

EXHIBIT D



City of Morro Bay
COMMUNITY DEVELOPMENT DEPARTMENT
955 SHASTA AVENUE ♦ MORRO BAY, CA 93442
805-772-6261

RESPONSE TO COMMENTS ON THE
CIRCULATED INITIAL STUDY/MITIGATED NEGATIVE DECLARATION

The letters of comment for the 3300 Panorama Drive, Demolition of Tanks and Associated Structures Project Initial Study and Proposed Mitigated Negative Declaration (MND) are provided below, with the responses following the individual letters. Letters of comment are reproduced in total, and numerical annotation has been added as appropriate to delineate and reference the responses to those comments.

3300 Panorama Drive
CASE NO. UP0-440 & CP0-500
DATE: June 2018

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MND 18.PC 1. Response to: Sarah Carvill, Coastal Planner, Coastal Commission (Santa Cruz) (March 30, 2018)

Telephone comment summary: Received information, everything looks fine.

1.1 Thank you for your comment. No revisions to the IS/MND are necessary in response to this comment.

MND 18.PC 2. Response to: Ruth Kapka, Appraiser (March 14, 2018)

Telephone comment summary: General questions about the scope of the proposed project.

2.1 Thank you for your comment. No revisions to the IS/MND are necessary in response to this comment.

MND 18.PC 3. Response to: Kathern Belt, General Public (March 7, 2018)

Telephone comment summary: Interested in purchasing a home in the neighborhood; general questions about the scope, timing, etc.

3.1 Thank you for your comment. No revisions to the IS/MND are necessary in response to this comment.

MND 18.PC 4. Response to: Freddy Romero, Santa Ynez Tribal (March 6, 2018)

Telephone comment summary: No comment, will defer to local tribes.

4.1 Thank you for your comment. No revisions to the IS/MND are necessary in response to this comment.



COUNTY OF SAN LUIS OBISPO HEALTH AGENCY
PUBLIC HEALTH DEPARTMENT
Jeff Hamm *Health Agency Director*
Penny Borenstein, MD, MPH *Health Officer/Public Health Director*

March 30, 2018

City of Morro Bay Community Development Department
Attn: Nancy Hubbard
955 Shasta Ave
Morro Bay, CA 93442

Draft Mitigated Negative Declaration for 3300 Panorama Drive, Morro Bay, CA

Dear Ms. Hubbard,

The following are comments produced during the review of the Mitigated Negative Declaration for the subject site:

1. Notice of Intent Document:
 - a. The statement on the first page "The sources of potential future releases from the facility have been eliminated..." The tanks do not have product and it was reported the product was removed from the pipelines but we are unsure if all product was removed from the entire piping system. It is possible some product or residual in piping may exist.
 - b. The last sentence on the first page should state CCR Title 22 not CCR Title 33.
2. Draft Mitigated Negative Declaration Document
 - a. The sentence on page 2 should state CCR Title 22 not CCR Title 33.
 - b. The first paragraph, last sentence on page 2 should include the City of Morro Bay Fire Department.
 - c. Page 7 Appendix List: Should list any City of Morro Bay Fire Department, Fire Code conditions for the demolition. A Fire agency has authority to stop work if unsafe conditions exist during the demolition.
 - d. Page 9, first paragraph:
 - i. 6th sentence: The same comment from 1a above applies.
 - i. 7th sentence: The same comment from 1b above applies.
 - e. Page 9 second paragraph:
 - i. 5th sentence should include a reference to the soil management plan and hazardous waste contingency plan.
 - f. Page 12, second paragraph:
 - i. 2nd sentence: should include possible pipeline fluid or residuals.

5.1

5.2

County of San Luis Obispo Health Agency

2156 Sierra Way, Suite B | San Luis Obispo, CA 93401 | (P) 805-781-5544 | (F) 805-781-4211
www.slopublichealth.org

- g. Page 16, fourth paragraph, 3rd sentence: should include the soil management and sampling plan
 - h. Page 20, last section: should include the City of Morro Bay Fire Department.
 - i. Page 59, Condition b: these inspections should include the City of Morro Bay Fire Department.
 - j. Page 59, Condition c: this certification should also be provided to the City of Morro Bay Fire Department.
 - k. Page 59, Condition g, item 5: this was indicated as a potentially required future assessment according to our June 24, 2016 letter.
 - l. Page 90, Condition b: these inspections should include the City of Morro Bay Fire Department.
 - m. Page 90, Condition c: this certification should also be provided to the City of Morro Bay Fire Department.
 - n. Page 90, Condition g, item 5: this was indicated as a potentially required future assessment according to our June 24, 2016 letter.
 - o. General comment: The project applicant can apply to this agency for a time extension of the Aboveground Hazardous Materials Storage Tank and Piping Closure permit.
3. Appendix C
- a. We could not locate any permits or declarations on Fire Code Requirements for the AST Demolition Process.

5.2
(cont'd)

5.3

Please contact Tricia Atkins at (805) 781-1105 or me for questions at 805-781-5595

Sincerely,



Aaron LaBarre, REHS
Supervising Environmental Health Specialist
Hazardous Materials Program

County of San Luis Obispo Health Agency

2156 Sierra Way, Suite B | San Luis Obispo, CA 93401 | (P) 805-781-5544 | (F) 805-781-4211
www.slopublichealth.org

MND 18.PC 5. Response to: Aaron LaBarre, County of San Luis Obispo Health Department (March 30, 2018)

- 5.1 Thank you for your comment. The participation of the County of San Luis Obispo Public Health Department in the public review of this document is appreciated. The commenter states that the tanks do not have product and that it was reported the produce was removed from the pipelines, but the department is unsure if all product was removed from the entire piping system. The commenter states that it is possible some product or residual may exist in piping. The commenter also states that the reference to CCR Title 33 should be CCR Title 22.

The statement “The sources of potential future releases from the facility have been eliminated...” has been removed from the IS/MND in response to this comment (refer to Page 9). Additionally, the references to CCR Title 33 have been revised to reference CCR Title 22 (refer to Pages 2 and 9).

- 5.2 The commenter includes several recommended revisions to the IS/MND including revisions to the Project Description, Section 8 (Hazards/Hazardous Materials) and Appendix A.

