475.3)

3 LIMITS ON COVENANTS, CONDITIONS, AND RESTRICTIONS TO RESTRICT SOLAR INSTALLATIONS

In California, common interest developments such as condominiums and planned communities typically have associations to manage their affairs and enforce their rules. These associations, often called homeowner associations, or HOAs, are widespread and an increasingly important part of homeownership in California.[11] HOAs have rules and regulations, expressed in part through covenants, conditions, and restrictions (CC&R), that govern many aspects of homeownership within the common interest development, including installation of solar energy systems. To ensure that CC&Rs do not place unreasonable restrictions on use of solar energy, California enacted Civil Code Section 714 in 1978 as part of the Solar Rights Act. This section of law limits the ability of HOAs to restrict solar energy system installations though unreasonable CC&Rs and prohibits undue discrimination in processes used to consider and approve solar energy installations.

3.1 WHAT ARE COVENANTS, CONDITIONS, AND RESTRICTIONS?

Covenants, conditions, and restrictions, or CC&Rs as they are commonly called, are the governing documents that dictate how an HOA operates and what rules the owners, their tenants, and guests must obey. CC&Rs include three distinct legal mechanisms: (1) covenants, (2) conditions, and (3) restrictions. "Covenants," also called "restrictive covenants," are enforceable promises that assign either a benefit or a burden to a property. Covenants are usually part of the property title or deed and therefore apply to subsequent property owners. "Conditions" relate to the circumstances that may end an ownership interest (e.g., right of first refusal, dissolution of the subdivision). "Restrictions" refer to legal restrictions placed on the ownership or use of the property, such as easements or liens. In common interest developments, restrictive covenants typically dictate the manner in which solar energy systems can be installed.[12] Although the provisions of the Act regarding CC&Rs apply mainly to restrictive covenants in practice, the law refers to covenants, conditions, and restrictions and the limits imposed by restrictive covenants on solar energy systems are commonly referred to as the collective CC&Rs; therefore, we refer to CC&Rs throughout this paper.

3.2 DOES THE SOLAR RIGHTS ACT PROHIBIT ALL CC&RS FROM RESTRICTING SOLAR INSTALLATIONS?

The Act contains many provisions and broadly addresses solar access issues, but it is perhaps best known for prohibiting CC&Rs that unreasonably restrict solar energy system installations. California Civil Code Section 714 (a) prohibits "any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or

---

[11] Common Interest Developments: Housing at Risk? Julia L. Johnston and Kimberly Johnston-Dodds, California Research Bureau (Requested by Senator Tom Torlakson), p. 6, August 2002.

[12] Thomas Starrs, Les Nelson & Fred Zaleman, Bringing Solar Energy to the Planned Community: A Handbook on Rooftop Solar Systems and Private Land Use Restrictions at http://www.sdenergy.org/uploads/Final_CC&R_Handbook_1-01.pdf

any interest in, real property that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable."

Although the intent of Section 714 (a) is to prohibit CC&Rs from placing restrictions on solar energy system installation, other subsections of 714 and 714.1 allow CC&Rs to impose certain reasonable restrictions on solar installations.[13] The following provides information to determine whether a restriction is considered reasonable under the Act.

3.2.1 Cost and Performance Criteria for Reasonable Restrictions

The Act permits CC&Rs to impose requirements that don't "significantly" increase the cost of the system or decrease its efficiency or performance.[14] California Civil Code Sections 714 (d)(1)(A) and 714 (d)(1)(B) provide criteria to define when a restriction has "significantly" altered system price or performance for both solar water heating and photovoltaic systems. Restrictions cannot increase the cost of solar water heating systems by more than 20 percent *or* decrease the system's efficiency by more that 20 percent.[15] Restrictions on photovoltaics cannot increase the system cost by more than $2,000 *or* decrease system efficiency by more than 20 percent.[16] Restrictions on either type of system need only increase cost *or* decrease efficiency to be determined unreasonable under the Act.

With limited case law in this area, it is unclear whether these criteria could also be applied to restrictions imposed by local governments (e.g., restrictions or requirements imposed during the permitting process). We discuss local governments ability to restrict solar energy systems in Section 4.

3.2.2 Alternative Comparable System

California Civil Code Section 714(b) also permits reasonable restrictions that allow a prospective solar energy system owner to install "an alternative system of comparable cost, efficiency, and energy conservation benefits." For example, an HOA could prohibit installation of passive solar water heaters, which can extend above the roof surface, but allow comparable active solar water heaters, which can have a lower profile on the roof and similar performance.[17]

3.2.3 Other Restrictions Permitted under the Solar Rights Act

Section 714.1 of the California Civil Code permits CC&Rs to impose certain restrictions on solar energy system installations despite the cost, efficiency, and comparable system criteria provided for in Section 714. Separate from the reasonable restrictions permissible under Section 714, Section 714.1 allows CC&Rs to impose the following reasonable restrictions.

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[13] Cal. Civ. Code §§ 714 (b), 714 (d)(1)(A), and 714 (d)(1)(B) (Deering 2006)

[14] Cal. Civ. Code § 714(b) (Deering 2006)

[15] Cal. Civ. Code § 714 (d)(1)(A) (Deering 2006)

[16] Cal. Civ. Code § 714 (d)(1)(B) (Deering 2006)

[17] *See Palos Verdes Ass'n v. Rodman*, 182 Cal. App. 3d 324 (1986)

- Restrictions on Common Area Installations – Section 714.1(a) permits CC&Rs to "impose reasonable provisions" that restrict solar energy installations in common areas. Common areas are defined in California Civil Code Section 1351(b) as "the entire common interest development except the separate interests therein." That is, a common area is the area of the development not owned separately by individuals. For example, in a condominium or planned development, all the property other than units, homes, parcels, and lots owned by individuals would be considered common areas. These typically include community centers, walkways, or common hallways.

- Prior Approval – Section 714.1(b) requires "the owner of a separate interest, as defined in Section 1351, to obtain the approval of the association for the installation of a solar energy system in a separate interest owned by another." California Civil Code Section 1351 defines an "association" as "a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development." This definition generally refers to HOAs. In the context of Section 714.1 (b), a common interest development is a (1) community apartment project, (2) condominium project, (3) planned development, or (4) a stock cooperative.[18] In general, a property owner in a common interest development seeking to install a solar energy system should contact the HOA to determine installation policies and guidelines.

- Maintenance and Repair – Section 714.1(c) allows HOAs to create requirements relating to the maintenance, repair, or replacement of roofs or other building components affected by solar energy installations.

- Indemnification or Reimbursement – Section 714.1(d) allows associations to require solar energy system installers to reimburse the association for loss or damage caused by installation, maintenance, or use of the system.

3.3 Definition of a Solar Energy System

The Solar Rights Act defines what types of solar energy systems qualify for its legal protections. For the purposes of the Act, California Civil Code Section 801.5 (a)(1) defines a solar energy system as any solar collector or other solar energy device or any structural design feature of a building whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.[19] Section 714 (d)(2) states that the definition of a solar energy system as provided in California Civil Code Section 801.5 applies

Based on this statutory definition, the following common solar energy systems would be considered "solar energy systems":

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[18] Each of these common interest development types is defined in Cal. Civ. Code § 1351.

[19] The Solar Rights Act's definition of a solar energy system differs from the statutory definition of a "solar collector" in Cal. Pub. Res. Code § 25981.

- Photovoltaics (solar electric)
- Solar water heating for use within a building
- Solar water heating for space heating
- Solar pool heating

3.3.1 Further Criteria to Supplement the Definition of a Solar Energy System

Section 714 (c)(1) provides further criteria that supplement the definition of a solar energy system. These criteria likely would have to be met in addition to the standard definition provided in Section 801.5 in order to be considered an eligible solar energy system under the Section 714.

- Health and Safety Requirements – Section 714 (c)(1) provides that a solar energy system must meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

- Solar Water Heating Certification – Section 714 (c)(2) requires a solar energy system used to heat water to be certified by the Solar Rating Certification Corporation (SRCC), a nonprofit third party organization, or other nationally recognized certification agencies.[20] This section specifies that the entire solar energy system and installation process must receive certification, rather than simply certifying each of its component parts.

- Solar Electric Standards – Section 714 (c)(3) requires a solar energy system used to produce electricity, such as photovoltaics, to also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the California Public Utilities Commission regarding safety and reliability.

3.4 Fair Approval Process for Solar Energy Systems

The Act also seeks to ensure that processes to consider and approve solar energy system installations are fair to the applicant. California Civil Code Sections 714(e) provides that "whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed." This subsection uses broad language that could apply to the approval processes of an HOA or a local government. Given the context of the other parts of Section 714 and existing case law, this language on fair approval processes most likely applies to HOAs. It is unclear whether it also applies to approval processes of local

[20] SRCC is a nonprofit third party supported by the United States Department of Energy. See www.solar-rating.org

governments. California Government Code Section 65850.5 specifically addresses city and county permitting of solar energy systems. We discuss this topic in more detail in Section 4.

3.5 Violation of California Civil Code Sections 714

California Civil Code Sections 714 (f) describes the penalties for violation of this section of the Solar Rights Act. It states that "any entity, other than a public entity, that willfully violates this section shall be liable to the applicant or other party for actual damages occasioned thereby, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars ($1,000)." In addition, California Civil Code Sections 714 (g) provides that reasonable attorney's fee will be awarded to the prevailing party in a case brought to enforce compliance with Section 714.

3.6 Relevant Cases

Case law relating to the Solar Rights Act is limited. This is particularly true for cases relating to HOAs imposing unreasonable restrictions on solar energy systems installations. Lack of awareness on the part of homeowners and HOAs about the Act's provisions and potentially high litigation costs could account for the limited case law.[21]

This section provides a summary of the following cases involving HOAs and individual solar energy system owners.

- *Palos Verdes Home Association v. Rodman*, 182 Cal. App. 3d 324 (1986)
- *Garden Lakes Community Association v. Madigan*, 204 Ariz. 238 (2003)

3.6.1 Palos Verdes Home Association v. Rodman

Palos Verdes Home Association v. Rodman provides guidance on what constitutes a "reasonable restriction" on solar energy system installations.[22] The issue in this case is whether the HOA's actions violate the standard of "reasonable restriction" provided in Section 714.

Rodman, a resident of the Palos Verdes Home Association, sought to install a passive solar water heating system on his home.[23] The Palos Verdes Association's CC&Rs required a homeowner to receive HOA approval for any improvements made outside of a home. The CC&R also contained guidelines for installing a solar energy system. The CC&Rs allowed for the installation of active systems, but prohibited installation of passive systems. The prohibition on passive systems, such as the one Rodman proposed to install, was based primarily on

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[21] 10 Widener J. Pub. L. 109, 131 (2000): Widener Journal of Public Law.

[22] *Palos Verdes Home Ass'n v. Rodman*, 182 Cal. App. 3d 324, 324 -329, 1986.

[23] There are two main types of solar water heating systems: active and passive. Active systems have pumps and sensors to control the flow of water into and out of the collector. Passive systems have no moving parts and rely on existing water pressure from the home's plumbing and convection to move water in and out of the collector.

aesthetics. The HOA argued that such collectors typically extend 18 inches above the roof surface, are painted black, and resemble an upside down bath tub.[24] If Rodman had followed HOA guidelines, he would have had to build the system into the roof so it did not sit above the roof. That modification would have added $1,400 to $1,800 to the cost of his system.

Rodman ignored the CC&Rs and had the system installed by a private company. The HOA notified Rodman that his system was not in compliance with their guidelines and filed a complaint against Rodman. A lower court ruled in favor of the HOA, requiring Rodman to remove his system. Rodman appealed, arguing the HOA restrictions violated California Civil Code Section 714. Rodman argued that the HOA's solar installation guidelines effectively restricted his solar energy system installation by significantly increasing the system's cost and decreasing its efficiency. The HOA responded by noting that Section 714 allows for reasonable restrictions as long as an alternative system of comparable cost could be installed.

The appeals court also ruled in favor of the HOA, arguing that an installer of a solar energy system cannot ignore HOA guidelines when those guidelines would only minimally increase installation costs. The court relied on expert testimony presented by the HOA. This testimony, given by an engineer, concluded that the active systems allowed by the HOA were comparable in cost and performance to the prohibited passive systems. The court reasoned that even though there would have been a significant increase in cost to install the passive system under HOA guidelines, Rodman could have installed an active system with no cost increase. As a result, the court concluded that the association's restrictions were "reasonable" and did not violate Section 714.

3.6.2 Garden Lakes Community Association v. Madigan

Garden Lakes Community Association v. Madigan,[25] which was heard in an Arizona court, also seeks to define what can be considered a reasonable restriction on solar installations. In this case, the court ruled that the increased cost required to meet the HOA's CC&Rs was too restrictive. Because this decision was made in an Arizona court, California courts are not required to abide by its holding. In addition, the decision deals with Arizona's solar rights law, which uses different language than California law. We include it here as a reference.

The Garden Lakes Community Association sued resident Madigan for installing solar panels that did not meet the HOA's requirements. Under the CC&Rs, panels cannot be visible to the public and must be screened. In this instance, the solar panels were not screened. Arizona's solar rights law precludes HOAs from "effectively prohibiting" the installation of solar energy systems. Homeowners have the burden of proof to demonstrate that this has occurred.

The court ruled in favor of Madigan, deciding the additional costs from installing screening materials to hide the panels from public view would be high enough to dissuade the homeowner from installing the system.

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[24] *Palos Verdes Home Ass'n v. Rodman*, 182 Cal. App. 3d at 328.

[25] *Garden Lakes Community. Ass'n v. Madigan* 204 Ariz. 238 (2003)

4 LOCAL GOVERNMENT'S ABILITY TO RESTRICT SOLAR INSTALLATIONS

In this section, we discuss how California Government Code Section 65850.5 and California Civil Code Section 714 (h) limit the ability of local governments to restrict solar energy systems by requiring use of a non-discretionary permitting process and by requiring local governments to certify compliance with section 714 prior to receiving state-sponsored solar energy incentives.[26]

4.1 NON-DISCRETIONARY PERMITTING OF SOLAR ENERGY SYSTEMS[27]

California Government Code Section 65850.5 establishes permitting standards and requires local governments to use a non-discretionary permitting process rather than a discretionary permitting process to review solar applications. This portion of the Act includes the following provisions.

4.1.1 Solar as a Statewide Affair

Section 65850.5 (a) states that "implementing statewide standards to achieve the timely and cost effective installation of solar energy systems is not a municipal affair... but a matter of statewide concern." This statement provides a basis to establish a statewide standard for permitting and discourage local governments from enacting varying and subjective permitting standards.[28]

4.1.2 Legislative Intent Language

Section 65850.5 (a) expresses the state of California's intent to promote and encourage solar energy systems. It also states the legislature's intent to prohibit local governments from implementing burdensome permitting requirements and encourages public agencies to remove any barriers to solar energy installations. While codified in California statutes, this "legislative intent" language does not *expressly* prohibit any actions by local governments, rather it discourages certain actions; therefore, it is unclear how such language would be enforced by the courts. However this it does express the state's support and commitment to solar energy. This section of law includes the following policy statements.

- Discourage Local Governments from Placing Barriers on Solar Installations – This section states that it is the intent of the legislature to prohibit local governments from adopting "ordinances that create unreasonable barriers to the installation of solar energy

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[26] Two bills added provisions to the Act that expand its reach to local governments: AB 1407, which was enacted in 2003, and SB 2473, which was enacted in 2004.

[27] The Solar Rights Act also created Section 17959.1 of the California Health and Safety Code, which his largely the same as the language from 65850.5. The substantial differences are that Section 17959.1 does not include a subsection on legislative intent or the appeals process. It also has a shortened version of 65850.5 (b).

[28] This statement might also have been included to require charter cities to comply with the provisions of this section of law. See 10 Pac Law Journal 478, 481 (1979).

systems, including but not limited to, design review for aesthetic purposes..." This subsection section seeks to prevent a local jurisdiction from restricting a solar installation based solely on discretionary factors such as aesthetics, but stops short of expressly prohibiting such restrictions. Instead the language is expressed as legislative intent; therefore, it is unclear how a court might enforce this section of law.[29]

- California Policy to Promote Solar Energy – This section also states that it is the policy of the state of California to "promote and encourage the use of solar energy systems and to limit obstacles to their use."

- Encourage Local Governments to Remove Barriers to Solar Energy – This section states that it is the intent of the legislature that "local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of solar energy system by removing obstacles to, and minimizing costs of, permitting for such systems."

4.1.3 Permitting Standards

Section 65850.5 (b) and the remaining subsections establish permitting standards for solar energy systems based on health and safety concerns and equipment certification and performance standards. The Act requires cities and counties to "administratively" approve applications to install solar energy systems by issuing a building permit or other non-discretionary permit. Based on this section of law, local governments cannot use a discretionary permitting process to review solar energy applications. Instead, they must use a ministerial or administrative process that is based on the following criteria:

- Health and Safety – Local review of solar energy applications must be limited to "those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety." The law defines "adverse impact upon the public health or safety" to mean " a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." To determine if an adverse impact exists, permitting officials must limit their review to local, state, and federal laws.

- Solar Water Heater Certification – A solar water heating system must be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agency.[30] Certification must apply to the entire solar energy system and installation process.

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[29] On interpretation is that this language does prevent cities and counties from enforcing ordinances that effectively prohibit or unreasonably restrict the use of solar energy systems other than for preservation or protection of public heath and safety. This interpretation also presumes the statutory definition of unreasonable restrictions in California Civil Code Section 714 that applies to CC&Rs would also apply here to restrictions imposed by local governments. See 10 Pac Law Journal 478, 481 (1979).

[30] SRCC is a nonprofit third party supported by the United States Department of Energy. See www.solar-rating.org.

- Photovoltaics Compliance with Applicable Codes – A photovoltaics, or solar electric, system must meet all "applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability."

4.1.4 Adverse Impact on Health or Safety

If a city or county finds that installing a solar energy system would result in an adverse impact on public health or safety, it can require a use permit. However, according to Section 65850.5(c), the municipality cannot deny an application for the use permit unless it "makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact." The law defines "a feasible method to satisfactorily mitigate or avoid the specific, adverse impact" as including, but is not limited to, any cost-effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior successful application for a permit.[31] The law also provides that a city or county shall use its best efforts to ensure that the selected method, condition, or mitigation also meets the cost and efficiency criteria of Section 714(d)(1)(A) and (B). If the city or county places conditions on the application in order prevent the adverse impact on health and safety, those conditions must be at the lowest possible cost to the applicant.[32]

If the city or county denies the applicant an administrative (or ministerial) permit and/or a use permit, Section 65850.5 (d) of the California Government Code provides that the applicant can appeal the decision to the city or county planning commission.

4.1.5 Definition of a Solar Energy System

Section 65850.5 of the California Government Code uses the definition of a solar energy system included in Section 801.5 of the California Civil Code. It also includes the same language contained in Section 714(c)(1) regarding health and safety codes and certifications for solar water heating and photovoltaics systems that supplements the standard definition.

4.2 Local Government Compliance with Section 714

Section 714 (h) prohibits a public entity from receiving state-sponsored grant funding or loans for solar energy programs if it fails to certify its compliance with the requirements of Section 714. The language in this subsection is sufficiently ambiguous that it is unclear with which parts of Section 714 a public entity would have to comply to be eligible for state-sponsored incentives. Only one other subsection specifically mentions local governments: Section 714 (f), which exempts public entities from paying damages.

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[31] Cal. Gov't Code § 65850.5 (g) (1) (Deering 2006)

[32] Cal. Gov't Code § 65850.5 (e) (Deering 2006)

A possible interpretation of this requirement is that public entities would have to comply with Section 714 by not imposing restrictions that significantly affect the cost and efficiency of a solar energy system (e.g., restrictions imposed through the permitting process). It is also possible that that public agencies are considered "approving entities" and would also have to comply with the provisions in Section 714 (e), which requires that a solar energy application be processed in the same manner used with similar applications and that the approving entity not willfully avoid or delay approval of the application. Section 714 (h)(2) also prohibits local public entities from exempting residents in its jurisdiction from the requirements of Section 714; therefore, a local government might also comply by demonstrating that it has not exempted any residents from the requirements of Section 714. In the absence of case law interpreting this specific subsection of the Act, it remains unclear which provisions in Section 714 a public entity would have to comply with to be eligible for state-sponsored solar energy incentives.

4.3 Relevant Cases

4.3.1 Larsen v. Town of Corte Madera

In *Larsen v. Town of Corte Madera*, the court addressed a series of petitions by the plaintiff who sought to use the provisions of California Government Code Section 65850.5 and California Health & Safety Code Section 17959.1 to overturn the city's denial of his petition to build a second story addition to his house, which he said would include a solar energy system. The plaintiff repeatedly sought approval for his roof renovation through the town's design review process.

This case was originally heard in the U.S. District Court for the Northern District of California[33] and was reviewed by the 9th District Court in 1996.[34] Another case involving the same parties was brought before the U.S. District Court for the Northern District of California nine years later.[35] In each case, the plaintiff attempted to use laws intended to protect solar energy system owners from "unreasonable restrictions" to challenge local ordinances. Each case is summarized below.

<u>*Larsen v. Town of Corte Madera*, US District Court (1996)[36]</u>

This is the original case brought by Mr. Larsen. It interpreted whether California Government Code Section 65850.5 and 17959.1 could be applied in cases involving local ordinances. In 1996, the U.S. District Court for the Northern District of California ruled that these two sections of law were not applicable to local land use decisions and only applied to "ordinances passed by a local legislative body and does not apply to specific land use decisions made by a local

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[33] *Larsen v. Town of Corte Madera*, 1996 U.S. Dist. LEXIS 3936 (1996)

[34] *Larsen v. Town of Corte Madera*, 104 F.3d 365, 1996 U.S. App. LEXIS 37751 (9th Cir. Cal. 1996) This case is not-reported. It is not precedent, and no court is required to follow its ruling.

[35] *Larsen v. Town of Corte Madera*, 2005 U.S. Dist. LEXIS 30846

[36] *Larsen v. Town of Corte Madera*, 1996 U.S. Dist. LEXIS 3936

government in its non-legislative capacities."[37] After this ruling, the plaintiff appealed to the 9th Circuit Court, which reaffirmed the U.S. District Court's ruling.

Larsen v. Town of Corte Madera, (US District Court (2005))[38]

In this case, the plaintiff requested an exemption from the Town of Corte Madera's Resolution 3331, which increased the Town's design review fee from $ 45 to $ 785, plus $ 100 per hour for time and costs. The plaintiff alleged that the increase in the town's design review fee violated California Health & Safety Code Section 17959.1 and California Government Code sections 65860 and 65850.5.

The court ruled that the plaintiff's arguments relating to the protection of solar energy systems "failed on their merits" for two reasons. First, the plaintiff was not entitled to the legal protections offered by the Solar Rights Act because his building failed to meet the definition of a solar energy system, provided for in California Civil Code Section 801.5. Second, the local resolution to raise the document review fee from $45 to $785 did not fall under the purview of California Government Code Section 65860.5 because the resolution "simply increased the design review fees" and did not target solar energy system installations. The court indicated that any local action must specifically target solar energy systems in order to fall under the provisions of the Act. Otherwise, the Act could be used indiscriminately to circumvent any local decision as long as a solar energy system was somehow involved.

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[37] *Id.*

[38] *Larsen v. Town of Corte Madera*, U.S. Dist. LEXIS 30846 (2005)

5 SOLAR EASEMENTS

An important factor when considering solar energy system is current and future access to unobstructed sunlight. Shade from vegetation growth, increased building heights as a result of remodeling, and construction of new buildings on adjacent parcels can affect the amount of sunlight reaching a solar energy system in the future. California's Solar Shade Control Act provides limited protection to solar energy system owners from shading caused by trees and shrubs on adjacent properties.[39] No similar law exists to prevent new or modified structures on an adjacent property from shading an existing solar energy system. However Section 801 and 801.5 of the California Civil Codes provides for solar easements, which allow a solar energy system owner access to sunlight across an adjacent parcel.

5.1 WHAT IS AN EASEMENT?

An easement is a right that (1) allows the holder to make some use of land that is not hers or (2) prohibits the owner of another property from using her land in some way that infringes on the rights of another property owner. There are two basic types of easements. An *affirmative easement* is a non-possessory right to use land in the possession of another. A *negative easement* restricts a property owner from using his property in some manner. A solar easement is generally considered a negative easement because it prevents a property owner from using his property in a manner that would prevent sunlight from reaching a solar energy system located on an adjacent property.

5.2 WHAT IS A SOLAR EASEMENT?

Because a landowner's property rights extend to the airspace directly above the land, she can grant access to the sunlight that transverses her land to a solar energy system owner on an adjacent parcel. California law calls this a solar easement.[40] In 1978, as part of the Act, California added the right to receive sunlight to its list of statutorily recognized easements.[41] California Civil Code Section 801.5 defines a "solar easement" as the "right of receiving sunlight across real property of another for use by any solar energy system." A solar easement must therefore be created for the sole purpose of accessing sunlight to create thermal or electric energy using a solar energy system, as defined by Section 801.5 of the California Civil Code. A person merely seeking to access sunlight could not seek protections under Sections 801 and 801.5.

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[39] Cal. Pub. Res. Code § 25982. (Deering 2006). See also S. Anders, C. Kuduk, K. Grigsby, California's Solar Shade Control Act: A Review of the Statutes and Relevant Cases, January 2007.

[40] Melvin M. Eisenstadt and Albert E. Utton, Solar Rights and Their Effect on Solar Heating and Cooling, 16 Nat Resources J. 363, 376 (1976)

[41] 10 Pac Law Journal 478, 478 (1979).

5.3 Requirements to Establish a Solar Easement

Section 801.5 does not specifically state that a solar easement must be created in writing, but courts rulings have established that an easement must be written to be enforceable.[42] California Civil Code Section 801.5 specifies that "any instrument creating a solar easement" must at a minimum include the following:

- Description of the dimensions of the easement expressed in measurable terms,
- Restrictions that would impair or obstruct the passage of sunlight through the easement, and
- The terms or conditions, if any, under which the easement may be revised or terminated.

5.4 Limitations of Solar Easements

Solar easements in theory can ensure access to unobstructed sunlight for a solar energy system; however, obtaining a solar easement can be difficult. Since a neighboring landowner must grant the easements to a solar energy system owner through a bilateral negotiation, the neighboring landowner can refuse to negotiate or to grant a solar easement. Further, easements can be burdensome and costly for individual homeowners to negotiate. Legal costs could exceed the cost savings of the system if neighbors are not willing to grant the easement for free.[43]

Depending on the density of houses in a neighborhood, a prospective solar energy system owner might have to negotiate with several neighbors to have access to sunlight. This is often the case in cities or when multiple houses on a slope block access to sunlight. A greater number of parties negotiating typically increases cost and reduces the chance an easement will be created.[44] And in certain cases a solar easement is just not possible. More established neighborhoods were built with no consideration for the need of solar access. Even if parties are willing to negotiate for a solar easement, because of the design of the neighborhood, it may be impossible to place solar collectors so that they can be used efficiently.[45]

5.5 California Government Code Section 66475.3

While easements can be difficult to negotiate on an individual basis, particularly in existing neighborhoods, California Government Code Section 66475.3 provides local governments the ability to require solar easements under certain circumstances in subdivision developments. Under this section of the law, legislative bodies of a city or county can by ordinance require certain subdivisions to create solar easements to ensure that each parcel has the right to

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[42] See *Zipperer v. County of Santa Clara*, 133 Cal. App. 4th 1013 (2005).

[43] Adrian J. Bradbrook, Future Direction in Solar Access, Winter, 19 Envtl. L. 167, 181.

[44] Id at 180.

[45] *Id* at 180.

receive sunlight across adjacent parcels or units in the subdivision. Such requirements can only be applied to subdivisions for which a tentative map is necessary. If a local jurisdiction chooses to adopt such an ordinance, it must specify the following:

- Standards for determining the exact dimensions and locations of easements.
- Restrictions on vegetation, buildings and other objects that might obstruct the passage of sunlight through the easement.
- Terms or conditions, if any, for terminating or revising the easement.
- That in establishing the easements consideration shall be given to feasibility, contour, configuration of the parcels.
- That an easement cannot reduce allowable densities or the percentage of a lot that can occupy buildings or structures under applicable planning or zoning requirements in force at the time the tentative map was filed.
- That the ordinance is not applicable to condominium projects that consist of the subdivision of airspace in an existing building where no new structures are added.

5.6 RELEVANT CASE: ZIPPERER V. COUNTY OF SANTA CLARA

Zipperer v. County of Santa Clara[46] is a case that specifically discusses the need for written documentation of a solar easement and establishes that all solar easements can not be implied but must be written.

The Zipperer family built a home with a "solar home central heating and cooling systems" in the mid-1980s.[47] The County of Santa Clara purchased the adjacent property in 1991, which had a small grove of trees on it. The County designated this land as a park reserve. The trees on this County parcel grew significantly after the County acquired the land and began to shade the Zipperer home, limiting their system's performance. In 1997 the homeowners requested that the County trim or remove the offending trees. The County did not respond; in 2002 it passed an ordinance exempting itself from the Solar Shade Control Act.

In 2004, homeowners brought a suit against the County under several causes of action, including breach of contract stemming from an implicit right to a solar easement. The Zipperers complained that the County had implicitly entered into a contract to provide a solar easement by allowing them to construct a solar home according to County requirements. The family also contended that the County violated this solar easement by allowing the trees on the neighboring lot to grow to a height that shaded the family's solar energy system.

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[46] *Zipperer v. County of Santa Clara*, 133 Cal. App. 4th 1013 (2005)

[47] The case did not specify what type of system the Zipperers installed in their home.

Solar Rights Act

The court ruled that written documentation is needed to create a solar easement in California, citing Section 801.5 of the California Civil Code as the "governing provision, which specifically requires a written agreement in order to create a solar easement."[48] And, despite the fact that the plaintiff argued that other provisions provided exemptions to this written requirement, the court ruled that "[California Civil Code] Section 801.5 plainly is the more specific provision, since it sets forth with particularity the requirements for creation of a solar easement."[49] Further, Section 801.5 requires a "description" of the easement, which implies it must be in writing.