All of the commenter’s suggested revisions have been incorporated. All references to CCR Title 33 have been revised to reference CCR Title 22 (refer to Pages 2 and 9). The City of Morro Bay Fire Department has been included in the list of supervising agencies (refer to Page 2). The impact analysis related to wild land fires and demand for fire protection has been revised to reference compliance with the City of Morro Bay Fire Department’s Fire Code conditions for demolition (refer to Pages 58 and 69). The statement “The sources of potential future releases from the facility have been eliminated...” has been removed from the IS/MND in response to this comment (refer to Page 9). The Project Description has been revised to include compliance with the Soil Management and Sampling Plan and Hazardous Waste Contingency Plan (refer to Page 9). The Transport and Disposal section has been revised to include a reference to possible pipeline fluid or residuals (refer to Page 12). The Resource Protection (Hazardous Materials) section of the Project Description has been revised to include compliance⁴ with the Soil Management and Sampling Plan (refer to Page 16). The “Other Public Agencies Whose Approval is Required” section has been revised to include the City of Morro Bay Fire Department (refer to Page 20). Mitigation Measure HM-1 (conditions b and c) has been revised to include inspection and certification by the City of Morro Bay Fire Department (refer to Pages 58, 88, and 89).

- 5.3 The commenter states that they were unable to locate any permits or declarations on Fire Code Requirements for the AST Demolition Process. The impact analysis related to wild land fires and demand for fire protection has been revised to reference compliance with the City of Morro Bay Fire Department’s Fire Code conditions for demolition (refer to Pages 58 and 69).

RE: Panorama
Project

- 1) Performance Bond
in place
- 2) Please have a
name & phone #
posted for questions
@ site
- 3) Timeline for Project
completion.

CATHY & ALAN BELT
allancathybelt@
gmail.com

RECEIVED

MAR 30 2018

City of Morro Bay
Community Development Dept.

6.1

6.2

6.3

Nancy Hubbard

From: Nancy Hubbard
Sent: Friday, March 30, 2018 2:28 PM
To: allancathybelt@gmail.com
Cc: Nancy Hubbard
Subject: 3300 Panorama

Thank you for stopping into the office today with your comments/questions.

The following is a brief response:

1. The applicant has stated that they are willing to obtain a performance bond and likely that will be a condition of the permit, when and if issued.
2. There will be a person assigned to manage all neighborhood communication during construction and that contact information will be posted on the site.
3. The timeline is unknown at this time. However, the expectation is that the work will be less intense than original proposed and will likely span over a 3-4 month period.

I hope I have addressed your concerns. Please let me know if I can be of any further assistance.

Nancy Hubbard
Contract Planner
805-772-6211
nhubbard@morrobayca.gov

MND 18.PC 6. Response to: Cathy and Allen Belt (March 30, 2018)

- 6.1 Thank you for your comments. The commenter requests that a performance bond be in place. The project applicant has stated that they are willing to obtain a performance bond and likely that will be a condition of the permit, when and if issued. This requirement will be incorporated as a condition of approval for the project.
- 6.2 The commenter requests that a name and phone number be posted for questions at the site. The applicant has confirmed that there will be a person assigned to manage all neighborhood communication during construction and the contact information will be posted at the site. This requirement will be incorporated as a condition of approval for the project.
- 6.3 The commenter requests a timeline for project completion. The timeline for the proposed project is unknown at this time; however, work activities are expected to require 3 to 4 months to complete.

Comments Regarding the 3300 Panorama Drive Mitigated Negative Declaration (MND)

Carole Truesdale

Fri 3/30/2018 11:01 PM

To:nhubbard@morrobayca.gov <nhubbard@morrobayca.gov>;

Cc:Carole Truesdale <carole_wing_slo@hotmail.com>;

RECEIVED

MAR 30 2018

City of Morro Bay
Public Works Department

Dear Ms. Hubbard,

Comments Regarding the 3300 Panorama Drive Mitigated Negative Declaration (MND)

Page 3: (bottom paragraph) Project Site is **NOT** "surrounded by high-density residential to the west and south." There are existing Single-Family homes, which are one and two-stories. Please correct.

7.1

Page 11: Site Demolition Map fails to show location of Sicily Street and its relation to Project Site.

7.2

Page 13: Security Gates will be located exactly where on Project Site? Please show on Maps and describe in document.

7.3

Page 16: Why is the property owner spending vast amounts of money to clear the Project site, if he has "... no known or anticipated specific future development plans for Project Site."? Please explain.

7.4

Page 17: Map fails to show location of Sicily Street on Map.

7.5

Page 19: Table fails to state number of truck trips per day.

7.6

Page 21: "Environmental Setting and Impacts #18 Utility/Service Systems" should have been checked for "Potentially Significant Impact" because of existing old water & sewer pipes under the streets that may be damaged by the proposed heavy truck loads; and the potential for loss of water/sewer services during their repair or replacement. The affected streets are Sicily St., Main St., Tahiti St., Yerba Buena, Panorama St.

7.7

Page 28: The Project Site property owner must address the possibility of implementing a Single-Family Planned Development on the Project Site. The Project Mitigated Negative Dec. fails to address this important issue. This is

7.8

called "piecemealing of project" under CEQA. An EIR must include an analysis of the environmental effects of future expansion or other action if it is a reasonably foreseeable consequence of the initial project (a Demolition Project), and the future expansion or action (a Single Family Planned Development) will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. Please address this issue.

7.8
(cont'd)

Page 31: Will Highway 41 be the route to haul demolished material to the North County Recycling Center in Paso Robles? What route will be taken?

7.9

Page 73: Who is responsible for the Before & After Video Inspections water, sewer pipes, street conditions, of proposed truck routes? How will the Before & After conditions be documented, and by whom? Where will the videos be on file?

7.10

Page 76: Where will the proposed non-potable water truck get its non-potable water?

7.11

Page 77: The Project has impacts that are cumulatively considerable - the incremental effects of probable future projects such as a Single-Family Planned Development subdivision. This issue must be addressed.

7.12

Thank you for responding to my questions...my contact email is:
carole_truesdale@hotmail.com.

Kind regards,

Carole Truesdale

"Food without wine is a corpse; wine without food a ghost. United and well matched, they are as body and soul; living partners!" chef...Andre Simon (1877-1970)

MND 18.PC 7. Response to: Carole Truesdale (March 30, 2018)

- 7.1 Thank you for your comments. The commenter requests that the statement "...surrounded by high-density residential to the west and south" be revised to reflect single-family homes which are one and two stories.