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[48] *Zipperer v. County of Santa Clara*, 133 Cal. App. 4th 1013 (2005)

[49] *Id.* at 1017.

6 PRESERVING PASSIVE SOLAR OPPORUNITIES IN SUBDIVISION DEVELOPMENTS

The Solar Rights Act also sought to preserve the use of passive solar design opportunities in subdivision developments. This intention was codified in California Government Code Section 66473.1 and California Civil Code Section 66475.3.

6.1 CALIFORNIA GOVERNMENT CODE SECTION 66473.1

For subdivisions that require a tentative map, California Government Code Section 66473.1 requires that such subdivision designs must "provide, to the extent feasible, passive or natural heating or cooling opportunities in the subdivision."[50]

Section 66473.1 (b) provides the following examples of natural or passive heating and cooling opportunities:

- Heating – Design of lot size and configuration to permit orientation of a structure in an east-west alignment for southern exposure.
- Cooling – Design of lot size and configuration to permit orientation of a structure to take advantage of shade or prevailing breezes.

This section of law also provides further guidance on passive heating or cooling opportunities. When considering such opportunities, developers and permitting agencies should take into account "local climate, contour, configuration of the parcel to be divided, and other design and improvement requirements." Such consideration should not reduce "allowable densities or the percentage of a lot that may be occupied by a building or structure under applicable planning and zoning in effect at the time the tentative map is filed."

California Government Code Section 66473.1(d) exempts certain condominiums from this requirement. Specifically, "condominium projects which consist of the subdivision of airspace in an existing building when no new structures are added" are exempt from the requirements of this section of law.

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[50] Cal. Govt Code § 66426. A tentative and final map shall be required for all subdivisions creating five or more parcels, five or more condominiums as defined in Section 783 of the Civil Code, a community apartment project containing five or more parcels, or for the conversion of a dwelling to a stock cooperative containing five or more dwelling units, except where any one of the following occurs: (a) The land before division contains less than five acres, each parcel created by the division abuts upon a maintained public street or highway, and no dedications or improvements are required by the legislative body. (b) Each parcel created by the division has a gross area of 20 acres or more and has an approved access to a maintained public street or highway. (c) The land consists of a parcel or parcels of land having approved access to a public street or highway, which comprises part of a tract of land zoned for industrial or commercial development, and which has the approval of the governing body as to street alignments and widths. (d) Each parcel created by the division has a gross area of not less than 40 acres or is not less than a quarter of a quarter section. (e) The land being subdivided is solely for the creation of an environmental subdivision pursuant to Section 66418.2. (f) A parcel map shall be required for those subdivisions described in subdivisions (a), (b), (c), (d), and (e).

7 CONCLUSION

The Solar Rights Act creates certain rights for homeowners and businesses to access sunlight for the purpose of creating thermal or electric energy. It defines how an HOA and a local government can limit solar energy system installations; creates the ability of a property owner to seek a solar easement to ensure access to sunlight across adjacent properties; and allows governments to preserve passive solar heating and cooling opportunities by requiring developers to create easements in certain subdivisions.

We revisit this landmark law because its provisions are by and large not well understood by the general public and because California's solar market will grow significantly in the coming decade as a result of expanded financial incentives for solar energy systems. As more homes and businesses install solar energy systems and local governments pursue renewable energy solutions, the provisions of the Solar Rights Act likely will become more relevant and important.

This paper provides information and analysis on the Act to help parties understand the provisions of the law and to understand how the law affects them. Our research should help solar collector owners determine if they are eligible for protections under the law; homeowner associations determine if they are liable for an allegation brought under the law; and cities and counties understand their role in promoting solar energy systems and enforcing solar access provisions in the law.

8 APPENDIX

8.1 OTHER RESOURCES

For more information about and other interpretations of the act, the following law review articles and books are useful:

- Thomas Starrs, Les Nelson & Fred Zalcman, Bringing Solar Energy to the Planned Community: A Handbook on Rooftop Solar Systems and Private Land Use Restrictions. Available at http://www.sdenergy.org/uploads/Final_CC&R_Handbook_1-01.pdf

- Robert L. Thayer, Solar Access: "It's the Law!" ASLA Environmental Quality Series, no. 34 January 1981 Institute of Governmental Affairs, Institute of Ecology, University of California, Davis. A handbook that details solar laws and their practical applicability in subdivision development.

- Melvin M. Eisenstadt & Albert E. Utton, Solar Rights and Their Effect on Solar Heating and Cooling, 16 Nat Resources J. 363 (1976). An article that examines the legal history and theories behind solar easements and right to light.

- Adrian J. Bradbrook, Future Direction in Solar Access, Winter, 19 Envtl. L. 167, 1988. A law review article generally discussing solar access laws.

- Energy; Incentives for the Use of Solar Energy, 10 Pac Law Journal 478, 478 (1979). A review of the Solar Rights Act and Solar Shade Control Act legislation. It also discusses possible legal problems and enforcement of solar easements.

- Eugene J. Riordan, and Robert L. Hiller, Describing the Solar Space in a Solar Easement, 2 Solar L. Rep 299 (1980-1981). A law review article that discusses the technicalities to be agreed upon when forming a solar easement.

- Kenneth H. Burke, Bruce N. Lemons, Simplified Solar Easements, 2 Solar L. Rep 320 (1980-1981). A law review article that discusses solar easement laws.

9 FULL TEXT OF STATUTES

The Solar Rights Act comprises the following California sections of law: California Civil Code Sections 714 and 714.1, California Civil Code Section 801, California Civil Code Section 801.5, California Government Code Section 65850.5, California Health and Safety Code Section 17959.1, California Government Code Section 66475.3 and California Government Code Section 66473.1. These sections of law are reprinted here in their entirety.

9.1 CALIFORNIA CIVIL CODE SECTION 714

(a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

(c) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agencies. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(d) For the purposes of this section:

(1) (A) For solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, "significantly" means an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding 20 percent, as originally specified and proposed.

(B) For photovoltaic systems that comply with state and federal law, "significantly" means an amount not to exceed two thousand dollars ($2,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 20 percent as originally specified and proposed.

(2) "Solar energy system" has the same meaning as defined in paragraphs (1) and (2) of subdivision (a) of Section 801.5.

(e) Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed.

(f) Any entity, other than a public entity, that willfully violates this section shall be liable to the applicant or other party for actual damages occasioned thereby, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars ($1,000).

(g) In any action to enforce compliance with this section, the prevailing party shall be awarded reasonable attorney's fees.

(h) (1) A public entity that fails to comply with this section may not receive funds from a state-sponsored grant or loan program for solar energy. A public entity shall certify its compliance with the requirements of this section when applying for funds from a state-sponsored grant or loan program.

(2) A local public entity may not exempt residents in its jurisdiction from the requirements of this section.

9.2 California Civil Code Section 714.1

Notwithstanding Section 714, any association, as defined in Section 1351, may impose reasonable provisions which:

(a) Restrict the installation of solar energy systems installed in common areas, as defined in Section 1351, to those systems approved by the association.

(b) Require the owner of a separate interest, as defined in Section 1351, to obtain the approval of the association for the installation of a solar energy system in a separate interest owned by another.

(c) Provide for the maintenance, repair, or replacement of roofs or other building components.

(d) Require installers of solar energy systems to indemnify or reimburse the association or its members for loss or damage caused by the installation, maintenance, or use of the solar energy system

9.3 Caliornia Civil Code Section 801

The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture;

2. The right of fishing;

3. The right of taking game;

4. The right-of-way;

5. The right of taking water, wood, minerals, and other things;

6. The right of transacting business upon land;

7. The right of conducting lawful sports upon land;

8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land;

9. The right of receiving water from or discharging the same upon land;

10. The right of flooding land;

11. The right of having water flow without diminution or disturbance of any kind;

12. The right of using a wall as a party wall;

13. The right of receiving more than natural support from adjacent land or things affixed thereto;

14. The right of having the whole of a division fence maintained by a coterminous owner;

15. The right of having public conveyances stopped, or of stopping the same on land;

16. The right of a seat in church;

17. The right of burial;

18. The right of receiving sunlight upon or over land as specified in Section 801.5.

9.4 California Civil Code Section 801.5

(a) The right of receiving sunlight as specified in subdivision 18 of Section 801 shall be referred to as a solar easement. "Solar easement" means the right of receiving sunlight across real property of another for any solar energy system.

As used in this section, "solar energy system" means either of the following:

(1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.

(2) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

(b) Any instrument creating a solar easement shall include, at a minimum, all of the following:

(1) A description of the dimensions of the easement expressed in measurable terms, such as vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector, device, or structural design feature may not be obstructed, or a combination of these descriptions.

(2) The restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the passage of sunlight through the easement.

(3) The terms or conditions, if any, under which the easement may be revised or terminated.

9.5 California Government Code Section 65850.5

(a) The implementation of consistent statewide standards to achieve the timely and cost-effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

(b) A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

(c) A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(d) The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city or county.

(e) Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

(f) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agency. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(g) The following definitions apply to this section:

(1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior successful application for a permit. A city or county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.

(2) "Solar energy system" has the same meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.

(3) A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

9.6 California Health & Safety Code Section 17591

(a) A city or county shall administratively approve applications to install solar energy systems though the issuance of a building permit or similar nondiscretionary permit. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

(b) A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. This finding shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(c) Any conditions imposed on an application to install a solar energy system must be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

(d) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agency. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical

and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(e) The following definitions apply to this section:

(1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior

successful application for a permit. A city or county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.

(2) "Solar energy system" has the meaning set forth in paragraphs

(1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.

(3) A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

9.7 CALIFORNIA GOVERNMENT CODE SECTION 66475.3

For divisions of land for which a tentative map is required pursuant to Section 66426, the legislative body of a city or county may by ordinance require, as a condition of the approval of a tentative map, the dedication of easements for the purpose of assuring that each parcel or unit in the subdivision for which approval is sought shall have the right to receive sunlight across adjacent parcels or units in the subdivision for which approval is sought for any solar energy system, provided that such ordinance contains all of the following:

(1) Specifies the standards for determining the exact dimensions and locations of such easements.

(2) Specifies any restrictions on vegetation, buildings and other objects which would obstruct the passage of sunlight through the easement.

(3) Specifies the terms or conditions, if any, under which an easement may be revised or terminated.

(4) Specifies that in establishing such easements consideration shall be given to feasibility, contour, configuration of the parcel to be divided, and cost, and that such easements shall not result in reducing allowable densities or the percentage of a lot which may be occupied by a building or a structure under applicable planning and zoning in force at the time such tentative map is filed.

(5) Specifies that the ordinance is not applicable to condominium projects which consist of the subdivision of airspace in an existing building where no new structures are added.

For the purposes of this section, "solar energy systems" shall be defined as set forth in Section 801.5 of the Civil Code.

For purposes of this section, "feasibility" shall have the same meaning as set forth in Section 66473.1 for the term "feasible".

9.8 California Government Code Section 66473.1

(a) The design of a subdivision for which a tentative map is required pursuant to Section 66426 shall provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.

(b) (1) Examples of passive or natural heating opportunities in subdivision design, include design of lot size and configuration to permit orientation of a structure in an east-west alignment for southern exposure.

(2) Examples of passive or natural cooling opportunities in subdivision design include design of lot size and configuration to permit orientation of a structure to take advantage of shade or prevailing breezes.

(c) In providing for future passive or natural heating or cooling opportunities in the design of a subdivision, consideration shall be given to local climate, to contour, to configuration of the parcel to be divided, and to other design and improvement requirements, and that provision shall not result in reducing allowable densities or the percentage of a lot that may be occupied by a building or structure under applicable planning and zoning in effect at the time the tentative map is filed.

(d) The requirements of this section do not apply to condominium projects which consist of the subdivision of airspace in an existing building when no new structures are added.

(e) For the purposes of this section, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

EXHIBIT E

Mike McGovern
Consulting Biologist
2060 Varian Circle
Arroyo Grande, CA 93420
805-441-7208

February 27, 2010

Firma Consultants
Michael Prater
849 Monterey St.
San Luis Obispo, CA 93401

RECEIVED
MAR 15 2010
City of Morro Bay
Public Services Department

Dear Mike,

On the morning of February 25, 2010 I met with Mike Prater of Firma Consultants, San Luis Obispo, CA. Mike introduced me to the proposed project of REC Solar installing solar voltaic panels at Morro Bay High School. In order to do this REC Solar proposed to remove and to trim some of the trees that will interfere with direct sunlight hitting the panels. There is potential that the removal or trimming of the trees may violate the Migratory Bird Treaty Act of 1918. This act states that it unlawful to pursue, hunt, take, capture, kill or sell birds listed therein ("migratory birds"). The statute does not discriminate between live or dead birds and also grants full protection to any bird parts including feathers, eggs and nests. Therefore, if the removal or trimming of trees disturbs nests it may be in violation of this act.

The trees in question are those that form the border of the south east corner of the Morro Bay High School property and those in the lawn in front of the school's office (figure 1). The trees along the southeast border (in black and red above the black in figure 1) are Monterey cypress (*Cupressus macrocarpa*) trees and those in red in front of the office are ghost pine trees (*Pinus sabiana*), Monterey pine trees (*Pinus radiata*) and one unidentified tree.

I began my observations of the trees approximately 0830 h and continued the observations until 1030 h the same morning. During that time I walked under and adjacent to each tree looking for obvious nests. These observations were done with and with out binoculars. No bird nests were noted.

A significant portion of my time was spent observing the trees and surrounding areas for use by birds. During that time a few birds were observed in the area but only three species used the trees. The Monterey cypress were used by ravens (*Corvus corvax*), and Anna's hummingbirds (*Calypte anna*), for roosting and an unidentified raptor thought to be a white tailed kite (*Elanus leucurus*) was observed sitting in a tree top.

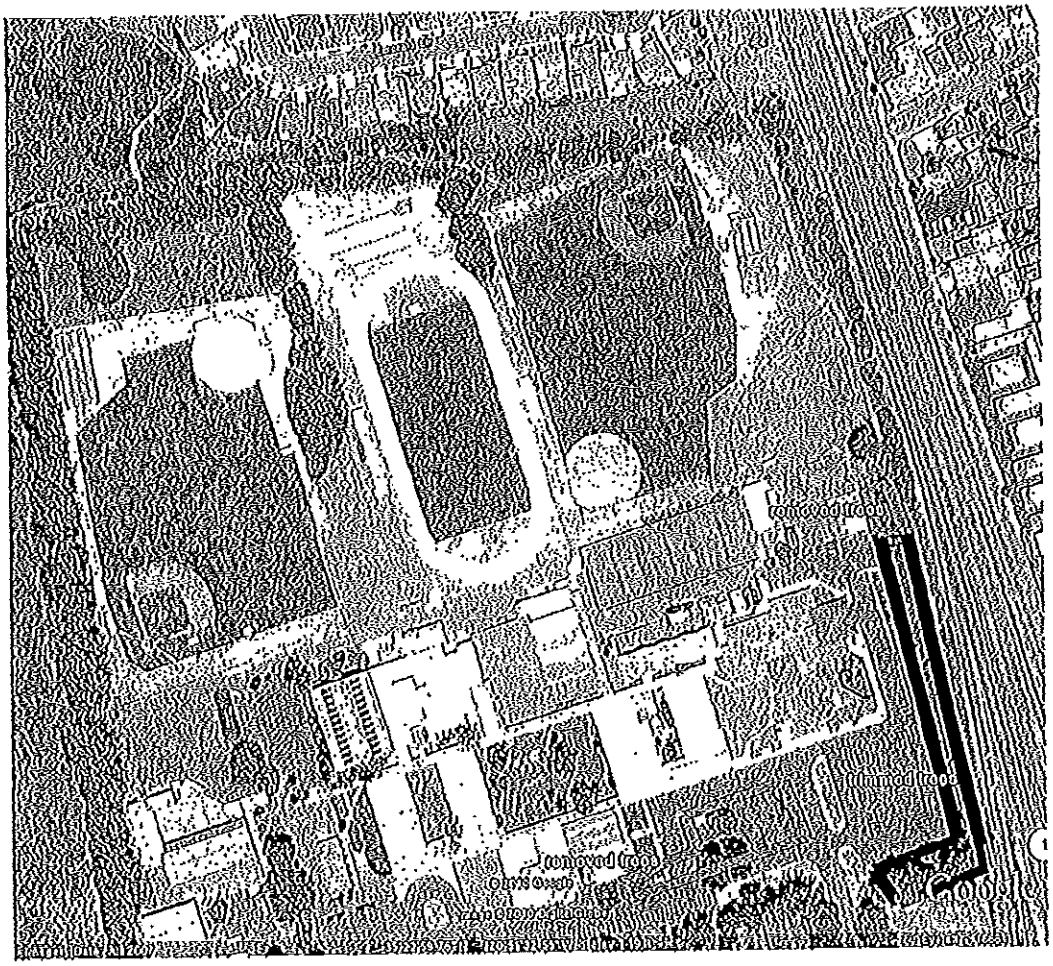

Figure 1: Morro Bay High School. Trees proposed for trimming are outlined in black and the trees proposed to be removed are outlined in red.

Other birds were observed in the area but did not utilize the trees. A pair of red shoulder hawks was seen circling the area of the high school and vocalizing during my entire stay. My notes also include mourning dove (*Zenaidura macroura*), mocking bird (*Mimus polyglottos*), turkey vulture (*Catharius aura*), seagull (*Larus* sp.), and black phoebe (*Sayornis nigricans*). I also took the opportunity to speak with two biology teachers, Mr. Steven Gade and Ms. Faylla Chapman, at the school to ask what avifauna they have witnessed using the trees or the school grounds. Mr. Gade was not able to augment my list of observed birds. Ms. Chapman offered that she has observed Killdeer (*Charadrius*), a hawk that used to roost nearby that was "dark", white crowned sparrows (*Zonotrichia leucophrys*), house sparrows (*Passer domesticus*), and a species of swallow.

The trees also were utilized by monarch butterflies. Three butterflies were seen settling momentarily on the cypress trees and others were seen visiting the shrubs and lawn around the school.

I viewed the California Natural Diversity Data Base (CNDDB) for the Morro Bay North quadrangle and the adjacent surrounding quadrangles. Eleven bird species were listed for those quadrangles including one species in the Morro Bay North quadrangle; the western snowy plover (*Charadris alexandrinus*). Those species are listed in Table 1.

TABLE 1: CNDDB LISTED SPECIES OF BIRDS	
COMMON NAME	BINOMIAL
Western snowy plover	Charadris alexandrinus
Coopers hawk	Acoipiter cooperii
Burrowing owl	Athene cunicularia
California horned lark	Eremophila alpestris actia
Western yellow-billed cuckoo	Cocoyzus americanus occidentalis
Ferrigenous hawk	Buteo regalis
White tailed kite	Elanus leucurus
California black rail	Laterallus jamaicensis coturniculus
California clapper rail	Rallus longerostis obsoletus
Purple martin	Progne subis
Golden eagle	Aquila chrysaetos

The habitat provided by the cypress and pine trees on the Morro Bay High School campus is not suitable or optimal for the species listed in Table 1. The western snowy plover, burrowing owl, California horned lark, the two rail species, and purple martin do not build nests in trees. Purple martins are hole nesters. The western yellow-billed cuckoo nests in riparian thickets and the Coopers hawk also prefers dense riparian vegetation for nesting and the white tailed kite too prefers this type of habitat with coast live oaks, sycamore, and willow trees preferred. The ferrigenous hawk prefers open country and is not often seen in urban areas as with the golden eagle. The trees can potentially provide nesting for red shouldered and red tailed hawks. A thorough search of the trees in question offered no nests. It appears that of the birds with special listing in and surrounding the Morro Bay North quadrangle none would use the trees around the school campus.

I believe that the trees serve a purpose, however, as a roosting site for a variety of bird species. I observed ravens, anna's humming birds, and an unidentified raptor utilizing the cypress and pines for such a purpose. It appeared to me that all but the raptor was using the trees to rest. The raptor may have used the tree for the same purpose but it is conceivable and probable that raptors could use the trees to perch as they observe the open, grassy field adjacent to the parking lot and grassy strip along California Highway One for prey.

The removal of three or four cypress trees along California High One would have minimal impact on the opportunity for raptors to hunt along this narrow corridor or for non-raptor birds to perch. The trimming of the trees also would not eliminate this same opportunity. It may make the trees less attractive for nesting sites in the future but it appears that they are not used as such now as evidenced by the lack of nests and the lack of sightings from the biology teachers at the school. We are presently in the non-nesting season and removal and / or trimming of the trees in the immediate future will not interfere with birds that may want to nest in the trees in question. The trees will continue to offer ample opportunity for the perching of birds seeking rest and for use by monarch butterflies.

Although the trees were minimally used by monarch butterflies my reconnaissance failed to discover any colonies of butterflies using the trees.

Sincerely,

Mike McGovern Ph. D.

JTS Inc.
1615 Oak Hill Road, Arroyo Grande, CA 93420-7123
(805) 489-9191 Office – (805) 801-0481 Cell – (805) 474-8244 Fax

DATE: MARCH 15, 2010

TO: FIRMA, INC. / REC SOLAR

REGARDING: AMENDED ARBORIST REPORT FOR SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT – MORRO BAY HIGH SCHOOL SOLAR PANEL PROJECT

FROM: JEREMY LOWNEY, CERTIFIED ARBORIST #3718
FIELD MANAGER, JTS INC.

SUMMARY:

This arborist report is in regards to the management of the trees which are blocking solar penetration to the proposed solar panel plan which is attached. Information is provided regarding the specific angels of the sun and distances from the trees for reference. Most of the trees can be saved by pruning.

Four Monterey cypress (*Cupressus macrocarpa*) will require removal on the North end of the property (Trees # 1,3,4,5). Two other dead Cypress stumps should also be removed. A final tree (Monterey pine) located in the front lawn area (Tree#38) that is suffering from Pitch Canker should be removed and replanted with a more suitable species.

Fourteen Monterey cypress are to be pruned to a maximum height of 35' or 39'6" to provide for passive solar radiation. This pruning should be done by a qualified arborist.

OBSERVATIONS:

It is my understanding that the solar panels will be on top of elevated roofs that are 9 feet tall. The following observations have been made accordingly.

1. The trees are numbered starting from North End near the livestock pens and proceeding clockwise (southward) and across to the central lawn area where the large oak and Monterey pines are located (referenced on the attached Solar Plan aerial photograph). Trees are not tagged.
2. Trees #24-29 can be pruned to 35 feet tall. Pruning ought to be done by a qualified arborist. The technique called "directional pruning" should be utilized in order to reduce future pruning requirements.
3. Trees #30-37 can be pruned to 39'6" tall to provide adequate solar penetration. Pruning ought to be done by a qualified arborist. The technique called "directional pruning" should be utilized in order to reduce future pruning requirements.

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4. Some trees on the North/East fence line need to be removed to accommodate solar penetration to the proposed panels. Trees #1,3,4,5
5. Trees numbered 3 and 4 (and most likely #5) on the North end are also suffering from root damage and decay caused by the installation of the bike path a few years ago. They have become hazardous and should be removed regardless of this project.
6. The Monterey pines, oak, and Torry pines in the central part of the property (trees #38 - #44) will not require removal or pruning. However, tree #38 is heavily infested with Pitch Canker (*Fusarium circinatum*) and should be removed to prevent further spread to adjacent pines.

DATA:

See attached spreadsheet.

CONCLUSIONS:

1. Monterey cypress (*Cupressus Macrocarpa*) can be heavily pruned and will likely survive when the trees are not overly mature or suffering from other problems. These Cypress trees can be pruned (if done by a professional or Certified arborist) to leave enough live foliage to sustain the life of the trees and accommodate the needed solar penetration. The pruning volume is approximately 25 – 40% of the live crown. No more than 40% of the live crown is to be removed on this species.
2. The Monterey pines (*Pinus radiata*) have Pitch Canker. Pruning the trees will further increase the spread of the fungus, so they should be left alone or removed completely if necessary.
3. Trees 1,3,4,5, 14 and 15 (which are tall stumps) are to be removed (TOTAL of 4 live, and 2 dead).
4. Trees number 2, 6 and 24 - 37 can be pruned to accommodate solar penetration. See specific pruning needs on the attached DATA spreadsheet. Trees #7-23 do not require pruning.

Thank you for the opportunity to work with you on this project. Please feel free to contact me if you have any further questions. 805-431-0708

Jeremy Lowney
Field Manager, JTS, Inc.

QUALIFICATIONS:
Certified Arborist WC-3718
Teacher of Urban Forestry, Cal Poly University, SLO
Former Hazardous Tree Inspector, County of San Luis Obispo Department of Planning & Building
Former Member of the California State Pitch Canker Task Force
Certificates in Tree Risk Management and Lawsuit Prevention, and Tree Appraising and Writing Technical Reports
Bachelors of Science in Forestry and Natural Resource Management,
California Polytechnic State University, SLO

TREE INVENTORY / MORRO BAY HIGH SCHOOL

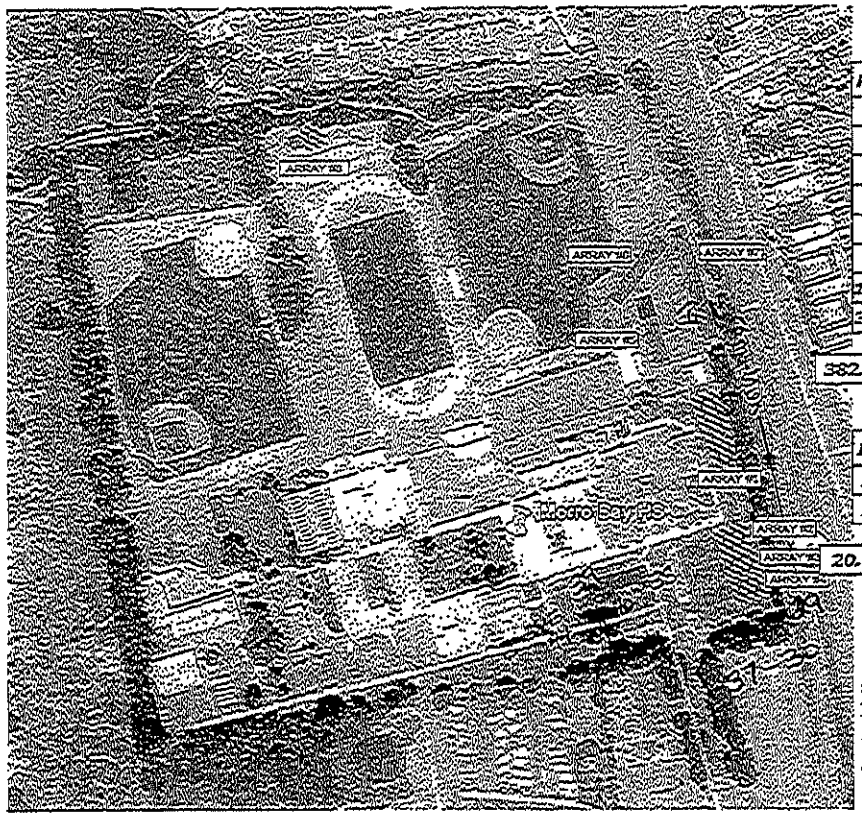
Tree #	Species	DBH	Removal	% Canopy Loss	Condition / Management
1	MC	72	Y	NA	Healthy. Very large tree. Remove for solar penetration.
2	MC	20	N	15%	Healthy. Under power lines. Side trim.
3	MC	36	Y	NA	Root damage and decay. Remove
4	MC	40	Y	NA	Root damage and decay. Remove
5	MC	50	Y	NA	Likely root damage and decay. Remove
6	MC	32	N	40%	Reduce to height of Tree #7 (approx. 25 ft)
7	MC	24	N	0%	Leave alone. Height is good.
8	MC	24 - 40	N	0%	No pruning necessary
9	MC	24 - 40	N	0%	No pruning necessary
10	MC	24 - 40	N	0%	No pruning necessary
11	MC	24 - 40	N	0%	No pruning necessary
12	MC	24 - 40	N	0%	No pruning necessary
13	MC	24 - 40	N	0%	No pruning necessary
14	MC	NA	Y	NA	Dead tall stump. Remove
15	MC	NA	Y	NA	Dead tall stump. Remove
16	MC	60	N	0%	No pruning necessary
17	MC	22	N	0%	No pruning necessary
18	MC	32	N	0%	No pruning necessary
19	MC	30	N	0%	No pruning necessary
20	MC	36	N	0%	No pruning necessary
21	MC	32	N	0%	No pruning necessary
22	MC	30 - 40	N	0%	No pruning necessary
23	MC	30 - 40	N	0%	No pruning necessary
24	MC	30 - 40	N	5%	Reduce height to 35'. Side trim to curb (approximately).
25	MC	30 - 40	N	15%	Reduce height to 35'. Side trim to curb (approximately).
26	MC	30 - 40	N	15%	Reduce height to 35'. Side trim to curb (approximately).
27	MC	30 - 40	N	15%	Reduce height to 35'. Side trim to curb (approximately).
28	MC	30 - 40	N	5%	Reduce height to 35'. Side trim to curb (approximately).
29	MC	30 - 40	N	40%	Reduce height to 35'. Side trim to curb (approximately).
30	MC	30 - 40	N	30%	Reduce height to 39'6", Trim top at 17 degree angle
31	MC	30 - 40	N	30%	Reduce height to 39'6", Trim top at 17 degree angle
32	MC	30 - 40	N	30%	Reduce height to 39'6", Trim top at 17 degree angle
33	MC	30 - 40	N	30%	Reduce height to 39'6", Trim top at 17 degree angle
34	MC	30 - 40	N	30%	Reduce height to 39'6", Trim top at 17 degree angle
35	MC	30 - 40	N	30%	Reduce height to 39'6", Trim top at 17 degree angle
36	MC	30 - 40	N	30%	Reduce height to 39'6", Trim top at 17 degree angle
37	MC	30 - 40	N	30%	Reduce height to 39'6", Trim top at 17 degree angle
38	MP	18	Y?	NA	Suffering from Pitch Canker. Possible removal
39	O	40 multi.	N	0%	Healthy Specimine. Leave alone
40	MP	48	N	0%	Fair. Has Pitch Canker. Has Red Turpentine bark beetle. Leave alone
41	MP	20	N	0%	Healthy. Leave alone
42	MP	40	N	0%	Fair. Has Pitch Canker. Has Red Turpentine bark beetle. Leave alone
43	TP	30	N	0%	Healthy. Too large for planting area. Future removal?
44	TP	36	N	0%	Leaning. Too large for planting area. Poorly pruned. Future removal?

KEY

Total Live Cypress Removals: 4

Tree Species

MC	*Cupressus*	*Macrocarpa*	Monterey cypress
MP	*Pinus*	*Radiata*	Monterey pine
O	*Querous*	*Tomentella*	Island oak
TP	*Pinus*	*Torreyana*	Torrey pine



REVISION	ARRAY #	DC POWER
36.96 KW	1	36.96 KW
27.72 KW	2	27.72 KW
27.72 KW	3	27.72 KW
27.72 KW	4	27.72 KW
64.68 KW	5	64.68 KW
73.92 KW	6	73.92 KW
110.88 KW	7	110.88 KW
378.84 KW	METER 1 TOTAL	378.84 KW
382.0 KW	METER 1 GOAL	382.0 KW

REVISION	ARRAY #	DC POWER
18.48 KW	8	18.48 KW
18.48 KW	METER 2 TOTAL	18.48 KW
20.0 KW	METER 2 GOAL	20.0 KW

LEGEND

- ARRAY ADDITION
- ARRAY REDUCTION

SYSTEM SIZE REDUCTION SUMMARY:
- ARRAY#1 IS REMOVED TO REDUCE THE TREE TRIMMING/REMOVAL ALONG HWY 1 AND DISTRIBUTED INTO ARRAY#5 AND ARRAY#6
-PORTIONS OF ARRAY#2, #3, AND #4 ARE RELOCATED TO THE LAWN AREA OR "NEW ARRAY#1" PER REVISION SUMMARY TO REDUCE THE TREE TRIMMING/REMOVAL ALONG HWY 1 AND SOUTH OF ARRAY #4

REC SOLAR

SUNPOWER

LOCATION:
SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT
MORRO BAY HIGH SCHOOL
205 ATASCADERO RD.
MORRO BAY, CA

PHOTOVOLTAIC ARRAYS PRELIMINARY DESIGN

G-109

NOTE:
DESIGN SUBJECT TO CHANGE PENDING SUNPOWER REVIEW.

OVERALL SITE PLAN

SCALE: NTS

REC SOLAR, INC.

SAN LUIS COASTAL UNIFIE SCHOOL DISTRICT

OVERALL SITE PLAN

G-109

Jeremy Lowney
Arboriculture & Landscaping
P.O. BOX 13521, SLO CA 93406
431-0708

JUL 22 2010
City of Morro Bay
Public Services Department

TO: DAVID FOOTE, FIRMA

FROM: JEREMY LOWNEY, CERTIFIED ARBORIST

DATE: JULY 15, 2010

REGARDING: ADDENDUM TO THE ARBORIST REPORT FOR MORRO BAY HIGH SCHOOL SOLAR PROJECT

Some simple changes to this project have been made so that no trees will be removed.

By working with the solar engineer and planner, it has been determined that by modifying the location of the solar rays, and by specific pruning, the 5 trees can be saved.

The changes are simple. In the previous inventory trees #1, 3, 4, and 5 were suggested for removal, and tree #29 was questionable (as to the survivability) if pruned to 35 feet in height.

In the new plan, trees #1, 3, 4, and 5 are to be pruned at normal amounts (10 – 20% of live canopy), rather than removed. Tree #29 was much too tall to be reduced to the previous height of 35 feet. In the new plan, tree #29 is to be reduced to 45 feet. This retains a much higher percentage of the live canopy of the tree and can be pruned such that it still looks very natural.

The remaining trees in the inventory will be pruned at moderate levels (if at all), so that they not only provide for the necessary solar penetration, but also improves the structure and safety of these public trees.

Feel free to contact me if you have further questions.

Thank you,

Jeremy Lowney
Certified Arborist #3718
805-431-0708

City of Morro Bay

Morro Bay, CA 93442 • 805-772-6200
www.morro-bay.ca.us

April 30, 2010

Mr. Sean L. Spear
Executive Director
California Debt Limit Allocation Committee
915 Capitol Mall, Room 311
Sacramento, CA 95814

RE: CDLAC Recovery Zone Facility Bond Application from California Statewide Communities Development Authority on behalf of SunEdison, LLC

Dear Mr. Spear:

The City of Morro Bay (City) is aware that SunEdison will be installing solar facilities at the San Luis Coastal Unified School District (District) located at 235 Atascadero Rd. The City supports the efforts of SunEdison to provide green energy and economic growth to our community through the issuance of Recovery Zone Facility Bonds by the California Statewide Communities Development Authority. Although the City supports the School District's efforts, the project must go through the formal permit process and receive a permit prior to construction.

Sincerely,

Rob Livick, PE/PLS
Interim Public Services Director

Glare Documents

JUN 29 2010
Public Se

REC

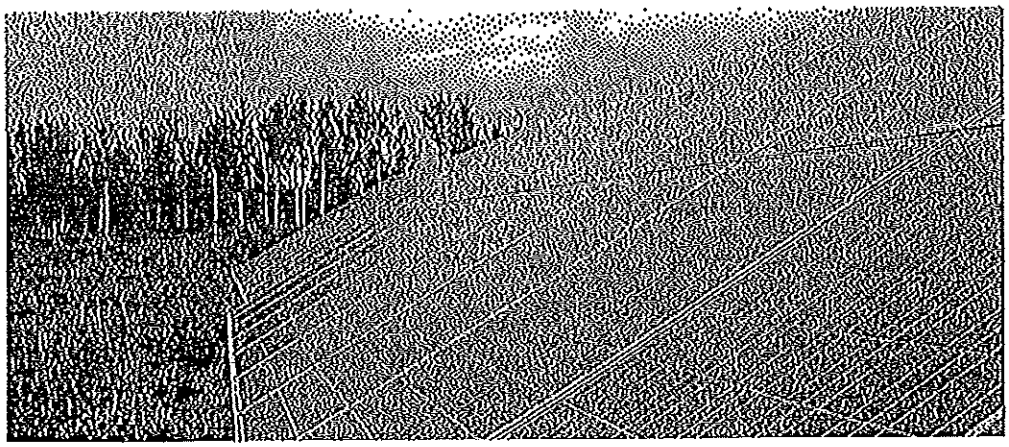
Career

Investors

Media

Contact us

REC SOLAR MODULES OUTPERFORM LEADING EUROPEAN AND CHINESE BRANDS



REC solar modules outperform leading European and Chinese brands in Fraunhofer Institute's one-year performance ratio test.

Oslo, Norway, September 21, 2009 – REC today announced the results of a study performed by Fraunhofer Institute, the leading European solar technology research institute, placing REC solar modules ahead of two leading module brands in a year-long performance ratio study. The study was commissioned by REC. The study also demonstrated that REC's use of the Sunaro* anti-reflective treatment on the module glass increases energy production.

During a period of 12 months Fraunhofer studied the performance of two arrays with REC modules, one array with modules from a leading European producer, and one array with modules from a leading Chinese producer. During the test, the REC modules recorded a performance ratio 4.8 percent higher than the Chinese modules and 1 percent higher than the European modules. "The higher performance ratio translates into increased production of electricity and additional money generated for the owner of the system with REC modules", said Åsmund Fodstad, VP Sales & Marketing. REC provides a 25-year power output guarantee on its modules.

The performance ratio is calculated by comparing the nameplate capacity of a solar module with the actual power output of the system. Performance ratio is widely considered the best measure of the quality of a module because all components and their interactions are taken into consideration.

The Fraunhofer study also demonstrated that REC's use of anti-reflective treatment on the module glass increases energy production and performance ratio. The test evaluated two arrays of identical REC modules, one with anti-reflective treated glass and one without. The modules with anti-reflective treated glass showed a higher performance ratio compared to modules with untreated glass. The anti-reflective treatment reduces the reflectivity of the glass surface, allowing more sunlight to enter into the solar cells for conversion to electricity. The treatment has been applied on all modules manufactured by REC since 2007. "This study confirms that the anti-reflective treatment of the glass used in the REC modules contributes to excellent performance in a wide range of sunlight conditions," Fodstad said. The REC modules are optimized for low light conditions such as sunrise and sunset, in effect waking up early in the morning and going to sleep late in the evening.

About REC

REC is the leading vertically integrated player in the solar energy industry. REC Silicon and REC Wafer are among the world's largest producers of polysilicon and wafers, respectively, for solar applications. REC Solar is a rapidly growing manufacturer of solar cells and modules, and is also engaging in project development activities in selected segments of the PV market. REC had revenues of NOK 8 191 million and an operating profit of NOK 2 529 million in 2008. Close to 3 000 employees work in REC's worldwide organization. See www.recgroup.com for more information about REC.

Media Inquiries
Åsmund Fodstad at
aasmund.fodstad@recgroup.com

* Sunaro is a registered Community Trade Mark within EC and a registered trademark in the United States and other countries.

Media Inquiries

For more information, quotes or photography, please contact Vice President of Sales & Marketing, Åsmund Fodstad at , or aasmund.fodstad@recgroup.com

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New Product: Honeywell's transparent coating material improves light transmittance

02 December 2009 | By Mark Osborne | Product Briefings > Materials

Product Briefing Outline: Honeywell Electronic Materials has launched a new material called Honeywell SOLARC that improves the efficiency and power output of PV module. The new product is a transparent coating material that improves the light transmittance through the glass that covers the solar cells.

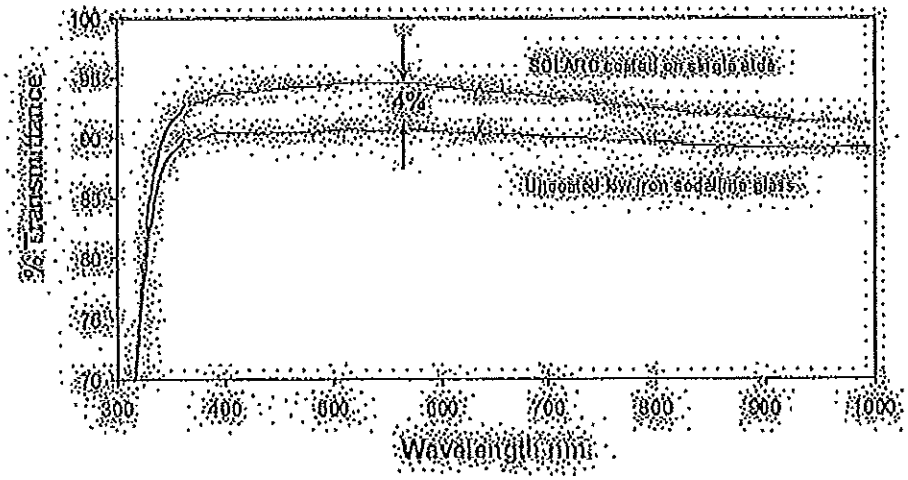
Problem: Most commercially available PV panels today lose approximately 4 percent of their potential power output due to light reflection from the front surface of the cover glass. Also, solar panels lose on average 7 percent of their power output due to particulate contamination, according to the California Energy Commission.

Solution: SOLARC coating reduces reflection significantly, resulting in more light reaching the solar cell, which translates into higher electricity output. Demonstrating a 4 percent increase in transmission at 550 nanometers, Honeywell's SOLARC has demonstrated a very good response across a broad solar spectrum that is relevant for PV cell operation, from 350 nanometers through 1,100 nanometers. SOLARC coating has also demonstrated superior durability in a broad variety of accelerated tests designed to imitate harsh environmental conditions to which a PV panel is likely to be exposed during its lifetime. Honeywell claims that environmental testing of the coating has shown that it provides additional protection to the glass, especially under hot and humid conditions that may lead to gradual glass deterioration. The coating has been further optimized to enable anti-soiling and self-cleaning functionality that prevents dust accumulation.

Applications: Honeywell's SOLARC is a liquid-based coating, can be used by all common types of PV modules an can easily be adapted to a broad range of coating techniques including dip, roller, slot die, spray and spin-on.

Platform: Unlike other commercially available ARC's, it does not require mixing of two components prior to deposition, and has at least a six month shelf life.

Availability: October 2009 onwards.



% Transmittance
100
90
80
70
300
400
500
600
700
800
900
1000
Wavelength nm
4%
SOLARO coated on single side
Uncoated Kw iron sodalime glass

City of Morro Bay
Morro Bay, CA 93442 • 805-772-6200
www.morro-bay.ca.us

April 16, 2010

FIRMA
1034 Mill St.
San Luis Obispo, CA 93401

Subject: Construction of 7 Solar Photovoltaic Arrays, Removal of 4 Trees and installation of 5 Trees/Shrubs

Dear Mr. Prater,

Thank you for your submittal of the revised project to install photovoltaics at the school. A Planning review indicates that necessary alterations of the proposed removal of 4 trees and subsequent construction of 7 solar photovoltaic arrays and replacement of 5 trees/shrubs plan must be made. A list of review comments is provided for you to make the necessary alterations to meet compliance. The following comments were prepared by the Morro Bay Fire and Planning Departments and are required at this time since the building plans will not be submitted or approved by the Morro Bay Building Department.

1. Clarify on the site plan the type and size of shrubs proposed to replace the trees that are proposed to be removed or remove the reference to shrubs if they are not proposed.

2. Clarify in the biological report if the trees to be removed are considered raptor habitat, therefore requiring mitigation. As currently prepared, it is unclear if mitigation measures are proposed for the loss of the 5 trees. If the trees are considered habitat and/or mitigation is recommended or required, the City will prepare an Initial Study. In addition, note that the City will prepare its own environmental determination regardless of the type of determination.

3. The tree survey indicates that 6 to 7 trees are recommended for removal, however, the biological report indicates that there will only be 3 or 4 removed. Clarify the number of trees to be removed and ensure that the trees identified in the biological report are the same trees identified in the tree survey.

4. Provide plans that are legible, complete, accurate and drawn to scale. For example, the arrays are all different sizes; however the sizes are not noted on the plans. In addition, locate all proposed work, showing distance from property lines and other structures on the parcel. See the enclosed development standards for the SCH zoning district.

5. Provide a complete description of the scope of work as follows: " Install (x) KW solar photovoltaic system including solar array and (x) inverters mounted on (Building Name) as supplemental electrical supply system through the service equipment."

6. Depict the maximum height of proposed work measured from natural grade or finished grade, whichever is lower.

7. Provide an electrical plan and include the following information:

   a. Location of new controlling equipment.

   b. Wiring methods and material between equipment.

   c. Single line diagram of existing and new equipment including grounding electrode system.

   d. All new equipment and specifications (kVA, size, weight, manufacturer, make).

   e. Disconnecting means for both existing and new systems.

   f. Location of existing service.

8. Photovoltaic systems must comply with building height, setback, open yard area, solar access and other zoning ordinance requirements.

9. All photovoltaic systems and equipment must be listed or otherwise approved by Building and Fire Staff for its use (California Electrical Code Sec. 110-3).

10. Photovoltaic systems shall comply with all applicable portions of Article 690 of the California Electrical Code, but not limited to, the following:

    a. Disconnecting means, at a readily accessible location, shall be provided for both DC and AC output of the photovoltaic system (CEC 690-17, 690-53, 705-21). DC disconnecting means shall also be provided for all roof-mounted arrays, with one disconnect per group or array of panels. The AC disconnect means shall be provided at a readily accessible location within view of the electrical entrance, as per utility requirements.

    b. Signage shall be provided at all disconnects indicating function. Signage shall be permanent and conspicuous and shall comply with CEC 690-17. Marking and identification of all wiring and equipment is required (CEC 690-51-53).

    c. All photovoltaic systems and equipment shall be grounded, and individual panel arrays and equipment shall be grounded continuously without interruption (CEC 690). The size of grounding conductors shall comply with CEC 690-45.

    d. Roof-mounted photovoltaic arrays located on dwellings shall be provided with ground-fault protection (CEC 690-5)

e. Connectors shall be polarized, of a latching or locking type, non-interchangeable and secured against inadvertent contact with live parts by persons (CEC 690-33).

f. Wiring, where exposed to direct rays of the sun, shall be of type SE, UF, or USE or other wiring listed and approved as suitable for wet locations and exposed to sunlight per CEC 690-31(b).

g. Working space for switch boards, panel boards, inverters, disconnects and other equipment shall be provided per Table 110-26(a) of the CEC, which requires that equipment clearance shall be at least 30" wide and 36" deep for equipment operating from 0-150 volts to ground.

h. Working space for equipment shall be level, illuminated and have headroom of 6'6".

11. All structural attachment methods and details utilized in the field shall match what is shown on the approved plans.

12. Provide labels for the project including owners within 300 ft. and occupants within 100 ft. of the project site.

Any further processing of this project must be initiated by you, the applicant, and is subject to the applicable rules and regulations of the Morro Bay Municipal Code.

Please contact me if you have any questions at 772-6270.

Sincerely,

Genene Lehotsky
Associate Planner

CC: San Luis Coastal Unified School District
937 Southwood Ave.
San Luis Obispo, CA 93401

LOCAC

Los Osos Community Advisory Council

RECEIVED

MAR 15 2010

City of Morro Bay
Public Services Department

March 1, 2010

COUNCIL MEMBERS 2009-2010

DISTRICT ONE
Alon Perlman
Mimi Whitney

DISTRICT TWO
Carole Maurer
Linda Owen

DISTRICT THREE
Paul Malykont
Richard Parker

DISTRICT FOUR
Janice Rohn, Secretary
Keith Swanson, Treasurer

APPOINTEES
Fred Dellagatta, Vice-Chair
Carroll Leslie
Vicki Milledge Chairperson

Brad Parker
Brad Parker Consulting Services
1760 Allsal Ave
San Luis Obispo Ca 93401

Dear Mr. Parker:

Thank you for attending the LOCAC Land Use Committee meeting on February 11, 2010 to discuss DRC 2009-00043/SLO Coastal Unified School District (proposed solar panels). We appreciate your responses to the committee and community members' questions and expressed concerns.

LOCAC's general policy on tree removal is very conservative. We want to be convinced that the benefit of a project to the community and mitigation of the effects of tree removal are sufficient to justify a recommendation to approve the project. At the same time, LOCAC generally supports projects that involve alternative/green energy generation. We also generally support cost-saving efforts for our schools where the savings will allow for more budgetary support of the curriculum. Thus, this project presents us with a dilemma.

After this project was discussed as an agenda item in the February 25th full LOCAC meeting, we found that several of the concerns that were discussed in the Land Use Committee meeting remained because we need further clarification of your previous responses to make a fully informed recommendation on the MUP. Therefore, we tabled further action on this project until our upcoming full LOCAC meeting on March 25th.

What follows is my attempt to summarize our remaining concerns and to make specific requests for further clarification from you. Some of these items may not seem to be directly connected with the issue of tree removal. They do, however, form the cost/benefit context for our decision-making. We would welcome a written response from you and we request your presence at our March 25th meeting so that we can mutually address remaining concerns. We do understand that we are asking you for more work than you may have expected. And, we know this proposed project will have a large and long-lasting impact on our community and we feel our concerns are serious enough to merit further discussion.

Community Outreach regarding visual impact and vandalism:
We understand from you that faculty and parents of students at all the affected schools have had an opportunity to comment on the visual impact of the array design and placement as well as the School Board's strategies regarding the minimization of vandalism to the panels and the response to it when it occurs. We also know that at the time of the hearing on this project neighbors will be notified of the opportunity to comment on it. This notification comes quite late in the process and is limited to a relatively small area around each campus. Our concerns are that neighbors outside of faculty and families of students have not had an early opportunity to comment on the project and that neighbors outside of limited confines of Planning Department noticing boundaries may never know they have an opportunity to comment.

We request that you, in your role of consultant to the School Board, recommend that they undertake a notification of the project's parameters to all residents in each school district in Los Osos in the very near future. Under noticing regulations, typically a 100 foot radius is required. However, noticing can be much larger if so desired preceding a notice of public hearing. Since the school district passes along costs to local residents, which includes liability and insurance, we request you consider noticing tax paying residents of this project early on in the project review.

Environmental Benefit of the Project:
You stated in the Land Use Committee meeting that this project would have an environmental benefit equivalent to planting 63,000 trees. We request a description of the assumptions and data used to calculate that result.

LOCAC P.O. Box 7170 Los Osos, CA 93412-7170
E-Mail: locac@locac.us www.locac.us

LOCAC

Los Osos Community Advisory Council

Other Questions:
These questions did not come up for discussion in the Land Use Committee meeting and were raised in our full LOCAC meeting. We request answers to these questions that will enable us to more fully explain and support our eventual recommendation on this project to all of our stakeholders.

- What is included in the design that provides safeguards for children and staff in an earthquake?
- The Los Osos Middle School is adjacent to sensitive species habitat and archeologically sensitive sites. How does this project address these issues?
- Similarly, was a survey for Morro Shoulder Band snails done and what were the results?
- What other solar array designs were considered that may have allowed for even fewer (or no) trees to be removed and/or have had less negative visual impact and a lower probability of vandalism? Why were they rejected?

If you have written materials you wish to send me for distribution to LOCAC members before the March 25th meeting, I need to receive them by March 15th so that there is ample time for us to read them. I prefer to receive them as attachments to an e-mail. Please let me know by March 12th if you will be attending our meeting so that I can note it on our agenda. It is held at 7:00 pm in the South Bay Community Center at 2180 Palisades Ave. in Los Osos. If you have any questions, please e-mail me at the address below or call me on the number below.

Yours truly,

Vicki Milledge

Vicki Milledge
LOCAC Chairperson
e-mail: vickilocacchair@earthlink.net
Mobile: 805-704-8783

cc: Supervisor Gibson, Cherie Aispuro, Edward Valentine, Russell Miller, Michael Prater, Kerry Brown, LOCAC

March 9, 2010

Vicki Milledge, LOCAC Chairperson

PO Box 7170 Los Osos, Ca 93412-7170

Dear Ms Milledge;

Thank you for the opportunity to respond to the questions the LOCAC had at their February 25th meeting regarding this valuable and environmentally responsible proposed solar electric project. I will do my best to respond.

Just to recap the number of public meetings which have already taken place, the Board of Education has conducted twelve publicly noticed, open meetings on this proposed project. Each School site Principal was involved in multiple design scenarios and decisions at their school regarding placement and potential impacts the solar panels might have for their school operations and March 25th will be the forth LOCAC meeting on this topic. I think it is appropriate to, and I have requested the Superintendent touch bases with the school Principals again to see if they have further questions or need to meet with any other parts of their school communities. The County, as the approving agency for tree removals, notices the surrounding neighbors and places a notice in the local paper of general distribution. The exact County process can be verified with Kerry Brown. Just recently the County has determined that each school should request a Minor Use Permit along with a Tree Removal Permit. This will undoubtedly involve more noticing.

The environmental benefits of clean, renewable solar electric generation have been studied by the EPA and I am including a link to their web site where environmental benefits are compared and calculated. http://www.epa.gov/cleanrgy/energy-resources/calculator.html#results. To assist you I am attaching a spread sheet depicting an estimate of energy our total system will produce for the next ten years. (28,256,653 kWh); Los Osos represents about 20% of the total project. Keep in mind the system will be in operation at least 25 years and hopefully will be productive 20 to 25 years after that. Just ten years of total project production in kWh plugged into the EPA calculator yields an environmental benefit equivalent to 520,331 seedling trees being planted and grown for ten years. This figure is based on the assumptions shown on this web link, http://www.epa.gov/cleanrgy/energy-resources/refs.html and further explored on this link, ftp://ftp.eia.doe.gov/pub/olaf/1605/cdrom/pdf/sequester.pdf . To be as accurate as possible this number should be reduced by 55% since the total electricity production in California is estimated to be cleaner than the averages used in the EPA calculator. There are obviously variations in tree types and any of the other parameters and assumptions used by the EPA but the sheer magnitude of total environmental benefit associated with this project is impressive.

The carport type structures, which will support the solar panels, are designed to the division of the State Architect, Structural Safety Division (DSA) standards and will be formally approved by DSA prior to construction. The actual construction will be inspected by an onsite DSA approved inspector; inspection laboratories will certify the quality of the steel and concrete structural components and the final completion will be signed off by the design engineers, inspectors and the DSA field supervising inspector. The entire process follows the same steps as though we were constructing a new school.

The School Board's CEQA filing specifies how we will treat sensitive habitat or cultural resources. The School District has included in their project description the requirement to have a qualified archaeologist on-site during any grading or soil removal. The archaeologist has the authority to stop all work if any cultural resources are accidentally discovered. The archaeologist will contact the County Environmental

Division to notify them of the discovery, and then prepare a monitoring and mitigation plan as necessary for cataloging resources. If nothing is discovered a letter stating the observation conducted including dates and personnel will be filed with the district. The District included this into the project based on previous CEQA documentation and records along with previous archaeological report prepared for each school site by archaeologist Mr. Robert Gibson. Los Osos Middle School has had the top 6-feet of natural material re-graded such that the area of the solar arrays is located within this previously disturbed material and the asphalt parking lot.

Regarding sensitive species; in 1976, the original school building was built, at that time Mr. Frey evaluated the site for the presence of biological value. The Department of Fish and Game prepared a report (71-11) indicating the school site was not located within the habitat range for the kangaroo rat. No other species were of concern. In 1997 the District conducted CEQA review for Measure A projects and during this process, the United States Department of Fish and Wildlife Service biologist Kate Symonds concurred that no viable habitat for the Morro Shoulder Band snail exists and no further surveys were required for their presence. During construction no snails on-site were discovered. Based on the absence of the Morro Shoulder Band snail and the limited footprint for the solar array structures, almost entirely in existing asphalt areas, the District determined there is no potential for impacts to Morro Shoulder Band snails.

Multiple design layouts were studied for each school; the site criteria and educational function of each school were primary factors as well as actual parking lot measurements and orientation. Eight other school sites were eliminated from the project because they could not accommodate an installation without compromising functionality or economic feasibility.

The solar panels themselves are pretty tough but can be broken. Our proposed contract with Sun Edison for operation of the system requires that any broken components be repaired or replaced in a timely fashion. If the system is not making power the school district does not purchase the power. Sun Edison is therefore motivated to keep the system in top repair and operation. The District's liability insurance will cover vandalism just like it covers our school's windows, walls, equipment, ETC.

I will be out of town on March 25th but have requested that a representative from REC Solar, Sun Edison's project partner, and Michael Prater from FIRMA, our environmental consultant, attend the LOCAC meeting in my place. Thank you again for the opportunity to address your questions, the San Luis Coastal Unified School District appreciates your concerns and hopes for your support on this important project.

Sincerely,

Brad Parker, President, Cardinal Consulting Inc.

Cc: Supervisor Gibson, Edward Valentine, Russell Miller, Michael Prater, Kerry Brown, Cody George, Mark Foster, Matthew Woods

San Luis Coast School District - Tree Equivalency

Year 1 kWh Production:	2,889,827	
Year 2	2,875,378.	
Year 3	2,861,001	
Year 4	2,846,696	
Year 5	2,832,462	
Year 6	2,818,300	
Year 7	2,804,209	
Year 8	2,790,188	
Year 9	2,776,237	
Year 10	2,762,356	
Total 10-Year Production:	28,256,653	http://www.epa.gov/cleanrgy/energy-resources/calculator.html
EPA Equivalency Calculation:	520,331	tree seedlings grown for 10 years with assumed US average powerplant CO2 offsets.
	234,149	tree seedlings grown for 10 years with assumed CA average powerplant CO2 offsets.

Clean Energy Home
Basic Information
Energy and You
Clean Energy Programs
Clean Energy Resources
Site Map

Calculations and References

This page describes the calculations used to convert greenhouse gas emission numbers into different types of equivalent units. Go to the equivalency calculator page for more information.

Electricity use (kilowatt-hours)

The Greenhouse Gas Equivalencies Calculator uses the Emissions & Generation Resource Integrated Database (eGRID) U.S. annual non-baseload CO_2 output emission rate to convert reductions of kilowatt-hours into avoided units of carbon dioxide emissions. Most users of the Equivalencies Calculator who seek equivalencies for electricity-related emissions want to know equivalencies for emissions reductions from energy efficiency or renewable energy programs. These programs are not generally assumed to affect baseload emissions (the emissions from power plants that run all the time), but rather non-baseload generation (power plants that are brought online as necessary to meet demand).

Emission Factor

7.18×10^{-4} metric tons CO_2 / kWh
(eGRID2007 Version 1.1, U.S. annual non-baseload CO_2 output emission rate, year 2005 data)

Notes:

- This calculation does not include any greenhouse gases other than CO_2 and does not include line losses.
- Individual subregion non-baseload emissions rates are also available on the eGRID Web site.
- To estimate indirect greenhouse gas emissions from electricity use, please use Power Profiler or use eGRID subregion annual output emission rates as a default emission factor (see eGRID2007 Version 1.1 Year 2005 GHG Annual Output Emission Rates (PDF) (1 p, 200K, About PDF).

Sources

- (EPA 2009) eGRID2007 Version 1.1, U.S. annual non-baseload CO_2 output emission rate, year 2005 data U.S. Environmental Protection Agency, Washington, DC.

Passenger vehicles per year

Passenger vehicles are defined as 2-axle 4-tire vehicles, including passenger cars, vans, pickup trucks, and sport/utility vehicles.

In 2007, the weighted average combined fuel economy of cars and light trucks combined was 20.4 miles per gallon (FHWA 2008). The average vehicle miles traveled in 2007 was 11,720 miles per year.

In 2007, the ratio of carbon dioxide emissions to total emissions (including carbon dioxide, methane, and nitrous oxide, all expressed as carbon dioxide equivalents) for passenger vehicles was 0.977 (EPA 2009).