This sentence has been revised to state that the project site is surrounded by single-family residential development (refer to Page 3).

- 7.2 The commenter states that the Site Demolition Map fails to show the location of Sicily Street and its relation to the project site.

The Site Plan has been revised to show the location of Sicily Street and access gates. The updated Site plan is included in the Final IS/MND.

- 7.3 The commenter requests that the locations of the security gates be shown on project maps and described in the document.

Refer to Response to Comment 7.2 above.

- 7.4 The commenter asks why the property owner is spending vast amounts of money to clear the project site if he has no known or anticipated specific future development plans for the project site.

The inquiry concerning the property owner's intentions for investing in demolition to clear the property of the long-abandoned jet fuel facilities is not relevant to an appropriate environmental analysis of the impacts of the project. There are no current proposals for any further development of the property beyond the removal of the tanks, piping, and concrete as detailed in the Project Description. Removing the tanks may be required for any future different use of the site. However, the potential for a future use of the property does not change the scope or nature of the demolition activities being proposed under the project.

- 7.5 The commenter states that the Post-Grading Plan Map does not show the location of Sicily Street.

Refer to Response to Comment 7.2 above.

- 7.6 The commenter states that Table 2 fails to state the number of truck trips per day.

Table 2 on Page 19 details the total number of each type of truck trip and its relevant load type. That is further detailed on pages 71 and 72 of the MND. The total number of truck trips is projected to be 131 round trips. Assuming the project takes the entire 90 projected days to complete, the average daily round trips for the trucks would be 1.5. Assuming the work can be completed in 60 days, the average round trip for trucks would be 2.2. It is not likely that the peak number of daily round trips for trucks during the project would total more than 15-20 in any one day, though, based on existing work plan schedules, it is unlikely such a peak would actually occur.

- 7.7 The commenter states that the "Environmental Setting and Impacts #18 Utility/Service Systems" should have been checked for "Potentially Significant Impact" because of existing old water and sewer pipes under the streets that may be damaged by the proposed heavy truck loads and the potential for loss of water/sewer services during their repair or replacement.

The detailed topics that the checklist recommends be assessed under the Utilities/Service Systems section are set forth on page 75 in Table 18 of the MND. Based on the findings of the Truck Traffic Impact Analysis prepared for the proposed project by DPSI (included as Appendix F to the Draft IS/MND), loading fatigue of the pavement from truckloads should not be a concern along the proposed primary and secondary traffic

routes. The primary and secondary traffic route (a majority Main, Tahiti, and Sicily Street) all have high Pavement Condition Index (PCI) ratings (Category I – Very Good), indicating that road conditions are capable of handling the proposed traffic to and from the proposed project. The trucks that are proposed to be used are five-axle vehicles (tandem rear axles) with dual wheels, which will reduce the pavement fatigue damage by spreading out the loads. A typical garbage truck has a front axial weight of 20,000 pounds and 35,000 pounds distributed over the tandem rear axles. The proposed five-axle trucks that will be used for the demolition have a lighter 12,000 pounds distributed to the front axle and 34,000 pounds distributed over each tandem rear axle even though they are carrying a heavier load. Therefore, the point loading on the sewer and water mains from the proposed five-axle trucks would make the weight over each axle lighter than a typical garbage truck. Also, for every trip over the pavement, a standard garbage truck does more harm to the fatigue of the road than each trip from the 5 axle semi-truck trailer. The MND properly determines that as to each of those items, there is either no impact or a less-than-significant impact. It would therefore be inaccurate to revise the checklist on page 21 to state that the MND determined there was a potentially significant impact to old water and sewer pipes because that is not consistent with the assessment conducted for the MND.

Further, there is also no substantial evidence in the record to support a conclusion that there is any potentially significant impact to those City facilities due to the use of the streets by the trucks. Nevertheless, the MND incorporates Mitigation Measure TR-1, which requires both a video inspection of the proposed truck traffic route, and a requirement that the project owner repair any damage to City facilities (including sewer and water lines underlying the streets of the truck route) caused by the demolition activities. While this matter is properly addressed in a different topic category from what the commenter references, it is nevertheless addressed. The MND fully supports the determination that these potential impacts of the project are less than significant with the incorporated mitigation.

- 7.8 The commenter states that the property owner must address the possibility of implementing a single-family planned development on the project site and states that the MND fails to address this important issue.

This comment is incorrect in its assertion that the property owner must address the possibility of implementing a single-family development on the project site. First, and most importantly, there is not any current pending proposal for a single-family development. Second, the commenter incorrectly relies on a claim that the MND's failure to address some future potential use of the property violates legal standard prohibiting "piecemealing" of projects. Those relevant legal standards were initially formulated by the California Supreme Court in *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376.

The Supreme Court in *Laurel Heights* sought a standard that balanced two important considerations. The Court recognized the principle that environmental evaluations of an activity should not be submerged by chopping a project into many little ones that have minimal environmental impact. However, the Court also gave deference to "the fact that premature environmental analysis may be meaningless and financially wasteful." (*Laurel Heights Improvement Assn., supra, at p.396*)

As a result, the Court established the following standard, which it emphasized was very much based on the facts of each case. Specifically, CEQA compliance requires an analysis of environmental effects of future expansion or other action only if two factors are both satisfied: (1) the other action is a reasonably foreseeable ***consequence*** of the initial project; and, (2) the future expansion or action is significant in that it will ***likely change the scope or nature*** of the initial project or its environmental effects (emphasis added). Absent these two circumstances, a future potential action need not be considered in the evaluation of environmental impacts of a proposed project. (*Laurel Heights Improvement Assn., supra, at p. 396*)

Removal of the long unused, and blighting facilities on the site will not create the consequence of future residential development on the site. Such future development will, if and when it occurs, be a consequence

of the zoning designations that are already allocated to the site. Removal of the tanks may be required for a new future different use of the site. However, that removal does not create a residential use as a direct consequence. The first of the two *Laurel Heights* standards cited above is therefore not satisfied.

In addition, any future residential development project will not change the scope or nature of the intended removal of the long-abandoned jet fuel storage and distribution system. The remediation standards that are assured by the permits involve stringent requirements for a Tank System Closure Permit that includes environmental sampling, an approved Hazardous Waste Management Plan and Site Safety Plans. Nothing in the Record suggests that the standards to be satisfied by these remediation requirements, or the environmental impacts associated with such remediation requirements, are being impacted by any pending development proposal. The remediation standards may be informed by the site's present zoning (and its adjacency to existing residential uses). However, those circumstances are part of the existing environmental baseline with respect to the remediation standard evaluations. They are not the result of any foreseeable future project. The second of the two *Laurel Heights* standards cited above is therefore also not satisfied.

Other relevant CEQA cases have confirmed that "[W]here future development is unspecified and uncertain, no purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences." *Lake County Energy Council v. County of Lake* (1977) 70 Cal.App.3d 851, 855. (Cited by *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 738 and *Rio Vista Farm Bureau Center v. County of Solana* (1992) 5 Cal.App.4th 351, 372).

This matter involves a Mitigated Negative Declaration, not an EIR. However, the legal standard remains the same. Where, as here, there is no pending development proposal for the site, and where such future development proposal would have no foreseeable impact on the nature of the tank removal project, no purpose would be served by the pure speculation of assessing a future unknown residential development as part of the present Permit evaluations. Issuance of the Permits makes no new commitment by the City to future residential development on the site. In addition, issuance of the Permits will not hinder future decision making with respect to the environmental consequences of any future residential development.

CEQA Guidelines Section 15165 address the analysis required for multiple and phased projects. That Guideline does not require analysis of an aspect of a project that is part of some larger undertaking that an agency is not pursuing or approving.

"The fact that the Guideline refers to "projects ... to be undertaken" confirms that it is intended to apply only to a project component that an agency is proposing to implement. It does not extend to preliminary plans, feasibility studies or contemplated development the agency is not proposing to approve or undertake". [*Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1358, at FN 9]

It is true that remediation activities will be conducted on a site zoned for future residential use. However, no changes are being proposed to any existing land use policies, and there is no pending project for any residential development of the site. Any evaluation of the potential environmental impacts of future residential development of the site are no more known now than they were at the time such zoning was allocated to the site. CEQA was presumably satisfied at the time such zoning was adopted. No change is being proposed to such zoning, no land division is sought, and no use that is reliant on the existing zoning is being approved. No further assessment of the environmental impacts of the existing zoning is therefore required. (See generally, *Black Property Owners Assn. v. City of Berkeley* (1994) 22 Cal.App.4th 974, 985).

Some Courts have applied a slightly different standard concerning whether a development project is being piecemealed. Those Courts have evaluated whether the current development activity has "independent utility". If it does, then that project will be considered as the relevant project even where there is some,

albeit speculative, future development that is dependent on the current project. (*Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.41 712, 736-737; *Planning and Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.41h 210, 148.) It is clear that removal of the blighting tanks, and further remediation of the site, provides independent utility irrespective of any potential future residential development.

- 7.9 The commenter asks if Highway 41 will be the route used for hauling demolished material to the North County Recycling Center in Paso Robles.

The North County Recycling Center in Paso Robles was used as a reasonable example at the time the MND was prepared because the final local receiving recycling facility had not yet been determined. Currently, the demolished materials are anticipated to be hauled to one of the following three potential facilities:

Santa Maria Area Recycling Terminal
and Bedford Enterprises
1940 W Betteravia Rd.
Santa Maria CA 93455

Roxsand
2280 Hutton Rd
Nipomo CA 93444

Cal Portland
1625 E Donovan Rd
Santa Maria CA 93456

The truck route is expected to be Highway 1 South to Highway 101 South.

- 7.10 The commenter asks who will be responsible for the before & after video inspections of water, sewer pipes and street conditions along proposed haul routes and questions how the before and after conditions will be documented, by whom, and where they will be maintained.

The MND includes Mitigation Measure TR-1, which specifies that the Public Works staff will conduct periodic inspections to verify compliance with the mitigation measure. As a result, the City is responsible to ensure that the required before and after video inspections of relevant City facilities is completed. The relevant videos would constitute public records of the City.

- 7.11 The commenter asks where the proposed non-potable water truck will get its non-potable water.

The intention is to use municipal water from the onsite service or a hydrant meter. If either of those water sources provide "potable water" versus non-potable water", the reference to the non-potable water truck in the equipment list on page 9 of the MND, as well as references to nonpotable water on pages 36 and 76 of the MND should be revised to delete reference to nonpotable. It is also important to confirm that the reference to non-potable was not intended to reflect use of reclaimed water. Our contractors have investigated the potential of using reclaimed water for the uses described for non-potable water in the MND. That contact was conducted with the Morro Bay/Cayucos Wastewater Treatment Plant and the Los Osos Water Recycling Facility. Neither facility offers reclaimed water to the public. As far as we know, there is no local source for reclaimed water. It is on that basis that the intention is to use municipal water from the onsite service or a hydrant meter.

- 7.12 The commenter states that the project has cumulatively considerable impacts related to the incremental effects of probable future projects such as a single-family planned development subdivision and requests that this issue be addressed.

Please refer to Response to Comment 7.7, above for a discussion pertaining to the project description and piecemealing.

Nancy Hubbard

From: Kristen Headland <DonKris@Charter.Net>
Sent: Friday, March 30, 2018 4:36 PM
To: Nancy Hubbard
Subject: 3300 PANORAMA DRIVE, MORRO BAY

Hello Nancy,

I have review the new documents for 3300 Panorama Drive and would like to point out an error. On Saturday June 24, 2017 and Sunday, June 25, 2017 several trees were cut down on the property. The Planning Department's new documents report that the trees were cut down in February 2017. I filed a City Code Violation regarding the illegal cutting down of the trees and you have my document. Why do you believe these trees were cut down in February 2017?

8.1

Thank You
Kristen Headland

MND 18.PC 8. Response to: Kristen Headland (March 30, 2018)

- 8.1 Thank you for your comment. The commenter states that several trees were cut down on the property on June 24-25, 2017, not in February 2017 as stated in the Draft IS/MND. The IS/MND has been revised to reflect this correction (refer to Pages 7, 15, and 25).

March 27, 2018

Mr. Joseph W. Pannone, Esq.
Morro Bay City Attorney

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

Re: CASE NO.: UP0-440 and CP0-500, Draft Mitigated Negative Declaration

Mr. Pannone,

The Revised Draft Mitigated Negative Declaration (February 16, 2018) ignores the violation of the CEQA piecemealing provision. The applicant, Chris Mathys stated at the last Planning Commission Hearing on the application (January 3, 2017) that he and his associates planned to develop the site for residential housing, after the tanks were removed. Furthermore in earlier documents, he referred to the various phases (Phase I, Phase II) of the project, once again alluding to the continued development of the project beyond the removal of the tanks.