The amount of carbon dioxide emitted per gallon of motor gasoline burned is 8.89×10^{-3} metric tons, as calculated in the "Gallons of gasoline consumed" section.

To determine annual greenhouse gas emissions per passenger vehicle, the following methodology was used: vehicle miles traveled (VMT) was divided by average gas mileage to determine gallons of gasoline consumed per vehicle per year. Gallons of gasoline consumed was multiplied by carbon dioxide per gallon of gasoline to determine carbon dioxide emitted per vehicle per year. Carbon dioxide emissions were then divided by the ratio of carbon dioxide emissions to total vehicle greenhouse gas emissions to account for vehicle methane and nitrous oxide emissions.

Calculation

Note: Due to rounding, performing the calculations given in the equations below may not return the exact results shown.

$8.89*10^{-3}$ metric tons CO_2/gallon gasoline * 11,720 VMT $_{car/truck\ average}$ * 1/20.4 miles per gallon $_{car/truck\ average}$ * 1 CO_2, CH_4, and N_2O/0.977 CO_2 = **5.23 metric tons CO_2E /vehicle/year**

Sources

- EPA (2009). Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2007. Chapter 3 (Energy), Tables 3-12, 3-13, and 3-14. U.S. Environmental Protection Agency, Washington, DC, U.S. EPA #430-R-09-004 (PDF) (66 pp, 737K, About PDF)
- FHWA (2008). Highway Statistics 2007. Office of Highway Policy Information, Federal Highway Administration. Table VM-1.

Gallons of gasoline consumed

To obtain the number of grams of CO_2 emitted per gallon of gasoline combusted, the carbon content of the fuel per gallon is multiplied by the oxidation factor and the ratio of CO_2's molecular weight to that of carbon. The average carbon content of gasoline is 2,425 grams of carbon per gallon (EPA, 2005) Fraction oxidized to CO_2 is 100 percent (IPCC 2006). The ratio of the molecular weight of CO_2 to carbon is 44/12.

Calculation

Note: Due to rounding, performing the calculations given in the equations below may not return the exact results shown.

2,425 grams C/gallon * 100% oxidation factor * 44 g CO_2/12 g C * 1 metric ton/1,000,000 g = **$8.89*10^{-3}$ metric tons CO_2/gallon of gasoline**

Sources

- EPA (2005). Emission Facts: Average Carbon Dioxide Emissions Resulting from Gasoline and Diesel Fuel. EPA420-F-05-001. Available at http://www.epa.gov/oms/climate/420f05001.htm.
- IPCC (2006). 2006 IPCC Guidelines for National Greenhouse Gas Inventories. Intergovernmental Panel on Climate Change, Geneva, Switzerland.

Therms of natural gas

Average heat content of natural gas is 0.1 mmbtu per therm (EPA 2008). Average carbon coefficient of natural gas is 14.47 kg carbon per million btu (EPA 2008). Fraction oxidized to CO_2 is 100 percent (IPCC 2006).

Carbon dioxide emissions per therm were determined by multiplying heat content times the carbon coefficient times the fraction oxidized times the ratio of the molecular weight ratio of carbon dioxide to carbon (44/12).

Note: When using this equivalency, please keep in mind that it represents the CO_2 equivalency for natural gas burned as a fuel, not natural gas released to the atmosphere. Direct methane emissions released to the atmosphere (without burning) are about 21 times more powerful than CO_2 in terms of their warming effect on the atmosphere.

Calculation

Note: Due to rounding, performing the calculations given in the equations below may not return the exact results shown.

0.1 mmbtu/1 therm * 14.47 kg C/mmbtu * 44 g CO_2/12 g C * 1 metric ton/1000 kg ≈ 0.005 metric tons CO_2/therm

Sources

- EPA (2008). Inventory of U.S. Greenhouse Gas Emissions and Sinks: Fast Facts 1990-2006, Conversion Factors to Energy Units (Heat Equivalents) Heat Contents and Carbon Content Coefficients of Various Fuel Types, U.S. Environmental Protection Agency, Washington, DC, USEPA #430-F-08-005 (PDF) (2 pp, 430K, About PDF).
- IPCC (2006). 2006 IPCC Guidelines for National Greenhouse Gas Inventories, Intergovernmental Panel on Climate Change, Geneva, Switzerland.

Barrels of oil consumed

Average heat content of crude oil is 5.80 million btu per barrel (EPA 2007). Average carbon coefficient of crude oil is 20.33 kg carbon per million btu (EPA 2007). Fraction oxidized is 100 percent (IPCC 2006).

Carbon dioxide emissions per barrel of crude oil were determined by multiplying heat content times the carbon coefficient times the fraction oxidized times the ratio of the molecular weight of carbon dioxide to that of carbon (44/12).

Calculation

Note: Due to rounding, performing the calculations given in the equations below may not return the exact results shown.

5.80 mmbtu/barrel * 20.33 kg C/mmbtu * 44 g CO_2/12 g C * 1 metric ton/1000 kg ≈ 0.43 metric tons CO_2/barrel

Sources

- EPA (2007). Inventory of U.S. Greenhouse Gas Emissions and Sinks: Fast Facts 1990-2005, Conversion Factors to Energy Units (Heat Equivalents) Heat Contents and Carbon Content Coefficients of Various Fuel Types, U.S. Environmental Protection Agency, Washington, DC, USEPA #430-R-07-002 (PDF) (2 pp, 216K, About PDF).
- IPCC (2006). 2006 IPCC Guidelines for National Greenhouse Gas Inventories, Intergovernmental Panel on Climate Change, Geneva, Switzerland.

Tanker trucks filled with gasoline

Average heat content of conventional motor gasoline is 5.22 million btu per barrel (EPA 2008). Average carbon coefficient of motor gasoline is 19.33 kg carbon per million btu (EPA 2008). Fraction oxidized to CO_2 is 100 percent (IPCC 2006).

Carbon dioxide emissions per barrel of gasoline were determined by multiplying heat content times the carbon coefficient time the fraction oxidized times the ratio of the molecular weight ratio of carbon dioxide to carbon (44/12). A barrel equals 42 gallons. A typical gasoline tanker trunk contains 8,500 gallons.

Calculation

Note: Due to rounding, performing the calculations given in the equations below may not return the exact results shown.

5.22 mmbtu/barrel * 19.33 kg C/mmbtu * 1 barrel/42 gallons * 44 g CO_2/12 g C * 1 metric ton/1000 kg ≈ $8.81*10^{-3}$ metric tons CO_2/gallon

$8.81*10^{-3}$ metric tons CO_2/gallon * 8,500 gallons/tanker truck = **74.89 metric tons CO_2/tanker truck**

Sources

- EPA (2008). Inventory of U.S. Greenhouse Gas Emissions and Sinks: Fast Facts 1990-2006. Conversion Factors to Energy Units (Heat Equivalents) Heat Contents and Carbon Content Coefficients of Various Fuel Types. U.S. Environmental Protection Agency, Washington, DC. USEPA #430-F-08-005 (PDF) (2 pp, 430K, About PDF).
- IPCC (2006). 2006 IPCC Guidelines for National Greenhouse Gas Inventories. Intergovernmental Panel on Climate Change, Geneva, Switzerland.

Home electricity use

In 2005, there were 111.1 million homes in the United States; of those, 72.1 million were single-family detached homes and 7.6 million were single-family attached homes for a total 79.7 million single-family homes* nationally (EIA 2008). On average, each single-family home consumed 12,773 kWh of delivered electricity (EIA 2008). The national average carbon dioxide output rate for electricity in 2005 was 1,329 lbs CO_2 per megawatt-hour (EPA 2009).

Annual single-family home electricity consumption was multiplied by the carbon dioxide emission rate (per unit of electricity delivered) to determine annual carbon dioxide emissions per home.

Calculation

Note: Due to rounding, performing the calculations given in the equations below may not return the exact results shown.

12,773 kWh per home * 1,329.35 lbs CO_2 per megawatt-hour delivered * 1 mWh/1000 kWh * 1 metric ton/2204.6 lb = **7.70 metric tons CO_2/home.**

*A single-family home is defined in the U.S. Department of Energy's Residential Energy Consumption Survey as follows: A housing unit, detached or attached, that provides living space for one home or family. Attached houses are considered single-family houses as long as they are not divided into more than one housing unit and they have independent outside entrance. A single-family house is contained within walls extending from the basement (or the ground floor, if there is no basement) to the roof. A mobile home with one or more rooms added is classified as a single-family home. Townhouses, rowhouses, and duplexes are considered single-family attached housing units, as long as there is no home living above another one within the walls extending from the basement to the roof to separate the units.

Sources

- EIA (2008). 2005 Residential Energy Consumption Survey. Table US-3. Total Consumption by Fuels Used, 2005. Physical Units (PDF) (4 pp, 50K, About PDF).
- EPA (2009). eGRID2007 Version 1.1. U.S. Environmental Protection Agency, Washington, DC.

Home energy use

In 2005, there were 111.1 million homes in the United States; of those, 72.1 million were single-family detached homes and 7.6 million were single-family attached homes for a total 79.7 million single-family homes* nationally (EIA 2008). On average, each single-family home consumed 12,773 kWh of delivered electricity, 47,453 cubic feet of natural gas, 59.1 gallons of liquid petroleum gas, 58.0 gallons of fuel oil, and 0.85 gallons of kerosene. (EIA 2008).

The national average carbon dioxide output rate for electricity in 2005 was 1,329 lbs CO_2 per megawatt-hour (EPA 2009).

The average carbon dioxide coefficient of natural gas is 0.0546 kg CO_2 per cubic foot (EPA 2008). Fraction oxidized to CO_2 is 100 percent (IPCC 2006).

The average carbon dioxide coefficient of distillate fuel oil is 426.1 kg CO_2 per 42-gallon barrel (EPA 2008). Fraction oxidized to CO_2 is 100 percent (IPCC 2006).

The average carbon dioxide coefficient of liquefied petroleum gases is 227.2 kg CO_2 per 42-gallon barrel (EPA 2008). Fraction oxidized is 100 percent (IPCC 2006).

The average carbon dioxide coefficient of kerosene is 410.0 kg CO_2 per 42-gallon barrel (EPA 2008). Fraction oxidized to CO_2 is 100 percent (IPCC 2006).

Total single-family home electricity, natural gas, distillate fuel oil, and liquefied petroleum gas consumption figures were converted from their various units to metric tons of CO_2 and added together to obtain total CO_2 emissions per home.

Calculation

Note: Due to rounding, performing the calculations given in the equations below may not return the exact results shown.

1. Delivered electricity: 12,773 kWh per home * 1,329.35 lbs CO_2 per megawatt-hour delivered * 1 mWh/1000 kWh * 1 metric ton/2204.6 lb = 7.70 metric tons CO_2/home.

2. Natural gas: 47,453 cubic feet per home * 0.0546 kg CO_2/cubic foot * 1/1000 kg/metric ton = 2.59 metric tons CO_2/home

3. Liquid petroleum gas: 59.1 gallons per home * 1/42 barrels/gallon * 227.2 kg CO_2/barrel * 1/1000 kg/metric ton = 0.32 metric tons CO_2/home

4. Fuel oil: 58.0 gallons per home * 1/42 barrels/gallon * 426.1 kg CO_2/barrel * 1/1000 kg/metric ton = 0.59 metric tons CO_2/home

5. Kerosene: 0.85 gallons per home * 1/42 barrels/gallon * 410 kg CO_2/barrel *1/1000 kg/metric ton = 0.01 metric tons CO_2/home

Total CO_2 emissions for energy use per single-family home: 7.70 metric tons CO_2 for electricity + 2.59 metric tons CO_2 for natural gas + 0.32 metric tons CO_2 for liquid petroleum gas + 0.59 metric tons CO_2 for fuel oil + 0.01 metric tons CO_2 for kerosene = **11.21 metric tons CO_2 per home per year.**

*A single-family home is defined in the U.S. Department of Energy's Residential Energy Consumption Survey as follows: A housing unit, detached or attached, that provides living space for one home or family. Attached houses are considered single-family houses as long as they are not divided into more than one housing unit and they have independent outside entrance. A single-family house is contained within walls extending from the basement (or the ground floor, if there is no basement) to the roof. A mobile home with one or more rooms added is classified as a single-family home. Townhouses, rowhouses, and duplexes are considered single-family attached housing units, as long as there is no home living above another one within the walls extending from the basement to the roof to separate the units.

Sources

- EIA (2008). 2005 Residential Energy Consumption Survey, Table US-3, Total Consumption by Fuels Used, 2005, Physical Units (PDF) (4 pp, 50K, About PDF). Per-home averages were obtained by dividing the physical units of total consumption for each fuel used by the total number of single-family homes.
- EPA (2009). eGRID2007 Version 1.1. U.S. Environmental Protection Agency, Washington, DC.
- EPA (2008). Inventory of U.S. Greenhouse Gas Emissions and Sinks: Fast Facts 1990-2006, Conversion Factors to Energy Units (Heat Equivalents) Heat Contents and Carbon Content Coefficients of Various Fuel Types. U.S. Environmental Protection Agency, Washington, DC, USEPA #430-F-08-005 (PDF) (2 pp, 430K, About PDF).
- IPCC (2006). 2006 IPCC Guidelines for National Greenhouse Gas Inventories. Intergovernmental Panel on Climate Change, Geneva, Switzerland.

Number of tree seedlings grown for 10 years

A medium growth coniferous tree, planted in an urban setting and allowed to grow for 10 years, sequesters 23.2 lbs of carbon. This estimate is based on the following assumptions:

- The medium growth coniferous trees are raised in a nursery for one year until they become 1 inch in diameter at 4.5 feet above the ground (the size of tree purchased in a 15-gallon container).
- The nursery-grown trees are then planted in a suburban/urban setting; the trees are not densely planted.
- The calculation takes into account "survival factors" developed by U.S. DOE (1998). For example, after 5 years (one year in the nursery and 4 in the urban setting), the probability of survival is 68 percent; after 10 years, the probability declines to 59 percent. For each year, the sequestration rate (in lb per tree) is multiplied by the survival factor to yield a probability-weighted sequestration rate. These values are summed for the 10-year period, beginning from the time of planting, to derive the estimate of 23.2 lbs of carbon per tree.

Please note the following caveats to these assumptions:

- While most trees take 1 year in a nursery to reach the seedling stage, trees grown under different conditions and trees of certain species may take longer -- up to 6 years.
- Average survival rates in urban areas are based on broad assumptions, and the rates will vary significantly depending upon site conditions.
- Carbon sequestration is dependent on growth rate, which varies by location and other conditions.
- This method estimates only direct sequestration of carbon, and does not include the energy savings that result from buildings being shaded by urban tree cover.

To convert to units of metric tons CO_2 per tree, we multiplied by the ratio of the molecular weight of carbon dioxide to that of carbon (44/12) and the ratio of metric tons per pound (1/2204.6).

Calculation

Note: Due to rounding, performing the calculations given in the equations below may not return the exact results shown.

23.2 lbs C/tree * (44 units CO_2 / 12 units C) * 1 metric ton / 2204.6 lbs = **0.039 metric ton CO_2 per urban tree planted**

Sources

- U.S. DOE (1998). Method for Calculating Carbon Sequestration by Trees in Urban and Suburban Settings, Voluntary Reporting of Greenhouse Gases, U.S. Department of Energy, Energy Information Administration (16 pp, 111K, About PDF)

Acres of pine or fir forests storing carbon for one year

Growing forests store carbon. Through the process of photosynthesis, trees remove CO_2 from the atmosphere and store it as cellulose, lignin, and other compounds. The rate of accumulation is equal to growth minus removals (i.e., harvest for the production of paper and wood) minus decomposition. In most U.S. forests, growth exceeds removals and decomposition, so there has been an overall increase in the amount of carbon stored nationally.

The estimate of the annual average rate of carbon accumulation is based on two studies, one on Douglas fir in the Pacific Northwest (Nabuurs and Mohren, 1995), and the other on slash pine in Florida (Shan et al., 2001). These two studies represent commercially important species from different regions and with different rotation periods (i.e., time between planting and harvesting). The calculations below include both above-ground and below-ground carbon stored in these two species of plantation trees. They do not include litter or soil carbon.

Calculation for Slash Pine

The calculation uses the Gain Loss method, as outlined in the 2006 IPCC Guidelines, in order to estimate carbon stored annually per hectare in the slash pine plantation system described in the

Shan et al. paper. The general equation for this method is shown below. Here, carbon losses due to harvested wood products, firewood foraging, and other sources of wood removals are assumed to be zero.

$$\Delta CB = \Delta CG - \Delta CL$$

Where:
ΔCB = annual change in carbon stocks in biomass for each land sub-category, considering the total area, metric tons of carbon per year
ΔCG = annual increase in carbon stocks due to biomass growth for each land sub-category, considering
the total area, metric tons of carbon per year
ΔCL = annual decrease in carbon stocks due to biomass loss for each land sub-category, considering the
total area, metric tons of carbon per year (Here assumed to be 0).

Gains:

$$\Delta CG = \Sigma(A_{l,j} * Gtotal_{l,j} * CF_{l,j})$$

Where:
Gtotal = Σ (Gw*(1+R)
A = area of land remaining in the same land-use category, here assumed to be 1.
Gtotal= mean annual biomass growth
l = ecological zone
j = climate domain
CF = carbon fraction of dry matter

Gw = average annual above-ground biomass growth for a specific woody vegetation type
R = ratio of below-ground biomass to above ground biomass for a specific vegetation type.

Since this paper measured growth in a plantation of trees harvested at age 17, the value is for relatively young trees that are growing more quickly than older trees would. The paper included several options in terms of management. The value used in the calculations below is the "control" - meaning that there was no fertilization (which had a big impact on growth) and no trimming of the understory for these trees. The calculation below uses the IPCC assumption that the carbon fraction is 47 percent of dry biomass.

The final result (3.052 MT C/ha/yr) * 0.4048 hectares/acre = 1.24 MT C/acre/year

	Reference	Aboveground biomass growth rate (MT/ha/yr) (averaged over 17 years)	Root:Shoot ratio (R)	Total Biomass Growth Rate (MT/ha/yr)	Carbon Fraction (MT C per MT dry matter)	Net Sequestration Rate (MT C/ha/yr)
Slash Pine, age 17	Shan et al 2001	5.209	0.2912	6.493	0.47	3.052

Calculation for Douglas Fir

This calculation is based on results found in a 1995 paper by Nabuurs et al. The paper uses a model to calculate the amount of carbon sequestered in plots of various tree types across the world. The model uses turnover rates in order to calculate carbon stored in forests over time during different types of logging intervals. Parameters included in the model include basic wood density, allocation of net primary production, turnover rates of tree organs, resident times of litter and humus, current volume increment, and allocation of harvested wood. The parameters are specific for each of the six sites chosen for the study. Within each site, three areas of fertility and production are measured, although the study uses sample data from the "moderate" site during the discussion and results sections. The numbers presented below are also from the "moderate" site.

Since this paper is concerned with carbon sequestered in forests undergoing selective logging, the designers of this calculator had to choose at what point during the harvesting cycle to measure the carbon sequestered. We decided to use the total carbon stock stored (including biomass and forest products, not including soil carbon) after 100 years of accumulation. The model in this paper assumes that the carbon fraction is 50 percent.

		Total C Stock After 100 Years (Mg C per ha)	Net Sequestration Rate (MT C/ha/yr)
Douglas Fir, age 100	Nabuurs et al. 1995	327	3.27

The final result (3.27 MT C/ha/yr) * 0.4048 hectares/acre = **1.32 MT C/acre/year.**
One reason why this value is higher than the slash pine plantation number is because the Douglas fir trees had 100 years to accumulate biomass – including more years at a relatively fast-growing maturity than the slash-pine trees.

The average of these two values is 1.28 metric tons of C per acre per year, which corresponds to **4.69 metric tons of CO_2 per acre of pine or fir forests.**

Sources

- Nabuurs, G.J., and G.M.J. Mohren. 1995. Modelling analysis of potential carbon sequestration in selected forest types. Canadian Journal of Forest Research 25(7):1157-1172.
- Shan, J.P., L.A. Morris, and R.L. Hendrick. 2001. The effects of management on soil and plant carbon sequestration in slash pine plantations. Journal of Applied Ecology 38(5):932-941.
- IPCC 2006, 2006 IPCC Guidelines for National Greenhouse Gas Inventories, Prepared by the National Greenhouse Gas Inventories Programme, Eggleston H.S., Buendia L., Miwa K., Ngara T. and Tanabe K. (eds). Published: IGES, Japan. Volume 4. Available at http://www.ipcc-nggip.iges.or.jp/public/2006gl/index.html.

Acres of forest preserved from deforestation

According to the 2009 U.S. Greenhouse Gas Inventory, the average carbon density of U.S. forests in 2007 was 76 metric tons per hectare, or 30.76 metric tons per acre (EPA, 2009).

For crop or pasture land, IPCC guidance on characterizing land use change suggests that an average value of aboveground cropland dry biomass is 10 metric tons per hectare (IPCC 2006). We assumed that the carbon content of dry biomass is 50 percent. Therefore, the carbon content of cropland was calculated to be 5.0 metric tons of carbon per hectare, or 2.02 metric tons per acre.

The change in carbon density from converting forested land to crop or pasture land would thus be 30.76 MT carbon/acre minus 2.02 MT carbon/acre, or 28.74 MT carbon/acre. To convert to a carbon dioxide basis, we multiplied by the ratio of the molecular weight of carbon dioxide to that of carbon (44/12), yielding a value of 105.38 MT CO_2/acre.

- This method assumes that all of the forest biomass is oxidized during burning (i.e. none of the burned biomass remains as charcoal or ash).

Note: The conversion provided may be an underestimate due to the omission of soil C in the calculation. Forest soil C stocks will likely decline with conversion. If the forests exist on organic soils, conversion would cause C stocks to decline, unless they are converting to wetland agriculture. However, most forests in the contiguous United States are growing on mineral soils. In the case of mineral soils forests, soil C stocks could be replenished or even increased, depending on the starting stocks, how the agricultural lands are managed, and the time frame over which lands are managed.

Calculation

Note: Due to rounding, performing the calculations given in the equations below may not return the exact results shown.

5.0 metric tons C biomass/ hectare * 1 hectare/ 2.47 acres = 2.02 metric tons C/acre of cropland

30.76 metric tons C/acre forest – 2.02 metric ton C/acre of cropland = 28.74 metric tons C/acre converted * 44 units CO_2/12 units C = **105.38 metric tons CO_2/acre converted**

Sources

- EPA (2009). Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2007, Chapter 7 (Land Use, Land-Use Change, and Forestry), p. 7-13. U.S. Environmental Protection Agency, Washington, DC, U.S. EPA #430-R-09-004. (PDF) (70 pp, 9.11MB, About PDF).
- IPCC 2006, 2006 IPCC Guidelines for National Greenhouse Gas Inventories, Prepared by the National Greenhouse Gas Inventories Programme, Eggleston H.S., Buendia L., Miwa K., Ngara T. and Tanabe K. (eds). Published: IGES, Japan. Volume 4.

Propane cylinders used for home barbeques

Propane is 81.8 percent carbon (EPA 2009). Fraction oxidized is 100 percent (IPCC 2006).

Carbon dioxide emissions per pound of propane were determined by multiplying the weight of propane in a cylinder times the carbon content percentage times the fraction oxidized times the ratio of the molecular weight of carbon dioxide to that of carbon (44/12). Propane cylinders vary with respect to size - for the purpose of this equivalency calculation, a typical cylinder for home use was assumed to contain 18 pounds of propane.

Calculation

Note: Due to rounding, performing the calculations given in the equations below may not return the exact results shown.

18 pounds/1 cylinder * 0.818 pound C/pound propane* 44 g CO_2/12 g C * 1 metric ton/1000 kg = **0.054 metric tons CO_2/cylinder**

Sources

- EPA (2009). Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2007, Annex 2, Table A-41. U.S. Environmental Protection Agency, Washington, DC, U.S. EPA #430-R-09-004 (PDF) (80 pp, 743K, About PDF).
- IPCC (2006). 2006 IPCC Guidelines for National Greenhouse Gas Inventories, Intergovernmental Panel on Climate Change, Geneva, Switzerland.

Railcars of coal burned

Average heat content of coal in 2006 was 22.68 million btu per metric ton (EPA 2008). Average carbon coefficient of coal in 2006 was 25.34 kilograms carbon per million btu (EPA 2008). Fraction oxidized is 100 percent (IPCC 2006).

Carbon dioxide emissions per ton of coal were determined by multiplying heat content times the carbon coefficient times the fraction oxidized times the ratio of the molecular weight of carbon dioxide to that of carbon (44/12). The amount of coal in an average railcar was assumed to be 100.19 short tons, or 90.89 metric tons (Hancock 2001).

Calculation

Note: Due to rounding, performing the calculations given in the equations below may not return the exact results shown.

22.68 mmbtu/metric ton coal * 25.34 kg C/mmbtu * 44g CO_2/12g C * 90.89 metric tons coal/railcar * 1 metric ton/1000 kg = **191.5 metric tons CO_2/railcar**

Sources

- EPA (2008). Inventory of U.S. Greenhouse Gas Emissions and Sinks: Fast Facts 1990-2006.

Conversion Factors to Energy Units (Heat Equivalents) Heat Contents and Carbon Content Coefficients of Various Fuel Types. U.S. Environmental Protection Agency, Washington, DC. USEPA #430-F-08-005 (PDF) (2 pp, 430K, About PDF).
- Hancock (2001). Hancock, Kathleen and Sreekanth, Ande. *Conversion of Weight of Freight to Number of Railcars. Transportation Research Board*, Paper 01-2056, 2001.
- IPCC (2006). 2006 IPCC Guidelines for National Greenhouse Gas Inventories. Intergovernmental Panel on Climate Change, Geneva, Switzerland.

Tons of waste recycled instead of landfilled

To develop the conversion factor for recycling rather than landfilling waste, emission factors from EPA's WAste Reduction Model (WARM) were used (EPA 2009). These emission factors were developed following a life-cycle assessment methodology using estimation techniques developed for national inventories of greenhouse gas (GHG) emissions. According to WARM, the net emission reduction from recycling mixed recyclables (e.g., paper, metals, plastics), compared to a baseline in which the materials are landfilled, is 0.81 metric tons of carbon equivalent (MTCE) per short ton. This factor was then converted to metric tons of carbon dioxide equivalent ($MTCO_2E$) by multiplying by 44/12, the molecular weight ratio of carbon dioxide to carbon.

Calculation

Note: Due to rounding, performing the calculations given in the equations below may not return the exact results shown.

0.81 MTCE/ton * 44 g CO_2/12 g C = **2.97 metric tons CO_2E/ton of waste recycled instead of landfilled**

Sources

- EPA (2009). WAste Reduction Model (WARM). U.S. Environmental Protection Agency. [note: click "view emission/energy factors" at bottom of form to see recycling and landfilling emission factors]

Coal-fired power plant emissions for one year

In 2005 there were 1,973,625,358 tons of CO_2 emitted from power plants whose primary source of fuel was coal (EPA, 2009).

In 2005 a total of 465 power plants that used coal to generate at least 95% of their electricity (EPA, 2009).

Carbon dioxide emissions per power plant were calculated by dividing the number of power plants by the total emissions from power plants whose primary source of fuel was coal. The quotient was then converted from tons to metric tons.

Calculation

Note: Due to rounding, performing the calculations given in the equations below may not return the exact results shown.

1,973,625,358 tons of CO_2 * 1/465power plants * 0.9072 metric tons / 1 short ton = **3,850,479 metric tons CO_2/power plant**

Sources

- EPA (2009). eGRID2007 Version 1.1, year 2005 data. Available at http://www.epa.gov/cleanenergy/energy-resources/egrid/index.html.

California's Solar Access Laws

By Kurt Newick & Andy Black

California has several laws designed to encourage solar access and prevent restrictions on solar energy systems. These laws address municipal restrictions, residential landscaping, and homeowner association restrictions.

- Solar Rights Act amended in 2004 by AB 2473 (Civil code section 714, Health and Safety Code section 17959.1, Government code section 65850.5): Prohibits local governments from restricting the installation of a solar energy system based on aesthetics.
- Solar Rights Act amended in 2003 by AB 1407 (Civil Code section 714): Requires that public entities do not place unreasonable restrictions on the procurement of solar energy systems when applying for state-sponsored grants and loans.
- Solar Shade Control Act of 1979 (Public Resources Code sections 25980-25986): addresses shade from neighboring vegetation.
- Solar Rights Act of 1978 (Civil Code section 714): Homeowner associations must not place unreasonable restrictions on homeowners wishing to install solar energy systems.
- Solar Easement Law (Civil code sections 801 & 801.5): Provides the opportunity to protect future solar access via a negotiated easement with neighboring property owners.
- Many cities and counties have local solar access laws and guidelines. For regional specific information on these and financial incentives, including tax credits, that make solar power more affordable, go to www.dsireusa.org.

Solar Rights Act amended by AB 2473

This law became effective on 1/1/2005. It is the intent of this law that "local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes." Local authorities shall approve applications through permit issuance and can only restrict solar installations based on health and safety reasons. It is thus intended to encourage installations by removing obstacles and minimizing permitting costs. Additional key changes limit aesthetic solar restrictions to those that cost less than $2,000 and limits a building official's review of solar installations to only those items that relate to specific health and safety requirements or local, state and federal law.

Solar Rights Act modified by AB 1407

This law prohibits public entities from receiving state grant funding or loans for solar energy systems if it places unreasonable restrictions on their installations. This law specifically

applies to cities, counties and other public entities and thus does not directly affect private parties.

Solar Shade Control Act of 1979

This act prohibits shading of solar collectors that result from tree growth occurring after a solar collector is installed. It applies to solar systems for electric generation, water heating and space heating or cooling.

It states that no plant may be placed or allowed to grown such that it shades a collector more than 10% from 10 am to 2 pm. It does not apply to plants already in place or replacement of plants that die after the installation of the solar collectors. It does require trees already in place, but not yet shading the system, to be trimmed and maintained so that they do not impact the system.

The solar collectors are required to meet building setback requirements, or a minimum of 5 feet from the property line and 10 feet from the ground. Further setback is required if the collector is lower than 10 feet.