The CEQA law requires that an EIR be prepared for the entire project start to finish, including the demolition of the tanks, through the building of houses in the R-1 zoned property. The Draft Mitigated Negative Declaration dated February 16, 2018, fails to reconcile the requirement of a proper EIR.

The piecemealing violation was first brought to our attention by the law office of Cynthia Hawley at the MB Planning Commission hearing on January 3rd, 2017. The violation was reinforced by the same law office in March of 2017, clarifying the issue of piecemealing and the protocol for preparing an EIR vs a MND.

As we understand the current draft MND, the director of the Morro Bay City Community Development Department, Mr. Scot Graham, is the local administrator of CEQA regarding the Revised Draft Mitigated Negative Declaration.

Our questions: As there is no stated purpose in the MND regarding the removal of the tanks, is the applicant planning to turn the site into a park, return it to its natural state, proposing development? How does the Community Development Department-Planning Division plan on reconciling the piecemealing violation of CEQA regarding CP0-500, UP0-440?

We would appreciate a written response to our question as soon as possible. The ten day response time required for properly submitted documents will be perfectly adequate.

Morro Bay Stakeholders: Ed Griggs, Kristen Hedland, Annie Pavarski, Carole Truesdale
Carole Truesdale, Ed Griggs, Kristen Hedland, Annie Pavarski

Attachments: Comments on the Proposed Approval of CP0-500, UP0-440 January 2017
Application of the California Environmental Quality Act, March, 2017

CC: MB City Council; Planning Commission; Nancy Hubbard; Planning & Development; City of Morro Bay Lead Contact Agency, City Manager

9.1

Application of the California Environmental Quality Act to the proposed demolition of jet fuel infrastructure and residential development at 3300 Panorama Avenue in the City of Morro Bay.

What is the difference between a negative declaration and an environmental impact report (EIR)?

According to the California Resources Agency:¹

A Negative Declaration is a document that states, upon completion of an initial study, that there is no substantial evidence that the project may have a significant effect on the environment.

An EIR is an informational document which will inform the public agency decision-makers and the public generally of:

- the significant environmental effects of a project
- possible ways to minimize significant effects
- reasonable alternatives to the project

The negative declaration is required to provide a description of the proposed project and make findings related to environmental conditions. It includes a copy of the initial study, which provides enough environmental information to support the findings that there is no substantial evidence that the project may have a significant effect on the environment. A mitigated negative declaration includes mitigation measures that are added to the project that purportedly avoid or reduce potentially significant effects to a level of insignificance.

The EIR, on the other hand, is "the heart of CEQA." An EIR is prepared when a project *may* cause a significant effect on the environment and serves to inform the public and the agency of the environmental impacts a project *may* cause. *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795.

"The purpose of an environmental impact report is to identify the significant effects of a project on the environment, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided." The mitigation measures and alternatives are the core of the EIR. *Citizens of Goleta Valley v Board of Supervisors* (1990) 52 Cal.3d 553.

The only way to analyze the impacts of this project and to avoid and/or mitigate them is through an EIR.

¹ http://resources.ca.gov/ceqa/flowchart/lead_agency/EIR-ND.html

Along with other alternatives, an EIR is required to consider the "no project" alternative – the cancellation of the project – and to identify the environmentally superior alternative. CEQA Guidelines Article 9, Contents of Environmental Impact Reports.

How does the agency decide between a negative declaration and an EIR?

According to the California Resources Agency as cited above:

A Negative Declaration can be prepared only when there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment. CEQA section 21080 and CEQA Guidelines section 15070.

An EIR must be prepared when there is substantial evidence in the record that supports a fair argument that significant effects may occur. CEQA section 21080; Guidelines section 15384 (fair argument); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68.

CEQA requires a specific sequence of steps.

The first step is a determination of whether CEQA applies to a project. Once a project application is accepted as complete, a preliminary environmental evaluation is required to determine whether a project is subject to CEQA. (Guidelines §15060)

If CEQA does apply, the next step is to determine whether an Environmental Impact Report is required. This determination is made "... either during preliminary review under §15060 or at the conclusion of an initial study..." (Guidelines §15081) In this case, the City of Morro Bay determined that an EIR was not required based on information in the Initial Study.

Under Guidelines §15064 "If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the agency shall prepare a draft EIR." (According to the Public Resources Code, use of the word "shall" means an act is mandatory.)

If, for example, the Initial Study in the 3300 Panorama Project shows that there is substantial evidence that the proposed project may have a significant effect on the environmentally sensitive habitat area on the site, an EIR is required under CEQA. In this case, while the City admits that the demolition and removal of pipeline will occur in the ESHA setback area and may impact ESHA on the site, it did not prepare an EIR to analyze those possible impacts in violation of CEQA.

The City also did not consider substantial evidence in light of the whole record of the proposed project. It did not consider the fact that the property is a superfund site and that disturbance of the infrastructure and soil may cause harms to soil,

water, air, and humans. And, it did not consider the whole project including the second phase of residential development and whether the whole project may have an effect on the environment. More on the requirement for an EIR is in the report provided to the City.

The failure to include the whole Project in the environmental review results in serious violations of CEQA, denies the public its right to participate in an informed decisionmaking process, and threatens potential harms to public environmental resources and, in this case, to humans because the property is a superfund site.

What is piecemealing?

Piecemealing is the segmentation of the environmental review of a project for the purpose of evading environmental considerations of the project as a whole.

Is the City of Morro Bay piecemealing the environmental review of planned development of the 3300 Panorama site?

Yes. The demolition and removal of the jet fuel infrastructure is the first step toward residential development of the site and the City is reviewing the demolition in isolation from the residential development in order to evade consideration of the environmental impacts of the project as a whole.

What are the laws that back this up?

CEQA Guidelines (California Code of Regulations) Section 15003(h) states that:

(h) The lead agency must consider the **whole** of an **action**, not simply its constituent parts, when determining whether it will have a significant environmental effect.

Case law is clear that piecemealing occurs when the project being reviewed is the first step toward future development. (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 398)

Here are some examples:

- Annexation of land into a city so it could be rezoned for development. (California Supreme Court in *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 269-270)
- Rezoning land as the first step to approval of a specific development project. (*City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 244)
- Approval of road and sewer construction “to provide a catalyst for further development”. “...construction of the roadway and utilities cannot be considered in isolation from the development it presages.” (*City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1337)

In the case of *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, the California Supreme Court set aside an EIR for failing to analyze the impacts of the reasonably foreseeable second phase of a multi-phased project.

How are the decision makers affected by piecemealing the whole project into two separate projects?

Because this project has been piecemealed into phases and the demolition phase is being analyzed separately for environmental impacts and project approval, the Planning Commissioners and the Council Members risk:

- a precommitment to the next phase of the project – the residential development phase;
- loss of an open mind for later review of data and analysis of the residential development of the site for which the first phase has already been approved;

Case law has linked “precommitment” to a lack of transparency. (Pugsley, *Timing is Everything: Ensuring Meaningful CEQA Review by Avoiding Improper “Precommitment” to a Project*, California Environmental Law Reporter, Matthew Bender, May 2009, p. 244.)

How do you determine what amounts to the whole project?

A proposed project is part of a larger project for CEQA purposes if the proposed project is a crucial functional element of the larger project such that, without it, the larger project could not proceed. *Communities for a Better Environment v. City of Richmond* (2010)184 Cal.App.4th 70, 99.

Where the expansion of the sewer system was a required or crucial element of a residential development without which the development could not go forward, the EIR had to consider the environmental effects of the sewer expansion. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729-731.

Clearing the site by demolition and removal of the jet fuel infrastructure is part of the residential development – the whole project – for purposes of CEQA review of environmental impacts because it is the first step toward the residential development and it is a required element of the residential development that could not go forward without it.

Should the project description in the Initial Study include a description of the foreseeable residential development for which the demolition of the jet fuel infrastructure is the first step?

Yes. The purpose of the Initial Study is to determine whether an environmental

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impact report or a negative declaration is required by CEQA. Since a "project under CEQA means "... the whole of an action...." (CEQA Guidelines section 15378) a project description is required to include the whole action. A negative declaration is legally inadequate where it does not address the impacts of anticipated future plans. This is one reason why an EIR is required for this proposed project.

"Where an agency fails to provide an accurate project description ... a negative declaration is inappropriate." (Lighthouse Field Beach Rescue v. City of Santa Cruz (2005) 131 Cal.App.4th 1170, 1202)

"...an EIR must include a analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376.

The law is clear that a failure to provide information required by CEQA – such as a project description of the whole project – is a violation of CEQA. The purposes of CEQA are subverted if material necessary for informed decisionmaking and informed public participation is omitted. *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892.

The environmental review within the Initial Study of the proposed 3300 Panorama project must include the future residential development because that second phase is a reasonably foreseeable consequence of the clearing of the property by demolition of the jet fuel infrastructure and the foreseeable residential development will change the scope and nature of the demolition and its environmental effects.

Therefore, it does not matter whether the property owners claim that they haven't decided yet whether they will build residences on the site or that they might sell the property to another owner or that the owners have not filed an application to develop the property with residences for which it is zoned. None of these are the test for whether the foreseeable future residential development must be included in the environmental review of the demolition phase of the whole project.

Should the City approve the Negative Declaration where the project description did not include the whole project?

No. The City of Morro Bay may legally decide whether a negative declaration or an EIR is required only after a description of the whole project is included in the initial study. And, as a practical matter, without a description of the whole project – the demolition and the residential development – it is impossible for the Planning Commission, the City Council and the public to decide whether an EIR is required.

**COMMENTS ON THE PROPOSED APPROVAL OF CDP #CPO 500 AND
CONDITIONAL USE PERMIT #UPO-440**

Demolition of military jet fuel tanks, piping and pump equipment at 3300 Panorama

Prepared by Cynthia Hawley, Attorney

January 3, 2018

The Planning Commission should deny the project application for the following reasons.

The whole project is being unlawfully piecemealed.

This project amounts to pre-construction preparation for residential development of the site. Under CEQA a "Project means the whole of an action" that has a potential for causing a direct or indirect change in the physical environment. CEQA forbids piecemealing environmental review of a project. It prohibits segmentation of the environmental review of a whole action for the purpose of evading environmental considerations of the project as a whole. In the case of *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, the California Supreme Court set aside an EIR for failing to analyze the impacts of the reasonably foreseeable second phase of a multi-phased project.

The demolition and removal of structures is not a stand-alone project. Rhine LP and Morro 94, LLC or CVI Group, LLC (see below) are not clearing the property of jet fuel tanks and delivery systems on soil known to be contaminated with toxic jet fuel for the benefit of the community. As a matter of law, the whole project that has the potential for causing direct or indirect changes in the environment includes the reasonably foreseeable next phase of residential development of the site for which the site is now being cleared.

In addition, the City staff's recommendation to unlawfully approve the proposed segment of the whole project is a denial of the public's right to participate in an informed decision making process - to know and deliberate information about the whole project including the potential environmental effects of the whole project and mitigation measures to reduce those effects.

For example, according to the staff report, in 1997 the Regional Water Quality Control Board indicated that no further action was identified, as no further development was proposed at that time and in the mid 1990s the California Department of Toxic Substance Control (DTSC) "... acknowledged that when the site is converted to residential use it should be reassessed for the presence of contaminants and the need for additional remediation (p.11) If the City approves the first phase of the project - preparation of the site for residential development as if clearing the property was not part of the conversion to residential use - the conversion will have occurred without

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reassessment of the soil and water for the presence of contaminants and of the need for additional remediation / mitigation. By this piecemealing the City would evade environmental considerations of the project as a whole in violation of CEQA.

The City must, as a matter of law under CEQA step back and require the developers to prepare a permit application that contains information about the whole project including demolition of existing structures, reassessment of the site for the presence of contaminants, determination of potentially needed remediation, and the residential development.

The project requires an environmental impact report (EIR) under CEQA.

According to the California Supreme Court, "...since the preparation of an EIR is the key to environmental protection under CEQA, accomplishment of the high objectives of that act requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact."¹

In this case, the City's own Initial Study Mitigated Negative Declaration shows that the land in question was used for storage and pipeline transport of jet fuel and is currently a US EPA Superfund site. The land is presumed to be contaminated at this time with total petroleum hydrocarbons and a 1996 report identified hydrocarbons and benzene in soil and groundwater samples. As noted above, in 1997, "No further action was identified" because "...no further development was proposed at that time" and it is "...acknowledged that when the site is converted to residential use it should be reassessed for the presence of contaminants and the need for additional remediation" as noted above.