A city or county may adopt an ordinance exempting its jurisdiction from the provisions of the act. Alternatively, some cities have passed ordinances that are more favorable to solar. In some cases, they require existing vegetation to be cleared to allow good solar access in at least some suitable place on a property.

Solar Rights Act of 1978

This law relates to homeowner associations. This code states that Community Covenants and Restrictions (CC&Rs) that prohibit or unreasonably restrict the installation or use of solar energy systems are void and unenforceable. It does provide for reasonable restrictions that don't significantly (more than 20%) increase the cost or reduce the output of a solar system from the original design.

Reasonable restrictions include 1) that the owner of the system take responsibility for roof maintenance, repair and replacement and 2) that the installers indemnify the association for any damage caused by the installation, maintenance, or use of the solar energy system.

Any homeowner covered by CC&Rs who has a roof immediately above his or her living space can use the roof for a solar system. A strategy to get maximum flexibility and output from the final "compromise" design is to propose a system designed to optimize solar production, at minimum cost, not considering other factors. Then, through the necessary negotiation stages to adjust for aesthetics, a final design might be achieved that isn't far from the owners original intention.

There may be significant costs associated with taking on responsibility for the roof maintenance that should be discussed and negotiated before project advancement. It may be possible to have a portion of association dues for roofing held separately.

Solar Easement Law

A solar easement can be written up and attached to the deed of neighboring properties to legally protect your right to receive future sunlight. Such an easement can be used to address concerns regarding neighboring structural changes. New developments may be required to include a solar access easement (a deed restriction to protect solar access within a development). Local building codes regarding building height restrictions, building set back requirements relative to property lines and solar orientation relative to neighboring properties may reduce the need for an easement.

To view these California laws see: www.leginfo.ca.gov/calaw.html

California Municipalities with specific Solar Access Laws/Guidelines

- Los Angeles - Zoning Code
- Marin County - Energy Conservation
- Sacramento - Zoning and Subdivision Regulations
- San Diego County - Solar Access Regulations
- San Jose - Solar Access Design Guidelines
- Santa Cruz - Solar Access Ordinance
- Santa Cruz County - Solar Access Protection
- Sebastopol - Solar Access

FOR MORE INFORMATION
DSIRE Database Summary of California Solar benefits – scroll down to end for Solar Access laws:
http://www.dsireusa.org/library/includes/statesearch.cfm?State=CA&back=fintab&CurrentPageID=7&Search=TableState

Energy Efficiency and Renewable Energy:
http://www.eere.energy.gov/consumerinfo/factsheets/ja1.html
Includes reference material, example solar access ordinances, bibliography including web resources.

American Planning Association 1313 East 60th Street Chicago, IL 60637(312) 955-9100 http://www.planning.org/

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EXHIBIT F

NOTICE OF EXEMPTION

TO: _____ Clerk of the Board of Supervisors
or
✓ County Clerk
County of San Luis Obispo

FROM: San Luis Coastal Unified School District
Attn: Asst. Superintendant of Business
1500 Lizzie Street
San Luis Obispo, CA 93401

1. Project Title: Solar Photovoltaic project proposed for Morro Bay High School.

2. Project Location Specific:
Morro Bay High School
235 Atascadero Rd., Morro Bay, CA 93442

3. (a) Project Location - City: Morro Bay
(b) Project Location - County: San Luis Obispo

4. Description of nature, purpose, and beneficiaries of Project: Photovoltaic

5. Name of Public Agency approving project: San Luis Coastal Unified School District

6. Name of Person or Agency carrying out project: SLCUSD/Russell Miller

7. Exempt status: (Check one)
(a) _____ Ministerial project.
(b) _____ Not a project.
(c) _____ Emergency Project.
(d) ✓ Categorical Exemption. State type and class number:
Class: #2(c), replacement or reconstruction of existing utility systems.
Class: #3(e), new construction of small structures (i.e., carports).
Class: #14, minor additions to schools
(e) _____ Declared Emergency.
(f) _____ Statutory Exemption. State Code section number: _____
(g) _____ Other. Explanation: _____

8. Reason why project was exempt:
The San Luis Coastal Unified School District considered the proposed project characteristics, the physical characteristics of the site, previous environmental documents prepared for the named school site and find the project incorporates measures to trim vegetation and avoid impacts on biotic, cultural and visual resources and determines no significant effects on the environment. The Project Description (see attached exhibits 1-3) includes trimming of trees, no trimming of trees during nesting season (Feb to Aug) if nests are present, and qualified biologist and archaeologist to monitor project construction. Summary reports shall be submitted following monitoring of project construction. See attached project plans for the site showing location of solar arrays, trees to be trimmed, and vegetation to be added.

9. Contact Person: Brad Parker
Telephone: (805) 704-2979

10. Attach Preliminary Exemption Assessment (Form "A") before filing.

Date: September 21, 2001

Signature (Superintendent)

Date Received for Filing:

(Clerk Stamp Here)

PRELIMINARY EXEMPTION ASSESSMENT
(Certificate of Determination When Attached to Notice of Exemption)

1. Name or description of project: The Solar Photovoltaic project is proposed for Morro Bay High School. The Preliminary Environmental Assessment considered the proposed project characteristics, the physical characteristics of the site, previous environmental documents prepared for the named school site and finds the project incorporates measures to trim and add vegetation and avoid impacts on biotic and cultural resources to determine no significant effects on the environment. The Project Description (see attached exhibits 1-3) includes planting screen plants along Highway 1 corridor, and tree trimming, no trimming of trees during nesting season (Feb to Aug) if nests are present, and qualified biologist and archaeologist to monitor project construction. Summary reports shall be submitted following monitoring of project construction. See attached project plans for the site showing location of solar arrays, trees to be trimmed, and vegetation to be added.

2. Location:
   Morro Bay High School
   235 Atascadero Rd., Morro Bay, CA 93442
   - 9 solar arrays totaling 397.32 KW
   - arrays located in parking lot and along Hwy 1
   - 20 trees to be trimmed per arborist report
   - visual screening provided by up to 80 planted trees/shrubs along Hwy 1
   - biological monitoring to occur; if nests are present no tree trimming during nesting season
   - archeological monitoring to occur for cultural resources

Summary of Project Benefits:
Quantified environmental benefits from this system by replacing electricity made from the burning of fossil fuels:

Yearly KWH Production	574,093
Barrels of Oil Offset by this System, Yearly	959
Car Miles Not Driven, Yearly	923,536
Carbon sequestered annually equal to 10,572 tree seedlings grown for 10 years	

3. **Entity or person undertaking project:**

☒ A. San Luis Coastal Unified School District

☐ B. Other (Private)

(1) Name: _____
(2) Address: _____

4. **Staff Determination:**
The School District's staff, having undertaken and completed a preliminary review of this project in accordance with the School District's "Local Guidelines for Implementing the California Environmental Quality Act (CEQA)," has concluded that this project does not require further environmental assessment because:

a. ☐ The proposed action does not constitute a project under CEQA.
b. ☐ The project is a Ministerial Project.
c. ☐ The project is an Emergency Project.
d. ☐ The project constitutes feasibility or planning study.
e. ☒ The project is categorically exempt.
Applicable Exemption:
Class: #2(c), replacement or reconstruction of existing utility systems.
Class: #3(c), new construction of small structures (i.e. carports).
Class: #14, minor additions to schools
f. ☐ The project is statutorily exempt.
Applicable Exemption: _____
g. ☐ The project is otherwise exempt on the following basis: _____
h. ☐ The project involves another public agency, which constitutes the Lead Agency.
Name of Lead Agency: _____

Date: September 21, 2010

_____
Staff

SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT
BOARD MEETING AGENDA
September 21, 2010

ITEM NO.: 16

TOPIC: Solar Electric Project for Morro Bay High School, CEQA Exemption

PREPARED BY: Russell Miller, Assistant Superintendent, Business Services;
Brad Parker, Consultant

WILL BE PRESENTED BY: Brad Parker

TYPE OF ITEM: Action/Discussion

DESCRIPTION OF AGENDA ITEM:

Morro Bay City staff have requested the district modify its Notice of Environmental Determination to reflect the revisions made to the proposed solar project at Morro Bay High School. This will enable the City to better process our permit application.

The solar photovoltaic project proposed for Morro Bay High School has been evaluated using the Preliminary Environmental Assessment according to the district's Local Guidelines for the Implementation of the California Environmental Quality Act (CEQA) for potential significant effects on the environment. The preliminary environmental assessment considered the proposed project characteristics and the physical characteristics of the site and determined the proposed project incorporates measures to add vegetation and avoid impacts on biotic and cultural resources. A categorical exemption was prepared for the project in accordance with the requirements of CEQA.

The State CEQA guidelines establish certain classes of exemptions called categorical exemptions. These apply to classes of projects which have been legislatively determined not to have a significant effect on the environment and which, therefore, are exempt. Compliance with the requirements of CEQA and the preparation of environmental documents for any project within one of these classes of categorical exemptions is not required.

The district's solar electric project at Morro Bay High School meets the criteria for a categorical exemption in several areas:

A. Class 2(c): Replacement or Reconstruction
Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity. (State Guidelines §15302)

ADDITIONAL INFORMATION:
Attached: Yes ✓ No ____
Available: Yes ____ No ✓

B. Class 3(e): New Construction or Conversion of Small Structures
Accessory (appurtenant) structures, including garages, carports, patios, swimming pools and fences. (State Guidelines §15303)

C. Class 14: Minor Additions to Schools
Minor additions to existing school grounds where addition does not increase original student capacity by more than twenty-five percent (25%) or ten (10) classrooms, whichever is less. The addition of portable classrooms is included in this exemption. (State Guidelines §15314)

The agency responsible for CEQA review is generally the agency having principal responsibility for carrying out, approving, or supervising the project. When two or more agencies equally share responsibility for the project, the first agency to act on the project will be the lead agency. Since the school district has the primary authority for approving and supervising the project, and since the school district will be acting first upon making an environmental determination on the project, the school district can and should assume the responsibilities of lead agency.

RECOMMENDATION:

That the Board of Education approve the findings of the Preliminary Environmental Assessment and make the determination that the project qualifies for a self-mitigated Categorical Exemption, Class 2(c), Replacement or Reconstruction; Class 3(e) New Construction or Conversion of Small Structures; and Class 14, Minor Additions to Schools, and authorize the Superintendent or his designee to file the necessary documents.

EXHIBIT C

October 27, 2010

To the Morro Bay City Planning Commission Regarding Permit Application # CPO-322, Solar Electric Project, Morro Bay High School

Since we now have the opportunity to react to the conditions placed on this project at the previous Planning Commission meeting, The San Luis Coastal Unified School District offers the following suggestions for the Commission's consideration:

1. **Condition imposed,** "To replace any Monterey Cypress tree that dies."
   Condition is overly vague and needs clarification.

   The School District proposes the condition language be modified to reflect direct consequences for any effects this project might have on Monterey Cypress trees. Sample language:

   "The School District will replace any Monterey Cypress tree which dies as a result of pruning performed as part of this project. Replacement tree size and spacing shall be subject to the direction of the Public Services Director. Maximum replacement tree size shall be a 24-inch box. This condition shall remain in place for the next 20 years."

2. **Condition imposed:** "The project shall not trim Monterey Cypress trees numbered 1 through 29 as part of this project approval so as to evaluate the loss of production from shading these trees would cause. If production is considered excessive after operation of the Solar Electric facility for a period of one year, the applicant can re-apply for a permit to trim these trees."
   There is no measurement standard stated for unacceptable production loss and the method for determining the exact effect the shading from these trees have on production loss is not stated.

   The School District proposes the following suggested language: "No trimming of Monterey Cypress trees numbered one 1 through 29 is allowed as part of this project. If production loss after operation of the system for one year exceeds 5% of the Solar engineer's unshaded estimate, after normalizing for standard weather conditions, the applicant may re-apply to the City of Morro Bay for an administrative permit authorizing trimming of Monterey Cypress trees numbered 1 through 29 as outlined in this application."

3. **Condition imposed:** Staff condition number seven states: "...panels shall be manufactured by REC"
   The naming of one product manufacturer is inappropriate, while the District expects to use panels made by REC, a competitor's panels could conceivably be used.

The School District proposes the following suggested language: Add the wording "or substantially equivalent to panels manufactured by REC."

Thank you for the opportunity to address the Commission concerning these items.

Sincerely,

Brad R. Parker, Consultant to San Luis Coastal Unified School District
805.704.2979

EXHIBIT D

San Luis Coastal Unified School District
Attn: Asst. Superintendent of Business
1500 Lizzie Street
San Luis Obispo, Ca 93401

OCT 2 : 2010
Public Comment

October 18, 2010

Re: Notice of Exemption, Project Location – Morro Bay High School.

Dear Assistant Superintendent;

The Categorical Exemption (CE) for the above referenced project is inadequate. The CE cites exemptions that stretch the definitions when the project is viewed as a whole. The project description has been fluid and remains undefined. My understanding of the project description at this time is the installation of nine (9) solar arrays totaling 32,000 square feet with associated carport structures, fencing and mechanical equipment. The project as proposed also includes the trimming of major vegetation and landscape screening.

School District **asserted** Categorical Exemptions.

1. Class # 2 (c), replacement of existing utility systems.
   The proposed structures are entirely ***new*** *utility systems, not replacements.*

2. Class #3 (e), new construction of small structures (i.e. carports)
   The proposed structures are not only carports they are solar array supports, housing electrical components for electricity generation. These carport structures are not ***small*** *structures; the project footprint is in excess of 32,000 square feet. (Equivalent to the Albertson's super market at 730 Quintana Road, Morro Bay, CA).*

3. Class #14, minor additions to schools
   The 32,000 square foot footprint and subsequent impacts of the project can not be defined as "minor additions."

When considering use of a Categorical Exemption the project must be considered in its entirety, it appears the school district has separated the project description into pieces and attempted to use individual exemptions to qualify the respective project components as exempt. This is a misplaced and incorrect use of a CE.

Additionally, the CE relies on out-of-date environmental analysis going back to the 1990's when the school district was spending Measure A money. Also, as a technical matter the signature date is inaccurate, an apparent typo, Superintendent Prater signed September 21, 2001 instead of 2010.

The school district or the City of Morro Bay should perform an Initial Study and prepare a proposed Negative Declaration or Mitigated Negative Declaration.

If you have any question, feel free to contact me.

Sincerely,

Julie Tacker

Julie Tacker
P.O. Box 6070
Los Osos, CA 93412
805-528-3569
julietacker@charter.net

CC:
County Clerk of San Luis Obispo
San Luis Obispo County Department of Planning and Building
City of Morro Bay, Community Development Department
California Coastal Commission
California Department of Fish and Game
California State Clearing House

EXHIBIT E

San Luis Coastal Unified School District
Attn: Asst. Superintendent of Business
1500 Lizzie Street
San Luis Obispo, Ca 93401

OCT 2 ? 2010

October 20, 2010

Re: Notice of Exemption, Project Location – Morro Bay High School.

Dear Assistant Superintendent;

Please consider this an amendment to my previous comments dated October 18, 2010 on the above referenced matter.

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

Two pertinent paragraphs:

15300.2—Exceptions

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

Both of these apply to MBHS. Paragraph (d) specifically applies to MBHS since Highway 1 is designated as a Scenic Highway.

Additionally, Class 4 and Class 8:

"15304. Minor Alterations to Land Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes."

"15308. Actions by Regulatory Agencies for Protection of the Environment
Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environ- mental

degradation are not included in this exemption."

Class 4, particularly, describes the MBHS impact.

Please consider theses citations as part of my concerns for the CE and consider the school district or the City of Morro Bay should perform an Initial Study and prepare a proposed Negative Declaration or Mitigated Negative Declaration for the proposed project.

If you have any question, feel free to contact me.

Sincerely,

Julie Tacker

Julie Tacker
P.O. Box 6070
Los Osos, CA 93412
805-528-3569
julietacker@charter.net

CC:
County Clerk of San Luis Obispo
San Luis Obispo County Department of Planning and Building
City of Morro Bay, Community Development Department
California Coastal Commission
California Department of Fish and Game
California State Clearing House

firma
landscape architecture
environmental studies
planning
ecological restoration

ATTACHMENT 3

December 14, 2010

San Luis Coastal Unified School District
c/o Brad Parker, Consultant

Sent via email

RE: San Luis Coastal Unified School District Solar Project Appeal, City of Morro Bay case no. CPO-322

Brad,

At your request I have provided this response to the appeal contentions raised by Julie Tacker related to the Coastal Development Permit approved by the City of Morro Bay Planning Commission on November 1, 2010. Ms. Tacker makes a variety of claims that we believe incorrectly interpret both the City' LCP and CEQA. I suggest this letter be the subject of a meeting with City staff before the hearing and that this response letter be included in the staff report materials going to the City Council.

Appeal Claim: Project is Inconsistent with the City of Morro Bay LCP

1.The project is consistent with all applicable LCP policies. The following consistency analysis formed the basis for the Categorical Exemption filed by the District.
The LCP chapter XIII page 205 indicates the Highway 1 corridor "provides more poor views than good ones". Page 207 adds:

> "Among some of the problems associated with landscaping and the need to provide more landscaping to enhance or restore Morro Bay's visual qualities are the following:
> (a) The lack of landscaping along Highway One exposes numerous views that detract from Morro Bay's visual qualities."

The existing views from Highway 1 are through the cypress tree trunks to the existing school, in particular the parking lot, agriculture and shop area, perhaps the least visually attractive part of the campus. The Proposed Project provides retention of all existing cypress trees and adds native screen plants that will screen views into the school site. The proposed screen planting improves the visual character and blocks the arrays.

2. The Project is consistent with Policy 12.01. This policy and the goals of the LCP are to ensure new development is subordinate to their surroundings and compatible with surrounding character. The arrays are subordinate in scale to the larger existing campus buildings and surrounding trees on the campus. The arrays will not be visible from Highway 1. This policy references Figure 31 in Chapter XIII that shows the highly scenic areas in the City that this policy of subordinating development to the surrounding character specifically applies. Morro Bay High School is not designated as a highly scenic area.

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

3. The Project is consistent with policy 12.06c. This policy applies to "designated scenic areas". As discussed in relation to Policy 12.01, above, the High School site is not designated as a scenic area. The key scenic view corridor along Highway 1 is the Cloisters site as shown on Figure 32.

4. The Project is consistent with Policy 12.09a. This policy directs the City to develop clearer requirements standards and criteria for landscaping and retention of existing specimen trees. All existing trees on the Campus are retained. Coastal Development Permit Planning condition 5 and Planning Commission condition 2 puts limits on the degree of tree pruning.

5. The Project is consistent with Policy VR-1.4b. This policy relates specifically to working with Caltrans to landscape the Highway 1 corridor. The policy does not apply to MBHS. However as discussed in items 1-4 above the proposed project includes landscaping that will screen views into the campus and improve visual quality.

6. The Project is consistent with Policy VR-2.1 and VR.2.2. This policy applies to views to and along the coast. The existing campus and cypress trees already block these views. The LCP Figures 31 and 32 identify the designated scenic areas that this policy applies to, and MBHS is not one of them. General Plan Figure VR-2 likewise does not designate MBHS as an area of visual significance.

7. The Project is consistent with Policies VR-3 and VR-3.5. These policies and their corollary policies in the LCP cited above do not designate MBHS as a scenic corridor site. In any case, the proposed structures are subordinate to their surrounding as shown on the Visual simulations provided by the District and would be screened from view from Highway 1.

8. The Project is consistent with Policy AR-14.4. The proposed project will result in an enhanced image for travelers on Highway 1 by providing screen planting of the campus. As discussed above the view along the MBHS frontage is not identified as scenic in the LCP and could be described as needing improvement. The proposed screen planting is consistent with this policy.

9. The Project is consistent with LCP chapter XII Environmentally Sensitive Habitat area policy 11.14. The proposed array panel in the north end of the site is 50 feet from the chain link fence. About 20 to 30 feet beyond the fence is a manmade drainage channel with willow cover. This area would be considered environmentally sensitive under the LCP definitions of "stream" and "riparian" resources. However, the proposed array is greater than 50 feet from the riparian edge and the top of channel bank.

Appeal Claim: Categorical Exemption is Inadequate and Lead Agency Determination Inappropriate

1. Lead Agency. The CEQA Guidelines section cited in the appeal has been taken out of context and misapplied. Section 15051 says:

"Where two or more public agencies will be involved with a project, the determination of which agency will be the Lead Agency shall be governed by the following criteria:

(a) If the project will be carried out by a public agency, that agency shall be the Lead Agency even if the project would be located in the jurisdiction of another public agency.

Subsection (b)1 cited in the appeal applies only if the project is to be carried out by a nongovernmental entity. In this case, the District is a governmental entity and subsection (a) applies because the District is the agency carrying out the project. Therefore, the District was correct to assume Lead Agency status under CEQA and the City was correct to affirm it.

2. Use of Categorical Exemption. Exceptions to the use of a Categorical Exemption relevant to this discussion include:

- Section 15300.2(a) limits the use of exemption #3 new construction of small structures if the location of the structures may be in a particularly sensitive environment. The various technical studies prepared for the project including the LCP consistency analysis above demonstrate that 1) the site is not "particularly sensitive" and 2) no adverse environmental effects would result from the project. Further, the term "small structures" is plural and though the project has a number of structures each is small. The exemption covers small structures.

- Section 15300.2(b) and (c) limit the use of any exemption where project or cumulative impacts would be significant as defined by CEQA due to "unusual circumstances". The site is developed and the proposed additions to the campus are in scale with the surroundings. Further no trees will be removed from the site. There do not appear to be any unusual circumstances associated with the site.

- Section 15300.2(d) limit the use of a CE on a project that may result in damage to scenic resources within a highway officially designated as a scenic highway. As discussed in the LCP visual resource consistency and demonstrated by the visual simulations of the proposed project, no damage to visual resources will result from the project.

The appeal citation of Class 4 and 8 exemptions is construed as a limit on the use of exemptions when in fact these sections 15304 and 15308 are exemption classes, not limitations.

In conclusion, because the several limitations on the use of a Categorical Exemption are not applicable to this project, the use of the three CE's filed by the District is appropriate. The District was correct in determining each of the CE's used was applicable to the project.

Appeal claim: Alternatives Analysis Needed

The appeal asserts that the use of the CE circumvented an analysis of alternatives that would have otherwise occurred if an Initial Study and Negative Declaration were done. This is incorrect on two counts:

1) the District did review and discuss alternatives such as placement of arrays on roofs, as well as alternative array placements, both in hearing before the District Board of Trustees and among the District's consultants. The public record of these hearings shows the Project was discussed at twelve public hearings before the Trustees; and

2) alternatives analysis is not an automatic outcome of the IS/ND process. Under CEQA, a discussion of alternatives is only a required part of an EIR, not a Negative Declaration. An EIR is only triggered by a determination that the project has a potential to have a significant and unavoidable adverse impact on the environment. In this case, it has been demonstrated that the project will not have a significant and unavoidable effect and therefore an EIR is not warranted.

This covers the substantive issues raised in the appeal. This analysis shows that the appeal contentions related to LCP consistency and CEQA lack a basis.

Sincerely,
David Foote ASLA

ATTACHMENT 4

ATTACHMENT 5

The Slo Coast Journal
Belted Kingfisher (Megaceryle alcyon)
News Continued
SloCoast Journal.com December, 2010 Issue 18

MB High School Solar Carport Project

By Julie Tacker

[This project has been appealed to the City Council, giving citizens of Morro Bay another chance to look it over and raise concerns with Council members and/or City staff. A hearing date, which was tentatively scheduled for Monday, December 13 at the Vets' Hall, has now been set for January 10th.]

Distracted by recent elections, wastewater/water and pot dispensary controversies, power plant ownership, and "beautiful verses blight" redevelopment debates, etc., the citizens of Morro Bay have had little chance to notice the 32,000 square foot carport project sneaking in at Morro Bay High School.

Under the guise of "environmentally friendly solar," San Luis Coastal Unified School District recently received approval from the City of Morro Bay's Planning Commission on a 4-1 vote (Jamie Irons dissenting) for nine "carport-like" solar array support structures. These equate in mass to sixteen 2,000 square foot single-level homes, the size of the Albertson's supermarket, or just slightly smaller than a regulation football field.

Morro Bay High School is in plain view of the state designated Scenic Coast Highway 1. Drivers passing through and those homes perched above will view the spanning sea of glass and steel added to the mass of the school itself. To make matters worse, the 55 year old Monterey Cypress trees that currently screen the high school from Highway 1 are slated for a "Marine haircut" —topping them, in some cases by 20 feet, to allow for optimal sun exposure to the solar arrays.

The Planning Commission recognized that the whacking may ultimately kill the trees, but did not send the School District back to the drawing board to relocate the arrays. Their approval conditions the project to landscape with low growing shrubbery that, after ten years of growth, may screen the carports. Also, the district must monitor the solar panel performance for a year, then return to the Planning Commission to receive new approvals before any tree "trimming" takes place and to replace any tree that may die as a result.

While waiting a year to top/kill the trees seems reasonable, it drives the district's investment deeper into the project. If the solar production is less than 100% efficient, the pressure to cut will be significant. These conditions are little consolation when the topping/death scenario could be avoided altogether. Solar arrays should be mounted on the school building rooftops or relocated to the west parking lot on the school grounds to minimize environmental impacts.

An irony in this approval is that the City of Morro Bay has been a partner in the The Tree City USA® Program for over nineteen years. The Tree City USA signs at community entrances tell visitors that here is a community that cares about its environment. It is also an indication to prospective businesses that the quality of life may be better here. To unnecessarily top or kill these trees at the intersection of Highway's 1 and 41 sends a very different message. Moreover, the City's Major Vegetation Removal, Replacement and Protection resolution, adopted in 1995 and amended in 2007, clearly states removal of Major Vegetation "will not adversely affect the character of the surrounding neighborhood." To lose any one of these 29 magnificent trees *will* affect the character of the surrounding neighborhood; just look at the two trees killed by PG&E "trimming" within the stand a couple of years ago.

Send your thoughts on this article to Slo Coast Journal Editor. We value your opinion.

Belted Kingfisher image on banner by Cleve Nash

Site Menu

The Business of the Journal
—About the Slo Coast Journal
—Archives
—Contact Us
—Just for Fun
—Letters to the Editor
—Stan's Place

The Business of Our Towns
—Behind the Badge
—Community Calendar
—Morro Bay Library Events
—Morro Bay Police File

It's Our Nature
—A Bird's Eye View
—Elfin Forest
—Eye on the Estuary
—Marine Sanctuaries
—Nature's Voice
—Ocean Creatures

Slo Coast Arts
—Art Talk
—Genie's Pocket
—Great Shots
—In Sight - Morro Photo Expo Winners

Slo Coast Life
—Best Friends
—Body, Mind, Spirit
California State Parks
—A Sense of Place
—State Parks Events
—State Parks Mindwalks - 2011
—Double Vision
—Exploring the Coast
—Far Horizons
—Get Involved
—Let's Go Green
—Medical Myth Busting
—Observations of a Country Squire

News, Editorials, & Commentary
—Decision on MB/Cayucos WWTP Appears Headed for Coastal Commission
—Possible Conflict of Interest in WWTP Project
—MB High School Solar Carport Project
—Annual Eco Summit in San Luis Obispo
—Sale of MB Power Plant Falls Through
—Has the Tea Party Invaded Morro Bay?

AGENDA NO: B-2

MEETING DATE: January 11, 2011

Staff Report

TO: **City Council** **DATE: January 4, 2011**

FROM: **Kathleen Wold, Planning Manager**

SUBJECT: **Appeal of the Planning Commission's decision to deny certification of the Morro Bay Cayucos Sanitary District Wastewater Treatment Plant Environmental Impact Report and denial of the Coastal Development Permit CP0-339 and Conditional Use Permit UP0-307.**

RECOMMENDATIONS:

Staff's Recommendation:

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

Planning Commission's Recommendation:

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

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

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

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

Prepared By: _____ **Dept Review:**_____

City Manager Review: _____

City Attorney Review: _____

FISCAL IMPACT:

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

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

BACKGROUND:

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

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

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

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

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

PROJECT OBJECTIVES:

The objectives of the proposed project are as follows:

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

DISCUSSION:

Coastal Act Regulations Regarding the Review of Wastewater Treatment Facilities:

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

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

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

Consistency with the Local Coastal Program:

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

with applicable goals, objectives and policies of the Local Coastal Program (as defined above to include the General Plan, the Local Coastal Plan and the implementing zoning regulations). Staff has reviewed the project pursuant to the various applicable goals, objectives and policies of the LCP and determined that the project is consistent. Below are applicable policies, programs, and objectives that relate to this project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

California Coastal Commission Issues:

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

An overview of the these issues follows:

1. The District's proposed preferred site location appears to be inappropriate for the development proposed. The concept of locating major public works infrastructure in an area that is subject to multiple significant hazards is not consistent with the hazards policies of the LCP. Further, the location is directly adjacent to the shoreline in a visually sensitive area where such objectives, and lead to adverse public viewshed impacts. Finally, the area has significant archaeological resources that, as required by the LCP, must be avoided. All of these impacts could be avoided or minimized by moving the project to an alternative location.

2. The proposal to reduce the capacity of the new WWTP is not consistent with LCP policies requiring infrastructure to accommodate future growth that is planned for in the LCP.

3. The proposal does not include a plan for water reclamation that meets the expectation of the City of Morro Bay LCP, the San Luis Obispo County LCP, or recent actions of the Commission including in its recent approval of the Los Osos Wastewater Project. Under the current proposal, the new WWTP would produce a large quantity of highly treated wastewater, and the vast majority of it would be disposed of through the ocean outfall.