This substantial evidence in the record provides a fair argument that excavation and disturbance of the soil on this site may have a significant effect on the environment including air quality and water quality and an EIR is required. Even if the project could legally be segmented to allow permitting the demolition of above and below ground structures in isolation of the whole project (which it cannot), an EIR would be required based on the evidence in the record.

Current information, data, and analyses related to soil and water contamination and to the effects the disturbance of the soil and potential release of toxic materials may have on groundwater and air directly adjacent to existing residential development must be provided within an environmental impact report.

¹ *Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75; CEQA Guidelines, California Code of Regulations §15064.

The Mitigated Negative Declaration is inadequate because it does not assess whether the project could exacerbate the contamination that is already present.

According to the California Supreme Court, CEQA requires an agency such as the City of Morro Bay to evaluate existing conditions in order to assess whether a project could exacerbate hazards that are already present.² Note that the law requires evaluation of existing conditions. In this case the City wrongly relies on the results of tests from two decades ago and on tests that may be carried out after project approval and outside of the informed public decision-making process required by CEQA. The law also requires an evaluation of the existing soil and water contamination; that is, collection and analyses of samples and assessments of whether disturbance of the site could exacerbate the hazards already posed by the contamination. No such evaluation of existing conditions has been carried out by the City. Accordingly, the City must require preparation of an EIR that includes evaluation and assessment of whether the whole project could exacerbate hazards that are already present.

The Mitigated Negative Declaration unlawfully precludes informed public decision-making and engages in deferred mitigation.

Fundamental purposes of CEQA are to provide informed public decision making processes that disclose and analyze potential harms that a project may cause to the environment and provide mitigation measures to reduce potential harms before a project is approved. The process the City describes violates these fundamental purposes.

For example, in the face of the admitted likelihood that the project will “disturb areas of previously documented hydrocarbon contamination” the City proposes to approve the project and then, after the project is approved and outside of the public decision-making process, require the applicant to test soils and “mitigate potential health and environmental hazards related to possible exposure” by way of adhering to the requirements of a permit issued by the Air Pollution Control District. (p.11-12)

In addition, the applicants have not submitted an application to County Environmental Health and there is no approved Aboveground Hazardous Materials Storage Tank and Piping Closure permit. Informed public decision making and development of effective mitigation measures depend on analysis of information contained in this application.

² *California Building Industry Assn. v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, 388.

This post-approval gathering and analysis of information and data and post-approval development of mitigation measures precludes the fundamental requirement of CEQA for informed public decision-making prior to project approval and amounts to deferred mitigation.

The statement that the “project site is partially located in the Coastal Commission’s Appeals Jurisdiction” is legally incorrect, misleading and should be corrected.

The City makes multiple statements that the “project site is partially located in the Coastal Commission’s Appeals Jurisdiction.” This claim is meaningless and serves only to cloud the fact that the demolition of the jet fuel infrastructure is appealable to the Coastal Commission.

According to Coastal Act §30603 “types of development” are appealable. Whether a project is appealable depends on whether that type of development is listed in section 30603. A development that is located within 100 feet of any stream is one type of development listed as appealable to the Coastal Commission in section 30603. The proposed development is within 100 feet of a stream and the City’s approval of that development is therefore appealable to the Coastal Commission.

There is nothing “partial” about it and the claim that the “project site is partially located in the Coastal Commission’s Appeals jurisdiction” without immediate clarification that the project is appealable to the Coastal Commission simply provides fodder for needless legal dispute. The City should change all of these false and misleading statements to the straightforward statement that “The project is appealable to the Coastal Commission because it is located within 100 feet of a stream.”

The proposed development is in violation of the Coastal Act and the City’s Local Coastal Program because it is not consistent with the City’s policies for protection of environmentally sensitive habitats.

Policy 11.06 requires buffering setbacks of 100 feet from the boundary of the ESHA and prohibits development within this setback. “Development” for the purposes of the coastal act and issuance of a coastal development permit “...includes grading, removing, dredging, mining, or extraction of any materials; ... demolition, or alteration of the size of any structure ...” Extraction of materials and demolition of any structure are prohibited within the 100 foot setback by the City’s LCP. Development that may be permitted within the setback is subject to review and comment by the California Department of Fish and Wildlife prior to commencement of the development.

The Initial Study admits that “Proposed actions within 100 feet of mapped ESHA [the setback area] include: removal of pumps and associated piping, pipeline(s), and use of equipment to remove one of the large Navy tanks.” Review and comment by the

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Department of Fish and Wildlife that might allow the development within the setback of the stream does not seem to exist. Mitigation of harms in this context is not relevant. The project is explicitly not consistent with Policy 11.06, yet the City does not make a finding to disclose this inconsistency. Instead, even though no new structures are proposed in this phase of the development, the City makes the irrelevant finding that “No new permanent structures are proposed within 100 feet of mapped ESHA, consistent with this policy” giving the false impression that the project is consistent with Policy 11.06.

The project is also inconsistent with Policy 11.06 because this policy allows reduction of the setback only under certain conditions related to subdivisions that do not exist here and a “downward adjustment” of a setback must be established in consultation with the Department of Fish and Wildlife. Again, the Initial Study and MND appear to make no claim of such a consultation.

Policy 11.14

The Initial Study’s analysis of consistency with Policy 11.14 – which also requires the minimum buffer setback from ESHA – admits that “... actions within 50-100 feet of the creek are limited to the demolition and removal of pumps, piping, and tanks and associated equipment use.” The IS does not make a finding that the project is consistent with these requirements of Policy 11.14. It admits the inconsistency. Policy 11.14 also requires assessment of specific factors in relation to protection of biological productivity and water quality of streams including:

- (a) Soil type and stability of stream corridors:
- (b) How surface water filters into the ground:
- (c) Slope of land on either side of the stream; and
- (d) Location of the 100 year flood plain boundary.

The City does not claim to have assessed these factors and does not make a finding that the project is consistent with this requirement of Policy 11.14. The finding made is that “...the project appears consistent with the intent of this policy.” The project is not consistent with the requirements of Policy 11.14.

The list of supporting documents and reports on the City’s web site is incomplete as reports on contamination relied upon by the City are not included.