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

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

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

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

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

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

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

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

PLANNING COMMISSION ISSUES:

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

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

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

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

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

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

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

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

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

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

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

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

ENVIRONMENTAL DETERMINATION:

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

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

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

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

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

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

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

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

> If the Planning Commission finds that the EIR is adequate and complete, the Planning Commission shall then determine, on the basis of the EIR, the facts presented and these guidelines whether or not, in light of the effects of the project, the project should be:
>
> A) Approved
> B) Denied
> C) Whether or not alternatives or mitigation conditions should be required to mitigate adverse environmental effects.
>
> Findings: No city agency shall approve or carry out a project for which an Environmental Impact Report has been completed which identifies one or more significant effects of the project unless the body agency makes one or more of the following written findings for each of those significant effects, accompanied by a statement of the facts supporting each finding.
>
> 1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant environmental effects thereof as identifies in the final EIR.

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

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

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

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

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

PROJECT FEATURES:

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

CONCLUSION:

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

ATTACHMENTS:

Attachment 1 – Planning Commission Staff Report with exhibits dated December 20, 2010
Attachment 2 – Draft Planning Commission Meeting Synopsis Minutes for December 20, 2010
Attachment 3 – Finding of Fact, MBCSD Wastewater Treatment Plant Upgrade Project, dated January 2011
Attachment 4 – Mitigation Monitoring and Reporting Program, MBCSD Wastewater Treatment Plant Upgrade Final Environmental Impact Report, dated January 2011
Attachment 5 – Appeal Form date stamped December 22, 2010
Attachment 6 – Plans and Visual Simulations

AGENDA NO: Supplement to B-2

MEETING DATE: January 11, 2011

Staff Report

TO: **City Council** **DATE: January 6, 2011**

FROM: **Rob Livick, PE/PLS/Public Services Director**

SUBJECT: **Appeal of the Planning Commission's decision to deny certification of the Morro Bay Cayucos Sanitary District Wastewater Treatment Plant Environmental Impact Report and denial of the Coastal Development Permit CP0-339 and Conditional Use Permit UP0-307.**

SUMMARY:

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

ATTACHMENT:

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

Prepared By: RL **Dept Review:** *RL*

City Manager Review: _____

City Attorney Review: _____

Attachment 1

California Regional Water Quality Control Board
Central Coast Region

Linda S. Adams
Acting Secretary for Environmental Protection

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(805) 549-3147 • Fax (805) 543-0397
http://www.waterboards.ca.gov/centralcoast

Edmund G. Brown Jr.
Governor

January 6, 2011

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

Honorable City Council Members:

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

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

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

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

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

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

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

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

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

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

Sincerely,

Roger W. Briggs
Executive Officer

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

ATTACHMENT 1

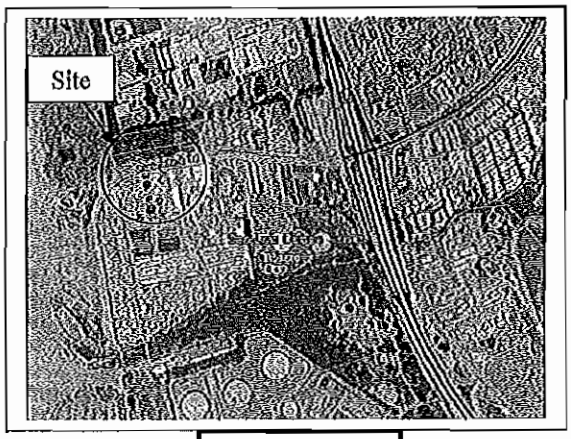
AGENDA ITEM: X-A
ACTION:_____

CITY OF MORRO BAY PLANNING COMMISSION

December 20, 2010

FILE NUMBERS/ADDRESS
Coastal Development Permit (CP0-339)
and Conditional Use Permit (UP0-307)

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



Vicinity Map

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

APPLICANT
City of Morro Bay/Cayucos Sanitary District

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 many not be consistent with other Coastal Act policies, yet may be necessary to provide for the public welfare. *The proposed project site is a grouping of many small parcels and includes the wastewater facilities, the City of Morro Bay's corporation yard and a cement plant. As stated in the LCP long term plans for the Wastewater Treatment Plant has always included upgrades and expansions. Policies within the LCP protect the overall site for this coastal dependent use encouraging it to upgrade or expand on the existing site to facilitate reasonable long term viability. It is clear that the proposed project (an upgrade of the Wastewater Treatment Plant at it protected site location) is consistent with the LCP*

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

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

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

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

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

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

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

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

the wastewater treatment facilities to 2.4 mgd. *The certified LCP contains information regarding the sizing of the Wastewater Treatment plant and the community's future needs. The sizing of the plant contained within this document assumes that the plant would continue with the same technologies as those that the plant was operating under in 1988 and the same consumer patterns as the population had in 1988. Today just over twenty years later three issues have had a significant effect on the amount of plant capacity necessary to meet demand. Since 1988, there have been improvements to technology resulting in improved 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:

_____
, Chairperson

ATTEST:

_____
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 x 0.193 in/hr = 0.385 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.

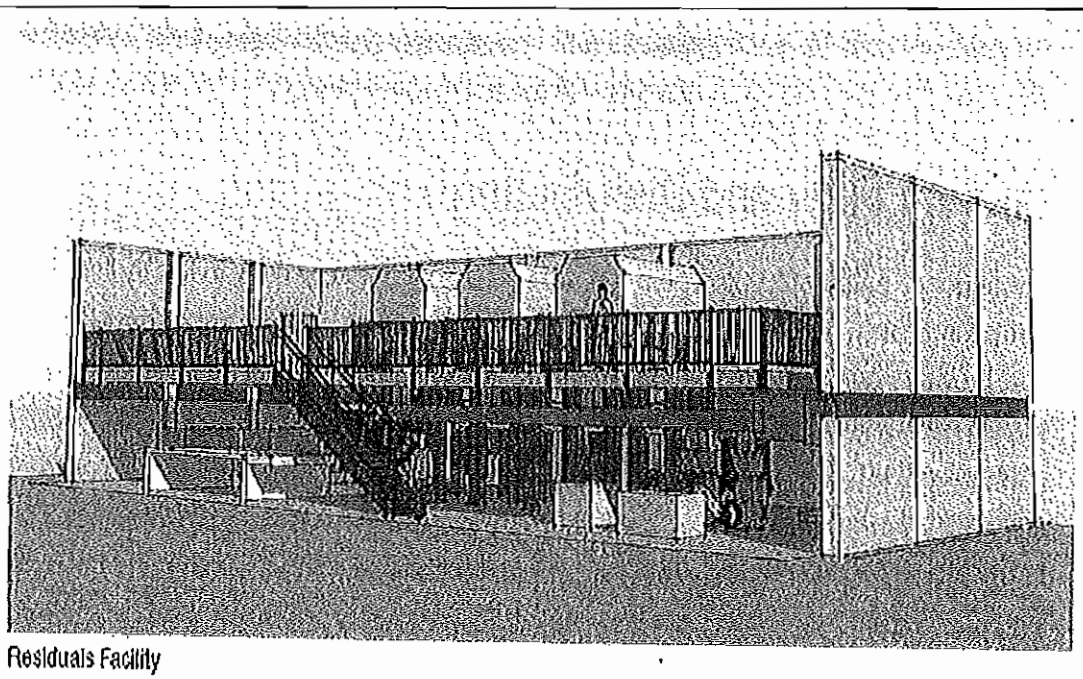
10. Storm Drain Pipe: Repair or replace the storm drain pipe (located along the Atascadero Rd. property frontage) and reconstruct the outlet to provide adequate stormwater conveyance from the property.

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).

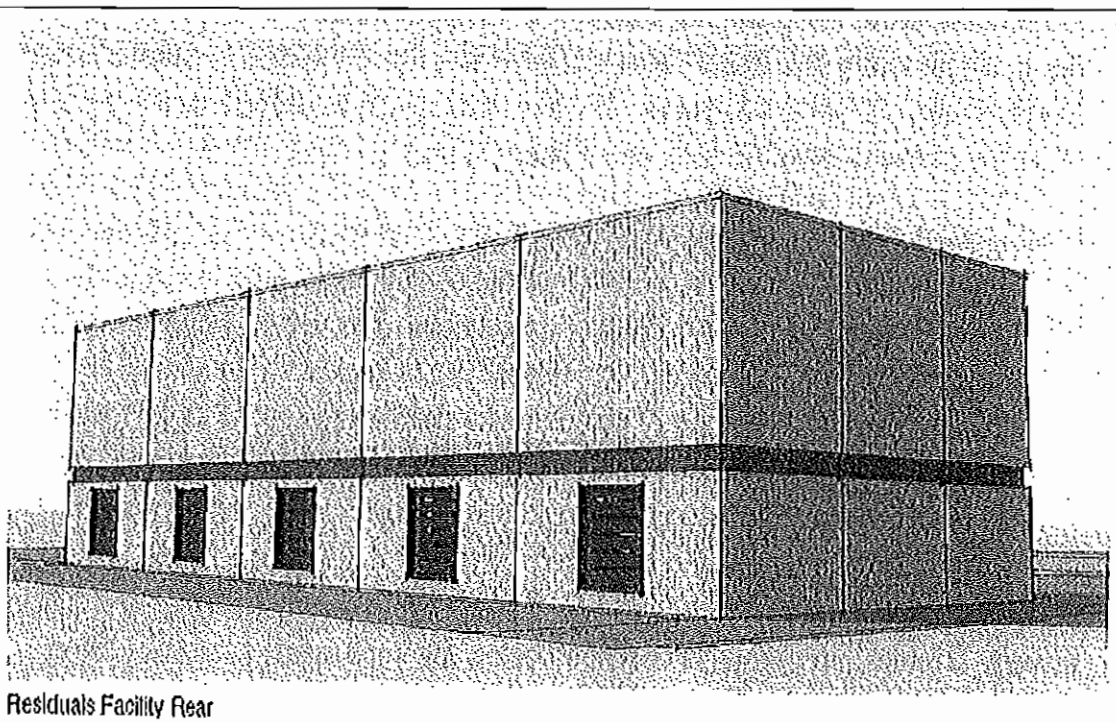
12. WDID Permit Numbers: Provide the WDID permit numbers for the Construction and Industrial Discharge permits issued by the State Resources Water Quality Control Board.

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.

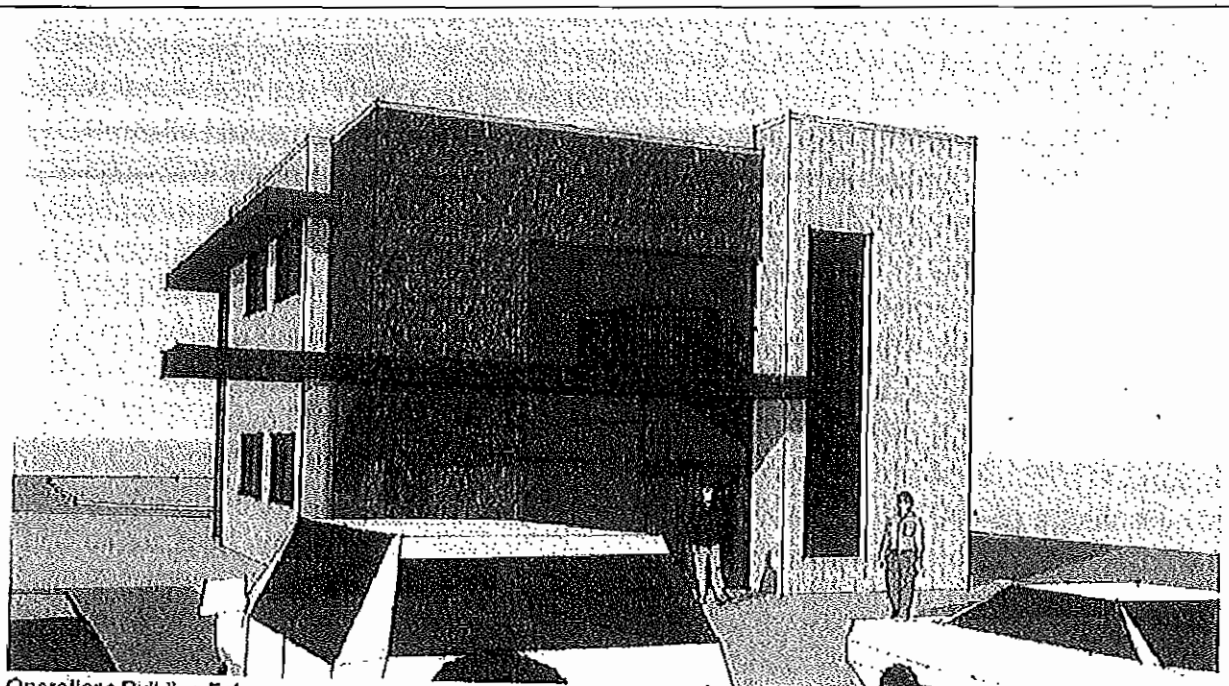
EXHIBIT C



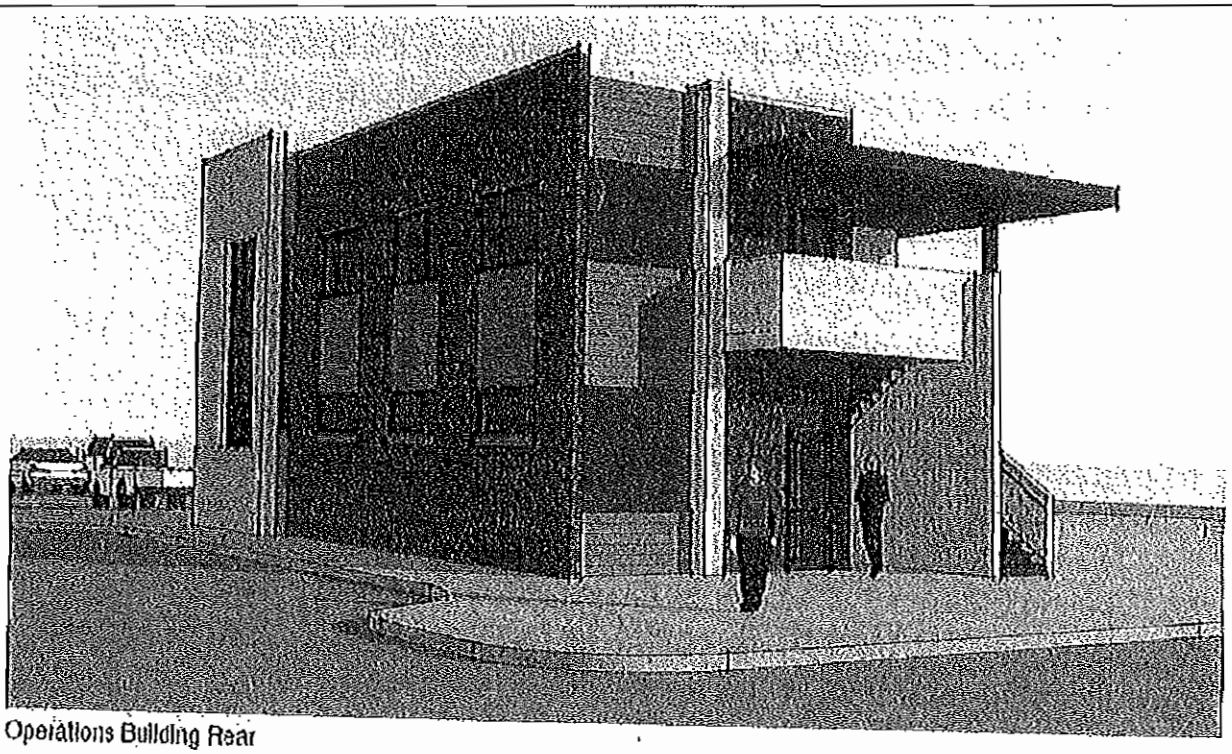
Residuals Facility



Residuals Facility Rear



Operations Building Entry



Operations Building Rear

EXHIBIT D

City of Morro Bay

Morro Bay, CA 93442
(805) 772-6200

Chronology of Major Milestones in WWTP Upgrade Project

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

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

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

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

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

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

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

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

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

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 (BOD_5) 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 (BOD_5) 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 (BOD_5) 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 BOD_5 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 BOD_5 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 BOD_5 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 BOD_5 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 BOD_5 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 BOD_5 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; BOD_5 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

Robert B. Enns, President
Cayucos Sanitary District

ATTACHMENT 2

AGENDA ITEM: VIII-A

DATE: January 18, 2010

ACTION: _____

CITY OF MORRO BAY
PLANNING COMMISSION
SYNOPSIS MINUTES

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

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

209 Surf Street, Morro Bay
December 20, 2010

Chairperson Vacant

Vice-Chairperson Gerald Luhr
Commissioner Jamie Irons

Commissioner Michael Lucas
Commissioner John Diodati

Rob Livick, Secretary

I. CALL MEETING TO ORDER

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

II. PLEDGE OF ALLEGIANCE

Michael Lucas led the pledge.

III. ROLL CALL

Vice-Chairperson Luhr took roll and noted that all Commissioners are present with the exception of former Chairperson Nancy Johnson.
Staff Present: Rob Livick, Kathleen Wold, Bruce Keogh, Dylan Wade, Rob Schultz and Andrea Lueker

IV. ELECTION OF CHAIR AND VICE-CHAIR

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

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

V. ACCEPTANCE OF AGENDA

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

VI. DIRECTOR'S REPORT/WRITTEN COMMUNICATIONS

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

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

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

VII. PUBLIC COMMENT

Diodati opened the Public Comment period:

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

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

VIII. CONSENT CALENDAR

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

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

IX. PRESENTATIONS – None

X. FUTURE AGENDA ITEMS

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

Commissioners had no discussion.

XI. PUBLIC HEARINGS

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

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

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

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

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

Diodati opened the Public Hearing:

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

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

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

Hearing no further comment, Diodati closed the Public Hearing.

Commissioners discussed with staff:

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

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

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

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

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

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

MOTION: Irons moved to continue the Planning Commission meeting past 10p.m. Luhr seconded the motion.
The motion carried unanimously (4-0).

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

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

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

Luhr seconded the motion.

The motion carried unanimously (4-0).

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

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

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

The motion carried unanimously (4-0).

XII. OLD BUSINESS

A. Current Planning Processing List/Advanced Work Program

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

XIII. NEW BUSINESS

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

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

The motion carried unanimously (4-0).

XIV. ADJOURNMENT

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

_____

John Diodati, Chairperson

ATTEST:

_____

Rob Livick, Secretary

ATTACHMENT 3

FINDINGS OF FACT

MBCSD Wastewater Treatment Plant Upgrade Project

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

Certification of Final EIR

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

(a) The Final EIR for the project has been completed and processed in compliance with the requirements of CEQA;

(b) The Final EIR was presented to the Morro Bay City Council, and as the decision-making body for City, the Morro Bay City Council reviewed and considered the information contained in the Final EIR prior to approving the project;

(c) The Final EIR reflects the City's independent judgment and analysis.

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

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

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

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

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

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

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

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

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

Record of Proceedings

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

Project Level Analysis

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

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

CHAPTER 1
Project Description

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

1.1 Project Location

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

1.2 Project Overview

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

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

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

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

The objectives of the proposed project are as follows:

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

1.4 Discretionary Actions

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

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

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

CHAPTER 2
CEQA Review and Public Outreach

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

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

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

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

CHAPTER 3
Impacts Determined to be Less than Significant

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

3.1 Aesthetics

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

3.2 Air Quality and Greenhouse Gas Emissions

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

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

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

3.8 Public Services and Utilities

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

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

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

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

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

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

4.2 Air Quality and Greenhouse Gas Emissions

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

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

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

a. Maintain all construction equipment in proper tune according to manufacturer's specifications;

b. Fuel all off-road and portable diesel powered equipment with ARB certified motor vehicle diesel fuel (non-taxed version suitable for use off-road);

c. Use diesel construction equipment meeting ARB's Tier 2 certified engines or cleaner off-road heavy-duty diesel engines, and comply with the State off-Road Regulation;

d. Use on-road heavy-duty trucks that meet the ARB's 2007 or cleaner certification standard for on-road heavy-duty diesel engines, and comply with the State On-Road Regulation;

e. Construction or trucking companies with fleets that that do not have engines in their fleet that meet the engine standards identified in the above two measures (e.g. captive or NOx exempt area fleets) may be eligible by proving alternative compliance;

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

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

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

a. Covers on storage piles shall be maintained in place at all times in areas not actively involved in soil addition or removal;

b. Contaminated soil shall be covered with at least six inches of packed uncontaminated soil or other TPH non-permeable barrier such as plastic tarp. No headspace shall be allowed where vapors could accumulate;

c. Covered piles shall be designed in such a way to eliminate erosion due to wind or water. No openings in the covers are permitted;

d. The air quality impacts from the excavation and haul trips associated with removing the contaminated soil shall be evaluated and mitigated if total emissions exceed the APCD's construction phase thresholds;

e. During the soil excavation, odors shall not be evident to such a degree as to cause a public nuisance; and ,

f. Clean soil shall be segregated from contaminated soil.

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

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

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

Implement Mitigation Measures 3.7-1 and 3.7-3.

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

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

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

Implement Mitigation Measures 3.7-1 and 3.7-3.

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

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

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

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

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

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

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

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

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

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

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

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

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

Implement Mitigation Measure 3.4-1a.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Implement Mitigation Measure 3.7-2.

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

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

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

(2) Implement "quiet" pile-driving technology (such as predrilling piles and the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;

(3) Use noise control blankets on building structures to reduce noise emissions from the site; and

(4) Monitor the effectiveness of noise attenuation measures by collecting noise measurements.

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

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

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

Implement Mitigation Measure 3.9-2

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

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

4.10 Transportation and Traffic

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

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

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

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

CHAPTER 5
Significant Environmental Impacts

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

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

6.1 No Project Alternative

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

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

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

6.4 Alternative 3: Chorro Valley Location

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

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

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

ATTACHMENT 4

MITIGATION MONITORING AND REPORTING PROGRAM

MBCSD Wastewater Treatment Plant Upgrade Final Environmental Impact Report

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

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

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

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
Aesthetics					
3.1-1: MBCSD shall ensure that new facility designs include non-glare exterior coatings (including walls) that are colored to blend in with the surrounding structures and landscape.	• Include mitigation measure in project design specifications. • Include mitigation measure in construction contractor specifications.	MBCSD	X		
3.1-2: MBCSD shall ensure that all exterior lighting is shielded and directed downward to minimize impacts to nighttime views. MBCSD shall minimize the use of light poles and consider using light bollards. In addition, highly reflective finishes shall not be used in the design for proposed structures.	• Include mitigation measure in project design specifications. • Include mitigation measure in construction contractor specifications.	MBCSD	X		
Air Quality and Greenhouse Gas Emissions					
3.2-1a: MBCSD shall require the construction contractor to prepare a Construction Activity Management Plan (CAMP) for submission to SLOCAPCD. Prior to initiation of construction, the CAMP shall be approved by SLOCAPCD. The CAMP shall include mitigation measures to minimize ROG and NOx, including but not limited to the following Standard Mitigation Measures recommended by the CAMP Guidelines: a. Maintain all construction equipment in proper tune according to manufacturer's specifications; b. Fuel all off-road and portable diesel powered equipment with ARB certified motor vehicle diesel fuel (non-taxed version suitable for use off-road); c. Use diesel construction equipment meeting ARB's Tier 2 certified engines or cleaner off-road heavy-duty diesel engines, and comply with the State off-Road Regulation; d. Use on-road heavy-duty trucks that meet the ARB's 2007 or cleaner certification standard for on-road	• Include mitigation measure in construction contractor specifications. • Contact SLOCAPCD prior to preparation of CAMP to discuss potential mitigation measures. • Submit CAMP to SLOCAPCD for approval prior to initiation of construction. • Retain copy of CAMP in project file • Retain a qualified mitigation monitor to implement mitigation monitoring activities during project construction. • Conduct routine inspections of construction equipment and operations to ensure compliance with CAMP. • Maintain written inspection records in the project file to verify compliance with CAMP.	MBCSD; construction contractor	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
heavy-duty diesel engines, and comply with the State On-Road Regulation; e. Construction or trucking companies with fleets that that do not have engines in their fleet that meet the engine standards identified in the above two measures (e.g. captive or NOx exempt area fleets) may be eligible by proving alternative compliance; f. All on and off-road diesel equipment shall not idle for more than 5 minutes. Signs shall be posted in the designated queuing areas and or job sites to remind drivers and operators of the 5 minute idling limit; g. Electrify equipment when feasible; h. Substitute gasoline-powered in place of diesel-powered equipment, where feasible; and, i. Use alternatively fueled construction equipment on-site where feasible, such as compressed natural gas (CNG), liquefied natural gas (LNG), propane or biodiesel.	• All maintenance and operation records shall be retained in the project file.				
3.2-1b: To further reduce the impact of fugitive dust, MBCSD shall require the construction contractor to comply with the SLOCAPCD's Rule 402. The construction contractor shall prepare a CAMP that includes dust control mitigation measures to be implemented during construction, particularly demolition and site grading phases. Mitigation measures may include, but not be limited to, the following recommendations from the CAMP Guidelines: a. Reduce the amount of the disturbed area where possible. b. Use of water trucks or sprinkler systems in sufficient quantities to prevent airborne dust from leaving the site. Increased watering frequency	• Include mitigation measure in construction contractor specifications. • Include PM10 mitigation measures on construction drawings and grading plans. • Contact SLOCAPCD prior to preparation of CAMP to discuss potential mitigation measures. • Submit CAMP to SLOCAPCD for approval prior to initiation of construction. • Retain copy of CAMP in project file • Retain a qualified mitigation monitor to implement mitigation monitoring	MBCSD; construction contractor	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
would be required whenever possible. c. All dirt stock pile areas should be sprayed daily as needed. d. Permanent dust control measures identified in the approved project revegetation and landscape plans should be implemented as soon as possible following completion of any soil disturbing activities. e. Exposed ground areas that are planned to be reworked at dates greater than one month after initial grading should be sown with fast germinating native grass seed and watered until vegetation is established. f. All disturbed soil areas not subject to revegetation should be stabilized using approved chemical soil binders, juite netting, or other methods approved in advance by the APCD. g. All roadways, driveways, sidewalks, etc. to be paved should be completed after grading unless seeding or soil binders are used. h. Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site. i. All trucks hauling dirt, sand, soil, or other loose materials are to be covered or should maintain at least two feet of freeboard. j. Install wheel washers where vehicles enter and exit unpaved roads onto streets, or wash off trucks and equipment leaving the site. k. Sweep streets at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water should be used where feasible.	activities during project construction. The name and telephone number of such monitor shall be provided to the SLOCAPCD. • Mitigation monitor shall conduct routine inspections of construction equipment and operations to ensure compliance with CAMP PM10 and dust control measures and determine when increased watering or dust control is required. • Mitigation monitor shall maintain written inspection records in the project file to verify compliance with CAMP. • Maintenance and operation records shall be retained in the project file.				

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
All PM_{10} mitigation measures required should be shown on grading and building plans. In addition, the contractor or builder should designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holidays and weekend periods when work may not be in progress. The name and telephone number of such persons shall be provided to the APCD prior to land use clearance for map recordation and finished grading of the area.					
3.2-1c: MBCSD shall evaluate whether naturally-occurring asbestos (NOA) is present within the area of disturbance based on geotechnical information collected at the site. If NOA is present, then the construction contractor must comply with all requirements of CARB's Air Toxics Control Measure (ATCM). Compliance may include preparation and implementation of an Asbestos Dust Mitigation Plan and an Asbestos Health and Safety Program for approval by APCD. If NOA is not found, then the construction contractor shall file an exemption request with SLOCAPCD.	• Include mitigation measure in construction contractor specifications. Construction contractor shall determine the presence or absence of NOA within the area of disturbance of the project. • If NOA is present, then retain copies of Asbestos Dust Mitigation Plan, Asbestos Health and Safety Program, or any requirements of CARB's ATCM. Maintain records of compliance with any asbestos control measures or plans in the project file. • If NOA is not present, then file exemption request with SLOCAPCD. Retain copy of exemption from SLOCAPCD in the project file.	MBCSD; construction contractor	X	X	
3.2-1d: Prior to demolition activities, MBCSD shall retain a licensed asbestos inspector to determine the presence of asbestos and asbestos-containing materials (ACM) within buildings to be re-used and/or demolished. If asbestos is discovered, the City would comply with asbestos abatement regulations to safely remove all ACM from the site.	• Include mitigation measure in construction contractor specifications. • Retain licensed inspector to conduct survey to determine presence/absence of ACM prior to demolition activities. • Retain ACM survey report in the project file.	MBCSD; construction contractor	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
	• If ACM is found, maintain records of construction contractor compliance with asbestos abatement regulations in project file.				
3.2-1e: Should hydrocarbon contaminated soil be encountered during construction activities, the SLOCAPCD shall be notified as soon as possible and no later than 48 hours after affected material is discovered to determine if an SLOCAPCD Permit will be required. In addition, the following measures shall be implemented immediately after contaminated soil is discovered; a. Covers on storage piles shall be maintained in place at all times in areas not actively involved in soil addition or removal; b. Contaminated soil shall be covered with at least six inches of packed uncontaminated soil or other TPH non-permeable barrier such as plastic tarp. No headspace shall be allowed where vapors could accumulate; c. Covered piles shall be designed in such a way to eliminate erosion due to wind or water. No openings in the covers are permitted; d. The air quality impacts from the excavation and haul trips associated with removing the contaminated soil shall be evaluated and mitigated if total emissions exceed the APCD's construction phase thresholds; e. During the soil excavation, odors shall not be evident to such a degree as to cause a public nuisance; and ,	• Include mitigation measure in construction contractor specifications. • If hydrocarbon contaminated soils are encountered, maintain records of correspondence with SLOCAPCD and compliance with mitigation measures.	MBCSD; construction contractor	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
f. Clean soil shall be segregated from contaminated soil.					
3.2-1f: Prior to the start of the project, MBCSD shall contact the SLOCAPCD for specific information regarding construction permitting requirements.	• Include mitigation measure in construction contractor specifications.	MBCSD; construction contractor	X		
3.2-2: MBCSD shall revise the Odor Impact Minimization Plan (OIMP) for the WWTP in accordance with Title 14 CCR Section 17863.4, to include the proposed new facilities. MBCSD shall identify new sources of objectionable odors and develop and implement new procedures to minimize odors. MBCSD shall comply with all requirements of the revised OIMP. Once the updated OIMP is completed it shall be submitted to the SLOCAPCD for review.	• Revise OIMP in accordance with Title 14 CCR. • Submit OIMP to SLOCAPCD for review. • Retain copy of OIMP onsite at the WWTP and in the project file.	MBCSD			X
Cultural Resources					
3.4-1a: Prior to issuance of a grading permit, an archaeologist meeting the Secretary of the Interior's Standards for professional archaeology (Appendix A of 36 CFR Part 61) ("qualified archaeologist") shall be retained by the City to develop and implement an archaeological monitoring plan. The plan shall include, but not be limited to, provisions for the monitoring of all ground-disturbing activities by a qualified archaeologist, including but not limited to trenching, boring, grading, removal of retired facilities, and use of staging areas and access roads. The duration and timing of monitoring shall be determined by the qualified archaeologist in consultation with the lead agency and based on the grading plans. In the event that cultural resources are unearthed during ground-disturbing activities, the archaeological monitor shall be empowered to halt or redirect ground-disturbing activities away from the vicinity of the find so that the find can be evaluated. The monitor shall prepare and	• Include mitigation measure in construction contractor specifications. • Retain a qualified archaeologist to develop and implement an Archaeological Monitoring Plan. • Maintain weekly monitoring reports for the duration of time specified in the Monitoring Plan. • Retain copies of monitoring reports in the project file. • Retain a Native American monitor for all ground-disturbing activities at the project site.	MBCSD	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
submit to the City brief weekly monitoring reports as well as one final monitoring report summarizing the results of the monitoring activity and describing any cultural resources recovered in the duration of monitoring. Due to the sensitivity of the project area for Native American resources, at least one Native American monitor shall also monitor all ground-disturbing activities in the project area. Selection of monitors shall be made by agreement of the City and the Native American groups identified by the Native American Heritage Commission as having affiliation with the project area.					
3.4-1b: If cultural resources are encountered, all activity in the vicinity of the find shall cease until it can be evaluated by a qualified archaeologist. If the archaeological monitor determines that the resources may be significant, the qualified archaeologist will notify the lead agency and will develop an appropriate treatment plan for the resources. The archaeologist shall consult with Native American monitors or other appropriate Native American representatives in determining appropriate treatment for unearthed cultural resources if the resources are prehistoric or Native American in nature. In considering any suggested mitigation proposed by the archaeologist in order to mitigate impacts to cultural resources, the Project proponent will determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) will be instituted. Work may proceed on other parts of the Project site while mitigation for cultural resources is being carried out.	• Include mitigation measure in construction contractor specifications. • Retain a qualified archaeological monitoring to implement the archaeological monitoring plan (see Mitigation Measure 3.4-1a). • If significant cultural resources are found, the qualified archaeologist shall develop a Treatment Plan, in consultation with Native American representatives, if appropriate. The Treatment Plan shall identify appropriate mitigation measures (either avoidance or data recovery) and areas around the project site where work may proceed in the meantime. • Retain copy of Treatment Plan in the project file. • Retain records of Treatment Plan implementation in project file.	MBCSD	X	X	
3.4-3: During all construction activities that involve substantial soil disturbance at a depth of greater than 5 feet below the current ground surface, the following	• Include mitigation measure in construction contractor specifications. • Retain a qualified paleontologist to	MBCSD	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
activities will be conducted: a. A qualified Paleontologist will be retained to supervise monitoring of construction excavations and to produce a monitoring and mitigation plan for the proposed project. Paleontological monitoring will include inspection of exposed rock units and microscopic examination of matrix to determine if fossils are present. b. Artificial fill, active beach and dune sand, and younger Quaternary alluvium have little paleontological sensitivity level, and will be spot-checked on a periodic basis to ensure that older underlying sediments are not being penetrated and fossils are not being exposed. All earth moving in older Quaternary alluvial deposits will be monitored at a schedule developed by the Paleontologist in consultation with the City and based on grading plans. c. The monitor will have authority to temporarily divert grading away from exposed fossils in order to recover the fossil specimens. An emphasis will be placed on thorough fossil locality documentation stratigraphic data collection. d. If microfossils are present, the monitor will collect matrix for processing. In order to expedite removal of fossiliferous matrix, the monitor may request heavy machinery assistance to move large quantities of matrix out of the path of construction to designated stockpile areas. Testing of stockpiles will consist of screen washing small samples (approximately 90 kilograms, or 200 pounds) to determine if significant fossils are present. Productive tests will result in screen washing of additional matrix from the stockpiles to a maximum of 2,700 kg (6,000 lbs) per locality to ensure recovery of a scientifically significant	develop and implement a Monitoring and Mitigation Plan that include requirements of Mitigation Measure 3.4-3. • Maintain weekly monitoring reports for the duration of monitoring as defined by the Plan. • Prepare and file a mitigation report at the completion of the monitoring period as defined by the Plan. • Retain copies of weekly and final monitoring reports in the project file.				

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
sample. e. Recovered fossils will be prepared to the point of identification, identified by qualified experts, entered in a database to facilitate inventory, analyzed for significance, and deposited in a designated repository. At each fossil locality, field data forms will be used to record the locality, stratigraphic columns will be measured and appropriate scientific samples submitted for analysis. f. The Paleontologist will prepare brief weekly progress reports to be filed with the client and the lead agencies. The Paleontologist will prepare a final mitigation report to be filed with the client, the lead agencies, and the repository.					
3.4-4: Halt Work if Human Skeletal Remains are Identified During Construction. If human skeletal remains are uncovered during Project construction, the Project proponent will immediately halt work, contact the San Luis Obispo County coroner to evaluate the remains, and follow the procedures and protocols set forth in Section 15064.5 (e)(1) of the CEQA Guidelines. If the County coroner determines that the remains are Native American, the coroner will contact the NAHC, in accordance with Health and Safety Code Section 7050.5, subdivision (c), and Public Resources Code 5097.98 (as amended by AB 2641). The NAHC will then identify the person(s) thought to be the Most Likely Descendent (MLD) of the deceased Native American, who will then help determine what course of action should be taken in dealing with the remains. The archaeologist, City, and MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15064.5(d)). The agreement should take into consideration the appropriate excavation,	• Include mitigation measure in construction contractor specifications. • Retain records of all inadvertent discovery evaluations in the project file.	MBCSD; construction contractor		X	

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. If the MLD and the other parties do not agree on the reburial method, the project will follow Section 5097.98(b) of the California Public Resources Code, which states that "the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American burials with appropriate dignity on the property in a location not subject to further subsurface disturbance." Per Public Resources Code 5097.98, the landowner shall ensure that the immediate vicinity, according to generally accepted cultural or archaeological standards or practices, where the Native American human remains are located, is not damaged or disturbed by further development activity until the landowner has discussed and conferred, as prescribed in this section (PRC 5097.98), with the most likely descendents regarding their recommendations.					
Geology, Soils, Seismicity, and Mineral Resources					
3.5-1: MBCSD shall ensure construction of the proposed project facilities adhere to the City's seismic standards and to the California Building Code requirements to reduce risks of damage from potential seismic ground shaking.	• MBCSD to provide seismic standards to the design engineer for incorporation into the project design and construction plans. • Verify seismic standards prior to issuance of building permit.	MBCSD	X		
3.5-2: Prior to the acceptance of construction plans for the project by the JPA Board, a design-level geotechnical investigation, including collection of site-specific subsurface data shall be completed by MBCSD. The geotechnical evaluation shall identify density profiles, approximate maximum shallow groundwater levels, characterize the vertical and lateral extent of the saturated sand/silt layers that could undergo liquefaction	• Retain a qualified engineer to conduct a design-level geotechnical investigation. • Require the design engineer to incorporate recommendations into project design. • Verify recommendations have been	MBCSD	X		

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
during strong ground shaking, and develop site-specific design criteria to mitigate potential risks. Recommendations made as a result of these investigations to protect new structures from seismic hazards shall become part of the proposed project.	incorporated into project design prior to issuance of building permit. • Retain the geotechnical report in the project file. • Include the geotechnical report as part of the construction documents.				
3.5-3: To control water and wind erosion during construction of the project, MBCSD shall ensure that contractors implement Best Management Practices (BMPs) to control wind and water erosion during and shortly after construction of the project and permanent BMPs to control erosion and sedimentation once construction is complete. The BMPs could include, but would not be limited to, sediment barriers and traps, silt basins, silt fences, and soil stockpile protection measures.	• Include mitigation measure in construction contractor specifications. • Require the design engineer to incorporate post-construction erosion control BMPs into the project design specifications. • Retain a qualified construction monitor to conduct routine inspections of BMP implementation during project construction. • Prepare weekly construction monitoring reports. • Retain construction monitoring reports in project file.	MBCSD; construction contractor	X	X	
3.5-4: The design-level geotechnical evaluation described in Mitigation Measure 3.5-2 shall include a review of the surface and near-surface soils in the areas where new project components will be constructed and where excavated spoil materials will be stockpiled. The evaluation shall determine if the underlying soils have adequate strength to support the proposed facilities and stockpiles and, if not, shall provide recommendations to avoid this hazard. Recommendations made as a result of these investigations shall be considered during project design and the evaluation report shall become part of the construction documents for the project.	• Retain a qualified engineer to conduct a design-level geotechnical investigation. • Require the design engineer to incorporate recommendations into project design. • Verify recommendations have been incorporated into project design prior to issuance of building permit. • Retain the geotechnical report in the project file. • Include the geotechnical report as part of the construction documents.	MBCSD	X		

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
Hazards and Hazardous Materials					
3.6-1a: Construction contractor(s) shall be required to implement best management practices (BMPs) for handling hazardous materials during the project. The use of the construction BMPs shall minimize negative effects on groundwater and soils, workers, and the public, and will include, without limitation, the following: • Follow manufacturers' recommendations and regulatory requirements for use, storage, and disposal of chemical products and hazardous materials used in construction. • Avoid overtopping construction equipment fuel tanks. • During routing maintenance of construction equipment, properly contain and remove grease and oils. • Properly dispose of discarded containers of fuels and other chemicals.	• Include mitigation measure in construction contractor specifications. • Retain a qualified construction monitor to conduct routine inspections of mitigation implementation during project construction. • Prepare weekly construction monitoring reports. • Retain construction monitoring reports in project file. • Maintenance and operation records shall be retained in the project file.	MBCSD; construction contractor	X	X	
3.6-1b: The implementing agencies shall require the construction contractor(s) to implement safety measures in accordance with General Industry Safety Orders for Spill and Overflow Control (CCR Title 8, Sections 5163-5167) to protect the project area from contamination due to accidental release of hazardous materials. The safety measures shall include, but not be limited to, the following: • Spills and overflows of hazardous materials shall be neutralized and disposed of promptly. • Hazardous materials shall be stored in containers that are chemically inert to and appropriate for the type and quantity of the hazardous substance. • Containers shall not be stored where they are	• Include mitigation measure in construction contractor specifications. • Retain a qualified construction monitor to conduct routine inspections of mitigation implementation during project construction. • Prepare weekly construction monitoring reports. • Retain construction monitoring reports in project file. • Maintenance and operation records shall be retained in the project file.	MBCSD; construction contractor	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
exposed to heat sufficient enough to rupture the containers or cause leakage. • Specific information shall be provided regarding safe procedures and other precautions before cleaning or subsequent use or disposal of hazardous materials containers. Disposal of all hazardous materials shall be in compliance with applicable California hazardous waste disposal laws. The construction contractor(s) shall contact the local fire agency and the Environmental Health Services Division of the San Luis Obispo County Public Health Department County Department of Public Health, Environmental Health Division, for any site-specific requirements regarding hazardous materials or hazardous waste containment or handling.					
3.6-1c: In the event of an accidental release of hazardous materials during construction, containment and clean up shall occur in accordance with applicable regulatory requirements.	• Include mitigation measure in construction contractor specifications.	MBCSD; construction contractor		X	
3.6-1d: Oil and other solvents used during maintenance of construction equipment shall be recycled or disposed of in accordance with applicable regulatory requirements. All hazardous materials shall be transported, handled, and disposed of in accordance with applicable regulatory requirements.	• Include mitigation measure in construction contractor specifications. • Maintenance and operation records shall be retained in the project file.	MBCSD; construction contractor		X	
3.6-1e: The implementing agencies shall require the construction contractor(s) to prepare a Site Safety Plan in accordance with applicable regulatory requirements.	• Include mitigation measure in construction contractor specifications. • Retain a copy of the Site Safety Plan in the project file.	MBCSD; construction contractor	X	X	
3.6-1f: The implementing agencies shall require the construction contractor(s) to prepare and implement a Safety Program to ensure the health and safety of construction workers and the public during project construction. The Safety Program shall include an injury	• Include mitigation measure in construction contractor specifications. • Retain a copy of the Safety Program in the project file.	MBCSD; construction contractor	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
and illness prevention program, as site-specific safety plan, and information on the appropriate personal protective equipment to be used during construction.					
Hydrology and Water Quality					
3.7-1: MBCSD shall require the construction contractor to prepare and implement a SWPPP in accordance with the requirements of the NPDES General Construction Permit. The SWPPP shall include BMPs to control erosion, sedimentation, and hazardous materials release. The SWPPP shall be approved by the City of Morro Bay prior to the start of construction. The BMPs shall be maintained at the site for the duration of construction. The objectives of the BMPs are to identify pollutant sources that may affect the quality of storm water discharges and to implement measures to reduce pollutants in storm water discharges. The BMPs for the proposed project shall include, but not be limited to, the implementation of the following elements in accordance with the City's Storm Water Management Plan (SWMP): • Identification of all pollutant sources, including sources of sediment that may affect the quality of storm water • Identification of non-storm water discharges; • Estimate of the construction area and impervious surface area; • Preparation of a site map and maintenance schedule for BMPs installed during construction designed to reduce or eliminate pollutants after construction is completed (post-construction BMPs); • Applicable erosion and sedimentation control measures, waste management practices, and spill	• Include mitigation measure in construction contractor specifications. • Retain a qualified construction monitor to conduct routine inspections of BMP implementation during project construction. • Prepare weekly construction monitoring reports. • Retain construction monitoring reports in project file. • Maintenance and operation records shall be retained in the project file to demonstrate compliance with BMPs.	MBCSD; construction contractor	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
prevention and control measures; • Maintenance and training practices; and, • A sampling and analysis strategy and sampling schedule for discharge from construction activities.					
3.7-2: MBCSD shall require the construction contractor to file a Notice of Intent to comply with the SWRCB or CCRWQCB Low-Threat General WDRs prior to initiating excavation and dewatering activities and to comply with all requirements and conditions of the General WDRs, including preparation of a discharge monitoring plan (DMP). If applicable, MBCSD may apply for the General Waiver of waste discharge requirements. MBCSD shall submit an application to the CCRWQCB for approval that demonstrates that the discharge from dewatering activities would not degrade water quality of groundwater or surface waters.	• Include mitigation measure in construction contractor specifications. • Retain a copy of Notice of Intent or General Waiver in the project file.	MBCSD; construction contractor	X	X	
3.7-3: MBCSD shall file a Notice of Intent to comply with the NPDES General Industrial Permit requirements upon completion of the proposed project. MBCSD also shall prepare a SWPPP and monitoring plan, as required by the General Industrial Permit, that identify sources of pollutants and the measures to be implemented to manage the sources and reduce storm water pollution and storm water runoff volume. The SWPPP shall include relevant BMPs from the City of Morro Bay's SWMP or LID practices in compliance with the NPDES Phase II Municipal Stormwater Permit. MBCSD shall demonstrate that the BMPs or LID practices meet the hydromodification criteria for redevelopment projects as defined in the City's SWMP and required by the CCRWQCB.	• Require the design engineer to develop a post-construction SWPPP and incorporate BMPs or LID practices into the project design specifications to meet the requirements of the CCRWQCB for the NPDES General Industrial Permit and the requirements of the City's SWMP. • Retain a copy of the post-construction SWPPP in the project file. • Verify BMPs for LID practices have been incorporated into project design prior to issuance of building permit.	MBCSD	X		
3.7-4: To mitigate impacts associated with 100-year flood hazards, MBCSD or the City of Morro Bay shall implement the following measures:	• Require design engineer to incorporate flood hazard mitigation into the project design specifications. • Verify mitigation has been	MBCSD	X		

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
• Construct the new WWTP facilities on higher ground. Construction on elevated fill provides the highest level of protection and least amount of operational inconveniences. • Construct all or part of the new facilities on City owned land to the south of the current site that is already elevated, modeled in the analysis as MB10 through MB12. Construction at this location will have the least adverse flood impact on neighboring properties. • Apply for a Letter of Map Revision (LOMR), including new hydrology and new hydraulic analyses, to document the potential reduction of flood levels relative to the current FIRM. The City floodplain management ordinance and funding agencies require that WWTP improvements be protected from flooding to the level of one foot above the 100-year flood elevation.	incorporated into project design prior to issuance of building permit. • Obtain LOMR prior to issuance of building permit. • Retain copy of LOMR in the project file.				
Noise					
3.9-1: MBCSD shall require construction contractors to restrict all construction activities to the hours between 7:00 A.M. and 7:00 P.M, Monday through Friday, and between 8:00 A.M. and 7:00 P.M. on Saturday and Sunday.	• Include mitigation measure in construction contractor specifications.	MBCSD; construction contractor		X	
3.9-2: To further mitigate pile driving and other extreme noise-generating construction impacts, a set of site-specific noise attenuation measures shall be implemented under the supervision of a qualified acoustical consultant. These attenuation measures shall include, but not be limited to, the following control strategies: (1) Erect temporary plywood noise barriers around the construction site; (2) Implement "quiet" pile-driving technology (such as	• Include mitigation measure in construction contractor specifications. • During construction, MBCSD shall appoint a qualified acoustical consultant monitor to perform site inspections to verify contractor compliance. • Retain inspection records in the project file.	MBCSD; construction contractor		X	

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
predrilling piles and the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions; (3) Use noise control blankets on building structures to reduce noise emissions from the site; and (4) Monitor the effectiveness of noise attenuation measures by collecting noise measurements.					
3.9-3: If a vibratory compactor is used within 25 feet of any structure, the construction contractor shall conduct crack surveys before drilling to prevent potential architectural damage to nearby structures. The surveys shall be done by photographs, video tape, or visual inventory, and shall include inside as well as outside locations. All existing cracks in walls, floors, and driveways shall be documented with sufficient detail for comparison after construction to determine whether actual vibration damage occurred. A post-construction survey shall be conducted to document the condition of the surrounding buildings after the construction is complete.	• Include mitigation measure in construction contractor specifications. • Retain results of survey reports in the project file.	MBCSD; construction contractor	X		X
Public Services and Utilities					
3.10-1: Project facility design and construction methods that produce less waste, or that produce waste that could more readily be recycled or reused shall be encouraged.	• Require design engineer to incorporate design features in accordance with the mitigation measure. • Include mitigation measure in construction contractor specifications.	MBCSD; construction contractor	X	X	
3.10-2: MBCSD shall require the construction contractor to describe plans for recovering, reusing, and recycling wastes produced through construction, demolition, and excavation activities. Submittal of these plans shall be required in construction specifications.	• Include mitigation measure in construction contractor specifications. • Retain copies of plans in the project file.	MBCSD; construction contractor		X	
3.10-3: MBCSD shall require the construction contractor to contact a regional notification center (e.g., Underground Services Alert or Dig Alert) at least two	• Include mitigation measure in construction contractor specifications.	MBCSD; construction contractor	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
days prior to initiating any construction activities.	• Retain records of correspondence in the project file.				
Transportation and Traffic					
3.11-1: MBCSD shall require the construction contractor to prepare and implement a Traffic Control/Traffic Management Plan to minimize impacts during project construction. The Traffic Control/Traffic Management Plan shall include, but not be limited to, the following measures: • The City of Morro Bay shall maintain access for local land uses including public properties, recreational properties, beachfront access, and commercial properties during construction activities. • Emergency services access to local land uses will be maintained for the duration of construction activities. Local emergency service providers will be informed of lane closures and detours. • The City of Morro Bay shall post advanced warning of construction activities to allow motorists to select alternative routes in advance. • The City of Morro Bay shall arrange for a telephone resource to address public questions and complaints during project construction. • The City of Morro Bay shall comply with roadside safety protocols, so as to reduce the risk of accident. • For roadways requiring lane closures, the City of Morro Bay (and the construction contractor) shall develop circulation plans to minimize impacts to local street circulation. This would include the use of signing to guide vehicles around the construction zone.	• Include mitigation measure in construction contractor specifications. • Retain copies of the Traffic Control/Traffic Management Plan in the project file. • Retain records of correspondence with San Luis Coastal Unified School District in the project file.	MBCSD; construction contractor	X	X	

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule		
			Before Construction	During Construction	After Construction
• Include a plan to coordinate all construction activities with the San Luis Coastal Unified School District at least two months in advance. The San Luis Coastal Unified School District shall be notified of the timing, location, and duration of construction activities. The implementing agencies shall require its contractor to maintain vehicle, pedestrian, and school bus service during construction through inclusion of such provisions in the construction contract. The assignment of temporary crossing guards at designated intersections may be needed to enhance pedestrian safety during project construction. Also, the following provisions shall be met: – A minimum of two months prior to project construction, the implementing agencies shall coordinate with the San Luis Coastal Unified School District to identify peak circulation periods at the Morro Bay High School (i.e., the arrival and departure of students), and require their contractor to avoid lane closures during these periods. – A minimum of two months prior to project construction, the implementing agencies shall coordinate with the San Luis Coastal Unified School District to identify alternatives to their safe routes to school program, alternatives for the school bussing routes and stop locations, and other circulation provisions, as part of the Traffic Control/ Traffic Management Plan.					
Cumulative Impacts					
4-1: MBCSD shall communicate and coordinate project construction activities with other City agencies. Phasing of project construction shall be coordinated to minimize cumulative impacts to traffic and circulation.	• Include mitigation measure in construction contractor specifications. • Retain records of correspondence with City agencies in the project file.	MBCSD; construction contractor	X	X	

FILE COPY

ATTACHMENT 5

RECEIVED

DEC 22 2010

City of Morro Bay
Public Services Department

CITY OF MORRO BAY
PUBLIC SERVICES DEPARTMENT
APPEAL FORM

APPEAL FROM THE DECISION OR ACTION OF (GOVERNING BODY OR CITY OFFICER):
Planning Commission
APPEAL OF SPECIFIC DECISION OR ACTION:
Denial of CPO-339 and UPO-307 and Failure to recommend EIR Certification
PERMIT TYPE BEING APPEALED (IE. COASTAL PERMIT, USE PERMIT, TENTATIVE SUBDIVISION):
DATE DECISION OR ACTION RENDERED: December 20, 2010
APPELLANT (PLEASE PRINT): Bruce Keogh, Wastewater Treatment Division Manager
SIGNATURE: Bruce Keogh
ADDRESS: 160 Atascadero Road, Morro Bay — *TELEPHONE NUMBER:* 805-772-6261

GROUNDS FOR THE APPEAL (ATTACH SHEETS AS NECESSARY):
Action of the planning Commission in not recommending certification of the Final EIR and approval of the Coastal and Use Permits was without merit.

REQUESTED RELIEF OR ACTION:
Certification of the Final EIR and approval of the Use Permit UPO-307 and Coastal Development Permit CPO-339

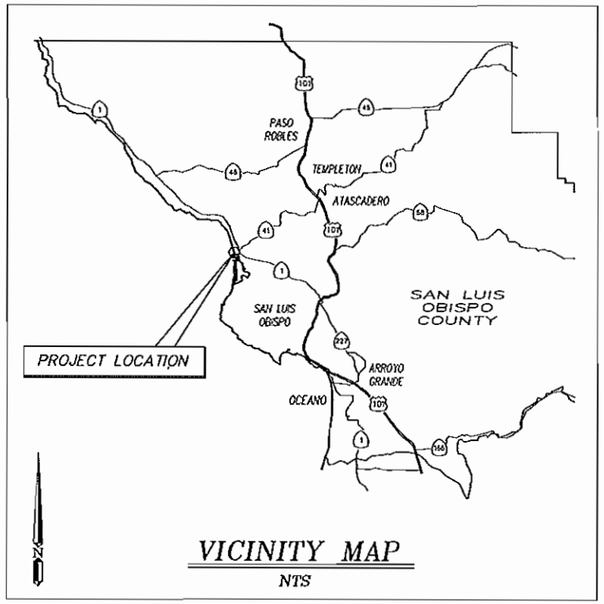
FOR OFFICE USE ONLY	
DATE APPEAL FILED:	ACCEPTED BY:
APPEAL BODY:	
DATE OF APPEAL HEARING:	

S:\Planning\Samples & Stocks\Form\Appeal.doc

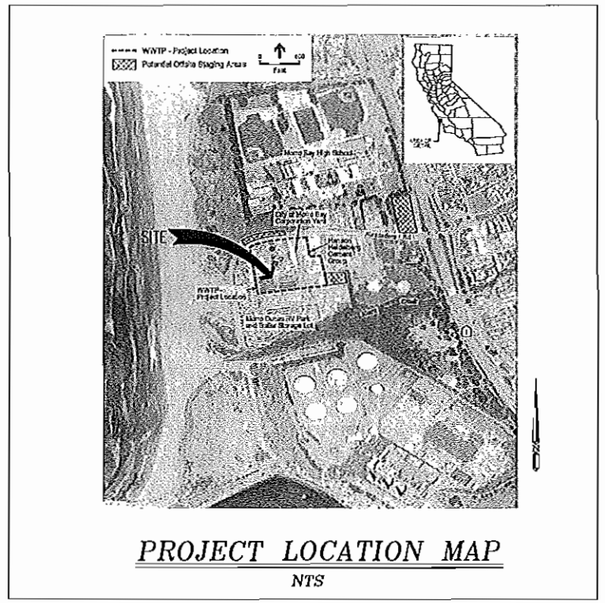
ATTACHMENT 6

FOR REDUCED PLANS ORIGINAL SCALE IS IN INCHES 0 1 2 3

MORRO BAY/CAYUCOS WASTEWATER TREATMENT PLAN UPGRADE



VICINITY MAP
NTS



PROJECT LOCATION MAP
NTS

Design Data Provided by MWH

OWNER

CITY OF MORRO BAY/
CAYUCOS SANITARY DISTRICT
955 SHASTA
MORRO BAY, CA 93422
PHONE: 805-772-6272
APN: 066-331-032,033,034

PROJECT DATA

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

SITE ADDRESS:
160 ATASCADERO ROAD
MORRO BAY, CA 93422

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

PROJECT MANAGER:
R. DENNIS DELZEIT, P.E. 22340
974 CAMINO CABALLO
NIPOMO, CA 93444
PH: 805-441-1863
EMAIL: delzeit@charter.net
FAX: 805-928-2028

ENGINEER:
STEVE HYLAND
VICE PESIDENT, MWH AMIERICAS, INC.
2121 N. CALIFORNIA BIVD.
WALNUT CREEK, CA 94596
PH: 925-627-4500
PH: 925-627-4711
FAX: 925-627-4501
EMAIL: steve.hyland@mwhglobal.com

ARCHITECT:
PAT BLOTE
RRM DESIGN GROUP
3765 S. HIGUERA ST., SUITE 102
SAN LUIS OBISPO, CA 93401
PH: 805-543-1794
FAX: 805-543-4609
EMAIL: PLBlote@rrmdesign.com

MBCSD PROPOSED WASTEWATER TREATMENT PLANT UPGRADE PROJECT

FACILITY	ESTIMATED AREA	ESTIMATED LENGTH	ESTIMATED WIDTH	ESTIMATED DIAMETER	ESTIMATED HEIGHT (a)
	S.F.	FT.	FT.	FT.	FT.
Influent Pump Station	450			24	1
Residuals Facility	3020	84	35		26
Oxidation Ditch 1	12,500	250	50		14
Oxidation Ditch 2	12,500	250	50		14
Secondary Clarifier 1	5020			50	6
Secondary Clarifier 2	5020			50	6
RAS/WAS Pump Station	1200	40	30		6
Secondary Pump Station	800	40	20		6
Tertiary Filter	480	24	20		14
Tertiary Filter (Future)	480	24	20		14
Chlorine Contact Basin 1	1400	70	20		8
Chlorine Contact Basin 2	1400	70	20		8
Chlorine Contact Basin (Future)	1400	70	20		8
Chemical Station	960	48	20		8
Utility Water Pump Station	190	16	12		8
Reclaimed water Pump Station (Future)	190	16	12		8
Standby Power	640	40	16		16
Maintenance Building	2300	72	32		24
Operations Building (2 Story)	3740	52	36		28
Household Hazardous Waste	1260	60	18		10

(a) Estimated height above new grade of Elevation 20 feet.

SHEET DIRECTORY

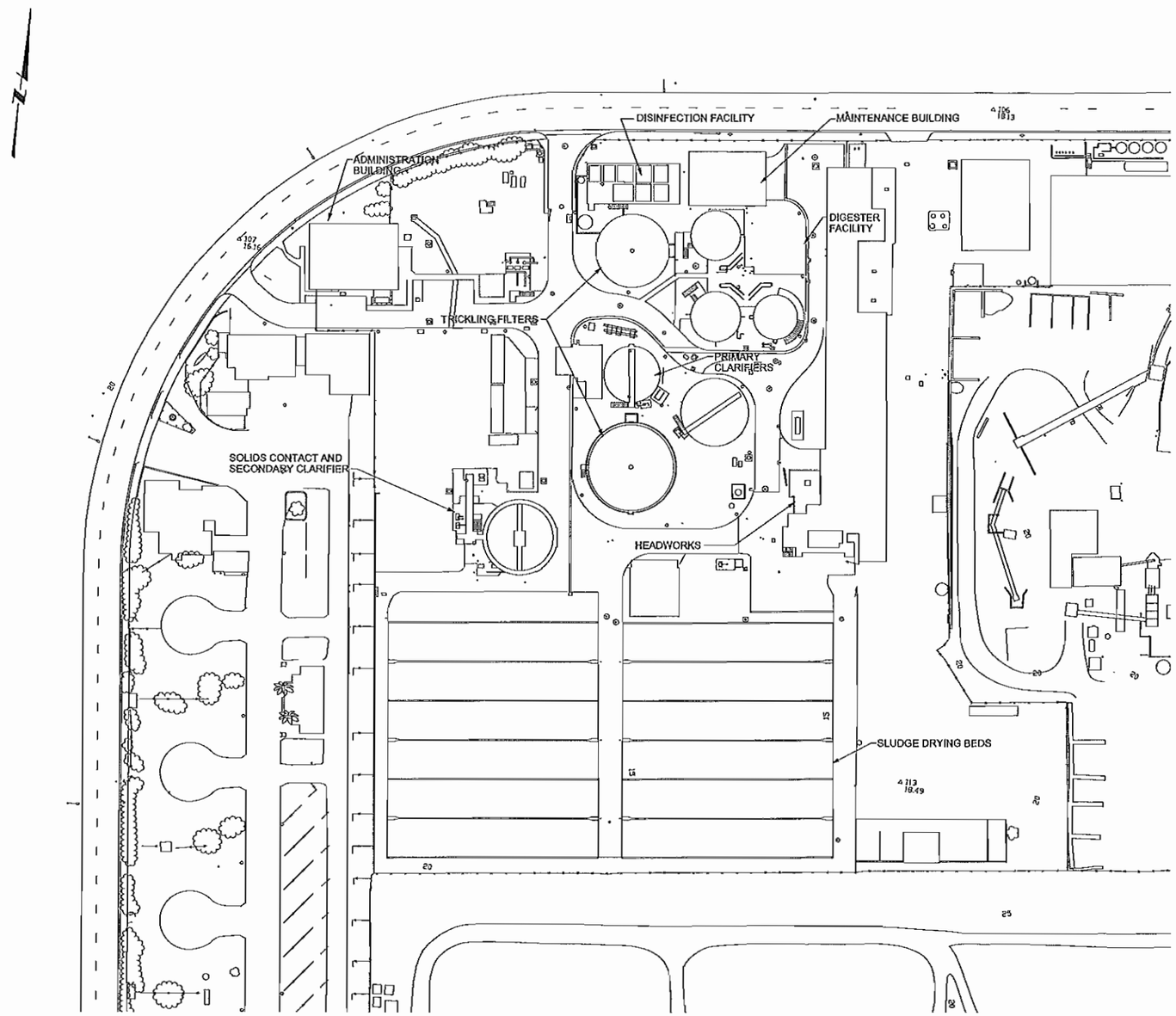
1. TITLE SHEET
2. EXISTING SITE PLAN
3. NEW SITE PLAN
4. DEMOLITION PLAN
5. MAINTENANCE BLDG. FLOOR PLAN
6. OPERATIONS BLDG. FLOOR PLAN

NOV 10 2010

REV.	DATE	BY	DESCRIPTION OF REVISIONS

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

JOB #: XXX-XXX
DESIGNERS: XXX
DRAWN BY: XXX
DATE: XX-XX-XXXX
DRAWING NO.
1
1 OF 6 SHEETS



REV	DATE	BY	DESCRIPTION

SCALE 1" = 50'

WARNING 0 ½ 1 IF THIS BAR DOES NOT MEASURE 1" THEN DRAWING IS NOT TO SCALE

DESIGNED R SASAKI
DRAWN D MASON
CHECKED S HYLAND

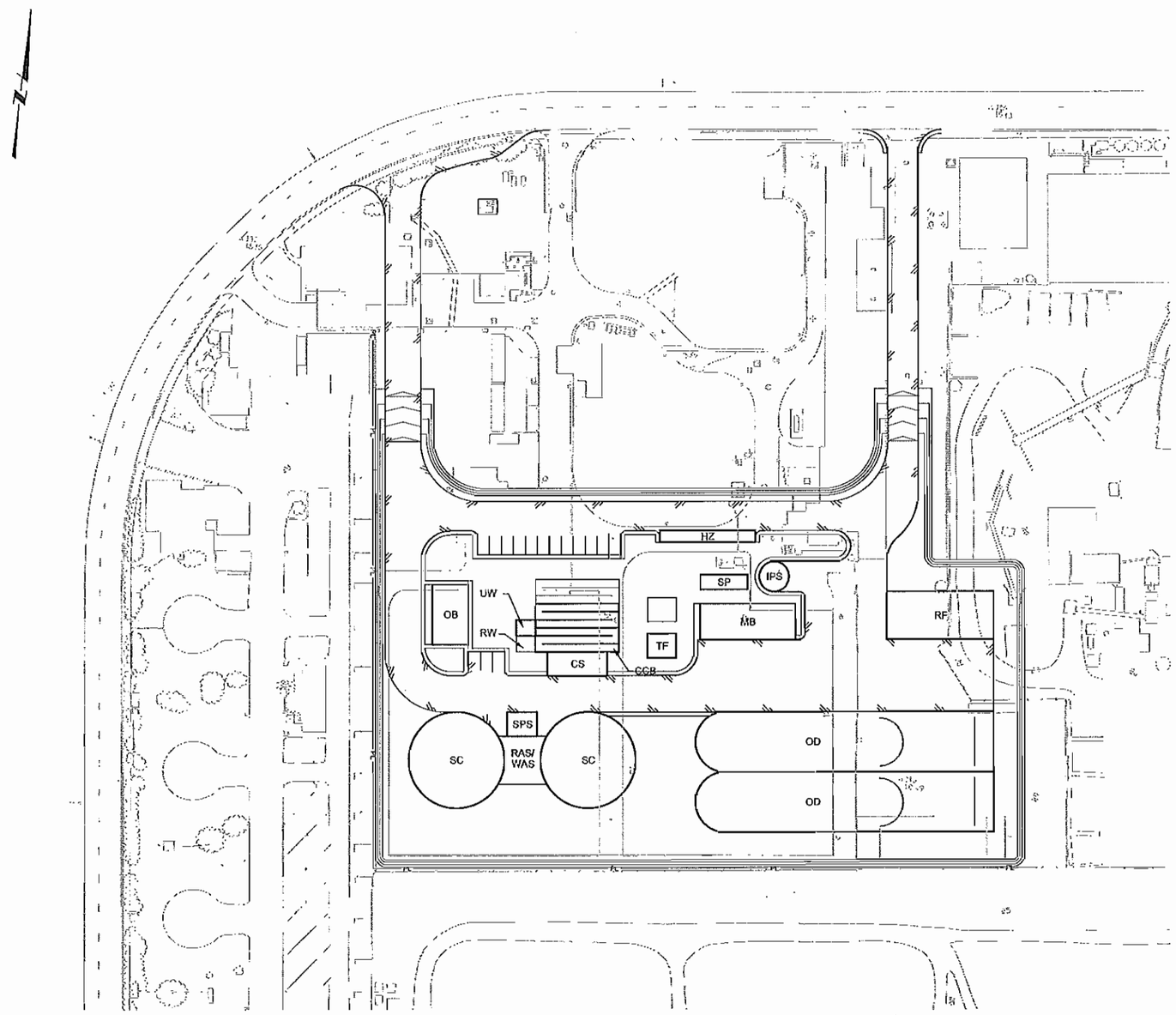
MWH®

MORRO BAY AND CAYUCOS SANITARY DISTRICT
WASTE WATER TREATMENT PLANT UPGRADE

EXISTING SITE PLAN

SHEET 1006513

File: MBCSD_Existing Site_B.dgn Model: Layout1 ColorTable: bw.ctb DesignScript: MWH_Joel_PenTable_V89.pen PlotScale: 0.078704:1 User: dkmason Plot Date: 08-NOV-2010 11:25



LEGEND

CS	CHEMICAL STATION
CCB	CHLORINE CONTACT BASIN
HZ	HOUSEHOLD HAZARDOUS WASTE
IPS	INFLUENT PUMP STATION
MB	MAINTENANCE BUILDING
OB	OPERATIONS BUILDING
OD	OXIDATION DITCHES
RAS	RETURN ACTIVATED SLUDGE
RF	RESIDUALS FACILITY
RW	RECLAIMED WATER (FUTURE)
SC	SECONDARY CLARIFIERS
SP	STANDBY POWER
SPS	SECONDARY PUMP STATION
TF	TERTIARY FILTER
UW	UTILITY WATER
WAS	WASTE ACTIVATED SLUDGE

REV	DATE	BY	DESCRIPTION

SCALE 1" = 50'

WARNING 0 ½ 1 IF THIS BAR DOES NOT MEASURE 1" THEN DRAWING IS NOT TO SCALE

DESIGNED R SASAKI
DRAWN D MASON
CHECKED S HYLAND

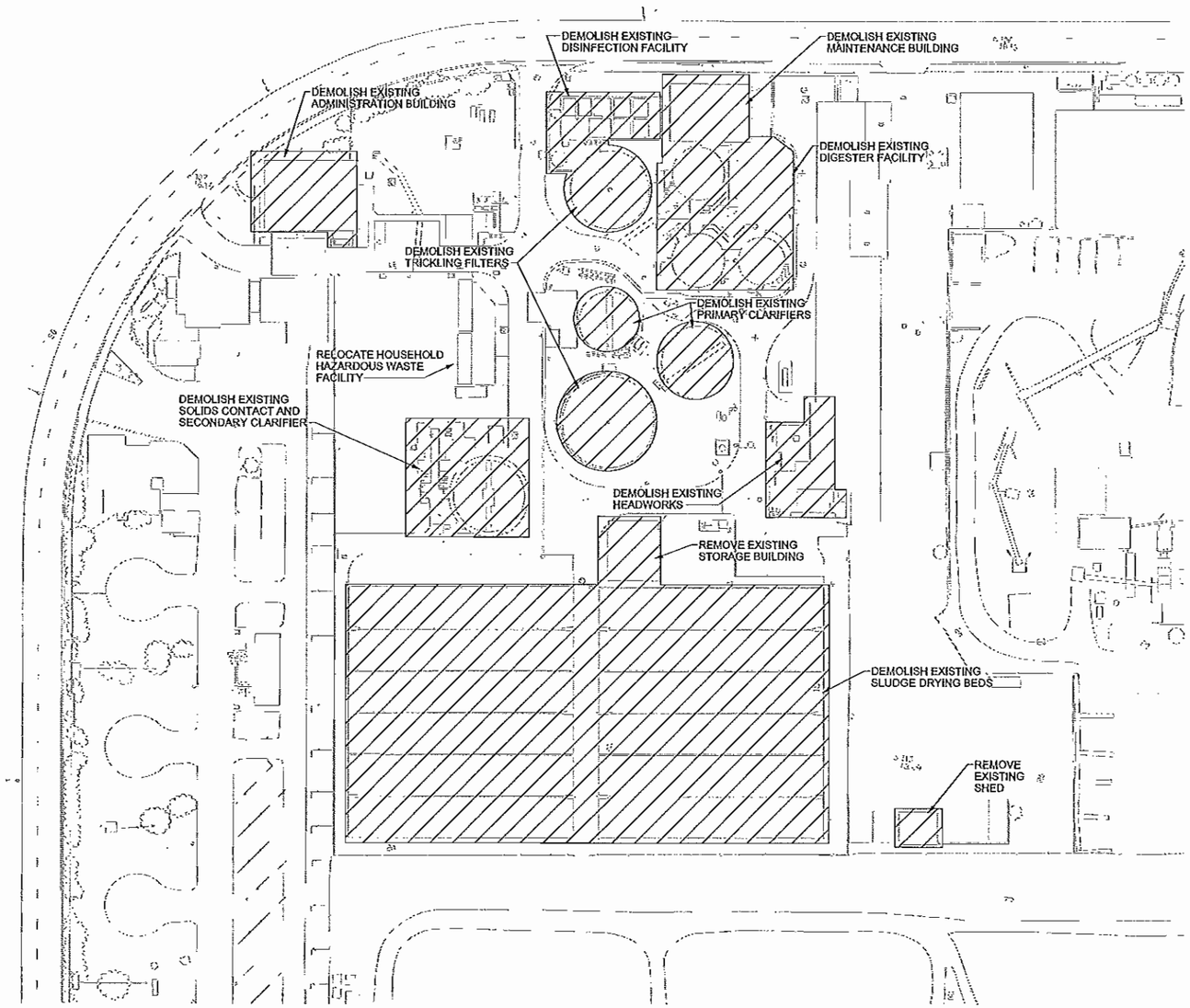
MWH®

MORRO BAY AND CAYUCOS SANITARY DISTRICT
WASTE WATER TREATMENT PLANT UPGRADE

NEW SITE PLAN

SHEET 1006613

File: MBCSD_New Site Plan_B.dgn Model: Layout1 ColorTable: bw.ctb DesignScript: MWH_Iplot_PenTable_V89.pen PlotScale: 0.078704:1 User: dkmason Plot Date: 08-NOV-2010 11:33



REV	DATE	BY	DESCRIPTION

SCALE: 1" = 50'

WARNING: 0 ½ 1 — IF THIS BAR DOES NOT MEASURE 1" THEN DRAWING IS NOT TO SCALE

DESIGNED R SASAKI
DRAWN D MASON
CHECKED S HYLAND

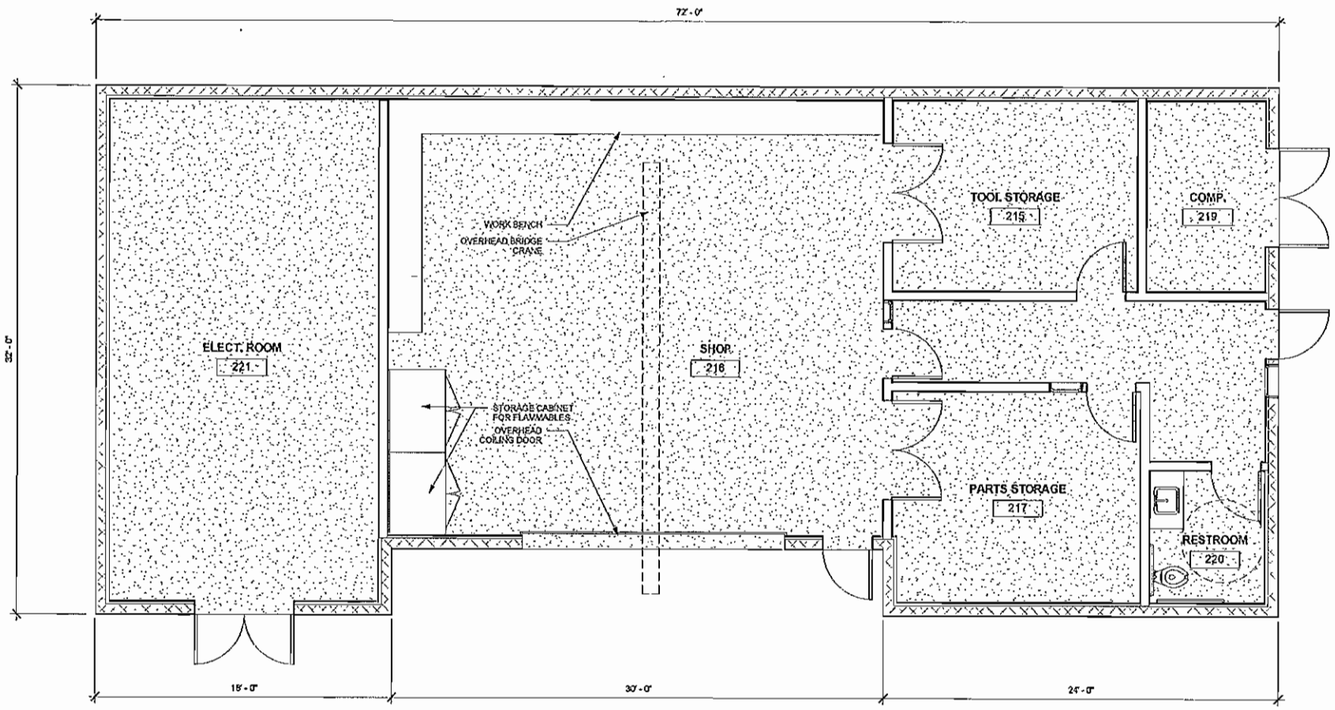
MWH®

MORRO BAY AND CAYUCOS SANITARY DISTRICT
WASTE WATER TREATMENT PLANT UPGRADE

DEMOLITION PLAN

SHEET 1006813

File: MBCSD_Site Demolition Plan_B.dgn Model: Layout1 ColorTable: bw.ctb DesignScript: MWH_plot_PenTable_V89.pen PlotScale: 0.0787041 User: dmason Plot Date: 09-NOV-2010 11:30



1 GROUND FLOOR PLAN

A-5.1 | A2.3 1/4" = 1'-0"

2,180 SQUARE FEET

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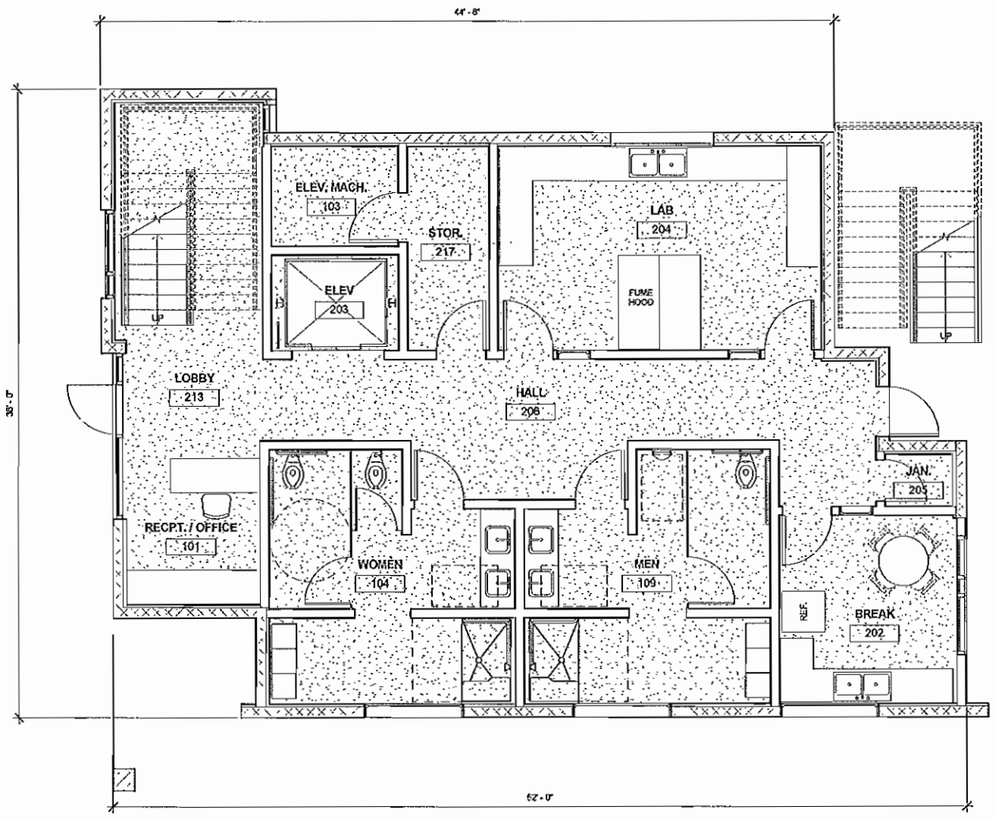
N:\2009\2009543-Morro Bay-WWTP-Upgrade\Architecture\Current\Task\Model\2009543-Maintenance Building.rvt
11/1/2010 2:43:37 PM

FLOOR PLAN

2009543 - MBWWTP - MAINTENANCE BUILDING

10/18/2010

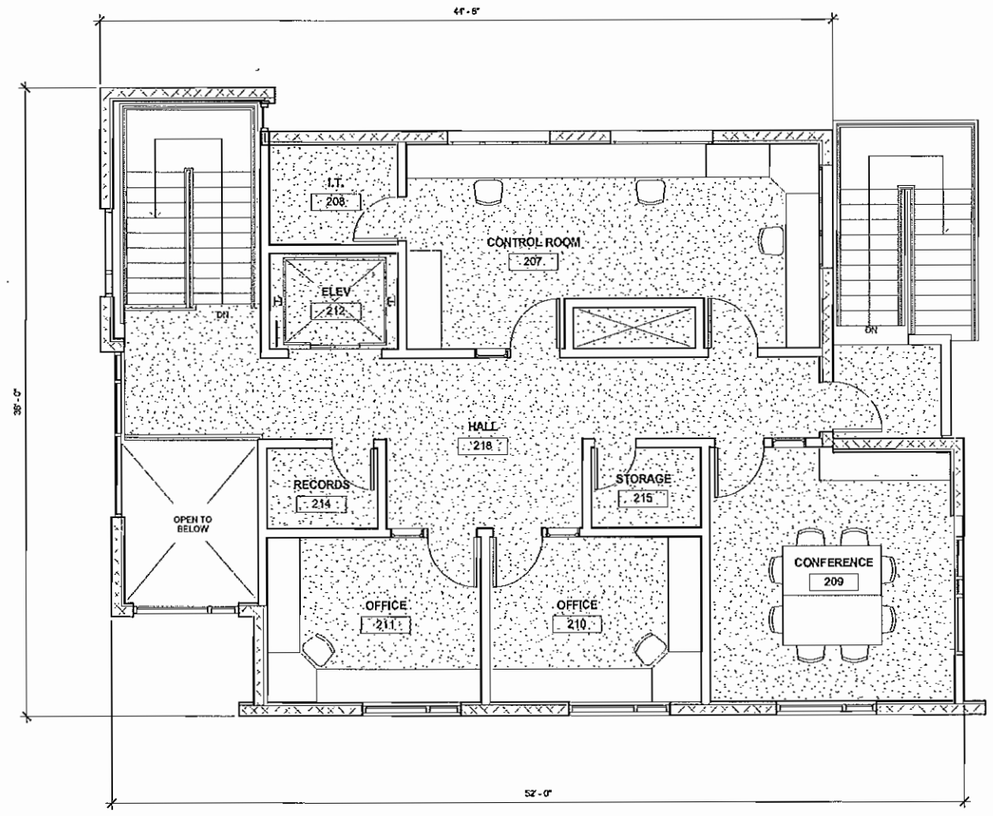
A2.3



1 GROUND FLOOR PLAN

A-5.1 | A2.1 1/4" = 1'-0"

1,680 SQUARE FEET



2 SECOND FLOOR PLAN

A-5.1 | A2.1 1/4" = 1'-0"

1,350 SQUARE FEET

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11/4/2010 1:30:08 PM

FLOOR PLANS

2009543 - MBWWTP - OPERATIONS BUILDING

11/04/2010

A2.1

AGENDA NO: B-3

MEETING DATE: January 11, 2011

Staff Report

TO: **Honorable Mayor and City Council** **DATE: December 29, 2010**

FROM: **Rob Schultz**

SUBJECT: **Ordinance No. 565 Amending Morro Bay Municipal Code Section 2.08.010 of the Morro Bay Municipal Code Regarding Council Meetings Time and Date; Introduction and First Reading**

RECOMMENDATION:

Per Council direction, we recommend Council accept public comment and then move for introduction and first reading of Ordinance No. 565, by number and title only, amending Morro Bay Municipal Code Section 2.08.010.

FISCAL IMPACT:

None at this time.

BACKGROUND:

The City Council on December 13, 2010 directed Staff to change the City Council meeting dates from the second and fourth Mondays to the second and Fourth Tuesdays. Morro Bay Municipal Code Section 2.08.010 currently provides the following:

> 2.08.010 - Time and date.
>
> Regular meetings of the city council shall be held on the second and fourth Mondays of each month at six p.m., or the next succeeding day which is not a holiday.

Prepared By: _____ **Dept Review:**_____

City Manager Review: _____

City Attorney Review: _____

Ordinance No. 565 would amend the Morro Bay Municipal Code to read as follows:

2.08.010 - Time and date.

Regular meetings of the city council shall be ~~held on the second and fourth Mondays of each month at six p.m., or the next succeeding day which is not a holiday.~~ established by City Council Resolution as set forth in the Council Policies and Procedures Manual.

CONCLUSION:

We recommend Council review and move for first reading and introduction of the attached Ordinance No. 565 by number and title only. Please feel free to ask questions or make any changes you feel appropriate.

ORDINANCE NO. 565

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY TO AMEND SECTION 2.08.010 OF THE MORRO BAY MUNICIPAL CODE

THE CITY COUNCIL
City of Morro Bay, California

The City Council of the City of Morro Bay does ordain Section 2.08.010 – "Council Meetings Time and Date" be amended as follows:

WHEREAS, Section 2.08.010 of the Morro Bay Municipal Code sets forth the time and date of the City Council; and

WHEREAS, the City desires to amend the City Council meeting dates to the second and fourth Tuesdays of each month; and

WHEREAS, the City of Morro Bay needs to amend Section 2.08.010 in order to make this change; and

WHEREAS, following the Public Hearing, and upon consideration of the testimony of all persons, the City council of the City of Morro Bay does ordain Section 2.08.010

> **2.08.010 - Time and date.** Regular meetings of the city council shall be established by City Council Resolution as set forth in the Council Policies and Procedures Manual.

INTRODUCED at a regular meeting of the City Council of Morro Bay, held on the 11th day of January, 2011 by motion of Councilmember _____, seconded by Councilmember _____.

PASSED AND ADOPTED on the ____ day of ____ , 2011, by the following vote:

AYES:
NOES:
ABSENT:

_____
WILLIAM YATES, Mayor

ATTEST:

_____
BRIDGETT KESSLING, City Clerk

APPROVED AS TO FORM:

_____
ROBERT SCHULTZ, City Attorney

AGENDA NO: D-1

MEETING DATE: 01/11/11

Staff Report

TO: **Honorable Mayor and City Council** **DATE: January 4, 2011**

FROM: **Andrea K. Lueker, City Manager**

SUBJECT: **City Council Annual Meeting Schedule - 2011**

RECOMMENDATION:

Staff recommends the City Council adopt the proposed meeting schedule for calendar year 2011:

1. The regular meeting dates are the second and fourth Tuesdays of each month with the exception of July 26th, November 22nd and December 27th, which are traditionally cancelled.
2. The City Council and the Planning Commission normally meet twice each year for a joint meeting. These meetings have been scheduled on a variety of dates, including 5th Monday's as well as on regular City Council meeting days an hour prior to the normal starting time. For 2011, it is recommended the joint City Council/Planning Commission meetings are held one hour prior to a regular City Council meeting. Suggested dates are February 22nd at 5:00 p.m. and September 13th at 5:00 p.m.

BACKGROUND:

For the past seven years, staff has proposed a schedule of meeting dates for the City Council for the new calendar year. The proposed schedule for the 2011 calendar year is very similar to the 2010 calendar.

A 2010 calendar is attached for your reference.

Prepared By: _____ **Dept Review:**_____

City Manager Review: _____

City Attorney Review: _____

AGENDA NO: D-2
MEETING DATE: 1/11/2011

Council Report

TO: **City Council** **DATE: January 4, 2011**

FROM: **Mayor Bill Yates**

SUBJECT: **Consideration of Replacing the Current Planning Commission**

RECOMMENDATION:
It is recommended the Planning Commission be replaced in their entirety. Currently there are three positions whose terms expire on January 31, 2011, leaving two remaining Commission positions.

FISCAL IMPACT:
None.

BACKGROUND:
The Planning Commission should be business and citizen friendly, and should be respectful of the enormous amount of time applicants and staff put into a project to prepare the project for presentation before the Planning Commission. In recent years, the Commission has repeatedly nit-picked projects, attempted to act as a Design Review Board, and generally been non-supportive and combative with staff's decisions.

Several examples of concern include the following:

- On a Great American Fish Company project, a Commissioner had a condition added to the project that required, if replaced, the roof be replaced with a metal roof, not a shingle one as currently exists. The Commission majority agreed and the condition was added. There was little discussion on this because the applicant didn't object, probably in order for the project to be approved without further controversy. This type of review, adding subjective design requirements, is not within the purview of the Planning Commission.

Prepared By: W. Yates	**Dept Review:_____**
City Manager Review: _____	
City Attorney Review: _____	

- At the December 20, 2010 Planning Commission meeting where the Draft EIR for the Waste Water Treatment Plant was presented, the Commissioners, after grinding away at staff, were advised by the City Attorney that their duty was to discuss the EIR among themselves, and then make their recommendation(s). The response from the Planning Commission was they didn't agree with him and they continued on. In all my years as witness of our governmental process, I have never seen the City Attorney's public advice refuted in that manner. It is difficult to imagine a similar situation during a City Council meeting, with the City Attorney standing before the City Council giving us legal advice, and then ignoring him and publically telling him we don't agree with his advice. This alone is grounds for removal.

- The Planning Commission, at the December 20, 2010, meeting, voted to send a letter to the Coastal Commission regarding their findings on the EIR. I submit the Planning Commission has no authority to write a letter to any outside agency on behalf of the City.

- The Planning Commission also complained there wasn't a workshop on the EIR so they could gather more information; however, there was a workshop as well as a number of JPA meetings where the project was discussed.

- Finally, one Commissioner, whose appointment is not expiring, suggested that the WWTP site be moved to the Chevron property. He stated this site was outside our sphere of influence, and inferred that county planning could handle the project. This Commissioner works for the county and once he suggested this, I felt that he was potentially entering the realm of conflict of interest.

DISCUSSION:

I understand that other City Council members feel that if the City Council is not happy with the two remaining Commissioners, they could be replaced later in the year. However, replacing later seems cumbersome and has not occurred in the past; however, there is precedence for replacing the Commission at this time.

The second argument I have heard from fellow City Council members is if we choose three new Commissioners, they will "keep the other two in check." I am concerned that while three Commissioners is a majority, it would only take one of our new appointees to change his/her mind and have a similar majority as currently exists in the Planning Commission. I also am not confident that the two remaining Commissioners would allow themselves to be "kept in check."

CONCLUSION:

With three Planning Commission vacancies, and based on recent actions of the existing Planning Commission, I recommend the City Council agree to replace the entire Planning Commission. This decision works well with the application deadline for Advisory Board vacancies of January 19, 2011 and interview date of January 24, 2011.