An informed public decision making process depends on access – by the public and decision makers – to all documents and reports relied upon by the City to prepare the Initial Study Mitigated Declaration, the staff report and the recommended actions. While the City’s web site provides links to, for example, multiple biological reports,

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multiple reports on birds, an arborist report, historic reports, a traffic impact analysis, a demolition site plan, and an air monitoring plan, reports related to jet fuel contamination of soil and groundwater on the site is conspicuously missing. The City should include digital access to the following on its web site along with all other supporting documents:

- *1996 Risk-Based Closure Report* prepared by Flour Daniel.
- *2016 Contingency Plan for Discovered Hazardous Waste by Bedford Contracting, Inc.*
- Documentation of the County of San Luis Obispo Environmental Health Services approval of the Aboveground Hazardous Materials Storage Tank and Piping Closure permit application.

There is a conflict between what is reported to the Governor's Office of Planning and Research (OPR) State Clearinghouse and the Initial Study.

The Planning Commission staff report at pages 5-6 states that "The MND identifies potentially significant impacts associated with Air Quality, Biological Resources, Cultural Resources, Hazards/Hazardous Materials, Hydrology/Water Quality, Noise, and Transportation/Circulation.

The "Project Issues" reported to the OPR State Clearinghouse are Aesthetic/Visual, Agricultural Land, Air Quality, Archaeologic-Historic, Biological Resources, Coastal Zone, Drainage/Absorption, Flood Plain/Flooding, Forest Land/Fire Hazard, Geologic/Seismic, Minerals, Noise, Population/Housing Balance, Public Services, Recreation/Parks, Schools/Universities, Sewer Capacity, Soil Erosion/Compaction/Grading, Solid Waste, Toxic/Hazardous, Traffic/Circulation, Vegetation, Water Quality, Water Supply, Wetland/Riparian, Growth Inducing, Landuse, Cumulative Effects

Claiming project "issues" related to inducing growth, landuse, cumulative effects, water supply, population/housing balance, etc. gives the Clearinghouse and any observer the impression that this negative declaration encompasses environmental review of a phase of the project – residential development of the site – that is not in fact addressed in this negative declaration. This kind of discrepancy creates unnecessary confusion in an already complex and highly contested area of law and municipal activity. The City should correct the list provided to the State Clearinghouse to match the list in the MND.

There is a contradiction in the documents as to who is the property owner / applicant that must be rectified.

The City's staff report states that the owner / applicant, which is represented by an agent, is Rhine L.P. and CVI Group, LLC. However, the application states that the owner / applicant is Rhine LP and Morro 94, LLC. The correct legal ownership of the property

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must be provided for liability purposes. First, Standard Condition 5 requires the "applicant" to indemnify and hold harmless the City in the case of any claim or action as a result of the City's decision related to the project, etc. The correct applicant must be identified in order to enforce this condition. Second, the correct applicant / property owner must be identified for service of process as required by CEQA in the event that litigation under CEQA against the City results from the City's decision.

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MND 18.PC 9. Response to: Letter Presented at City Council Hearing from Ed Griggs, Kristen Headland, Annie Pavarski, and Carole Truesdale, Morro Bay Stakeholders, with Additional Comments Prepared by Cynthia Hawley, Attorney (March 27, 2018)

9.1 Thank you for your letter. We apologize for not responding within the ten days you requested and causing you to feel the need to send a follow-up letter. The Morro Bay Stakeholders' (hereafter referred to as "Stakeholders") correspondence raised concerns regarding the Draft Initial Study/Mitigated Negative Declaration ("IS/MND"), for the proposed demolition of tanks and associated structures at 3300 Panorama Dr., Morro Bay pursuant to UP0-440 and CP0-500 (referred to herein as "project").

As a preliminary observation, we extend our appreciation and respect for the active role of the Stakeholders in the City's civic affairs. Participation by citizenry is key to a healthy and vibrant community.

1. After Removal of the Tanks There Are No Definitive Plans for Project Site

The Stakeholders' correspondence asks what the plans of the applicant are for the project site after the demolition project is complete. That question seems to imply there are definite plans that have already been made, prepared and settled upon for the use of the project site once the tanks are removed. The City is unaware of any such plans and the applicant has not indicated in any concrete fashion such plans are definitive.

We next address the following statement in the Stakeholders' correspondence: "The applicant, Chris Mathys stated at the last Planning Commission Hearing on the application (January 3, 2017) that he and his associates planned to develop the site for residential housing, after the tanks were removed. Furthermore, in earlier documents he referred to the various phases (Phase 1, Phase 2) of the project, once again alluding to the continued development of the project beyond the removal of the tanks."

City staff reviewed the video recording made of the January 3, 2017, Morro Bay Planning Commission hearing concerning the demolition project. After such review, it is unclear where in the record the applicant stated definitive plans to develop the site for residential housing after the tanks were removed. Review does reveal the applicant referred to the existing zoning designation of the subject site. The applicant also stated residential development purposes *could* be proposed for the project site *after* the project site is completely clean and cleared. However, such a statement is not evidence that the applicant (or any other specific third party) has definitive plans to develop the site for residential housing.

The Stakeholders' correspondence also inquires as to what the specific plans of the applicant after the tanks are removed. As of the date of this letter, the City has not received any application from either the referenced applicant or any other applicant for proposed development at the project site subsequent to the conclusion of the project. If such applications are received in the future, then the City will proceed to conduct appropriate and applicable CEQA review of such an application.

The project site is located within the R-1/PD/ESH (Single-Family Residential/Planned Development/Environmentally Sensitive Habitat [ESH]) zoning district and designated by the General Plan and Coastal Land Use Plan as Medium-Density Residential. As the R-1 designation indicates, the district is intended for single-family home development. Within that allowed use

there is a wide range of possible developments that include factors such as lot size, building height, home size, and other standards.

No meaningful CEQA analysis can be done when there are no definitive plans for development of the project site. At the present, it simply is unknown what proposed development, if any, and by whom, may or may not be sought for the project site in the future. In short, with no specific plans to actually develop the project site, there is no ability to prepare a project description, which would then be subject to CEQA analysis. Without that necessary first step, there is no proposed scope or details that can be subject to environmental analysis.

When “future development is unspecified and uncertain, the EIR is not required to include speculation about future environmental consequences of such development.” In fact, “environmental analysis may be meaningless and financially wasteful.” (*Laurel Heights Improvement Assn. v. Regents of Univ. of California*, (1988) 47 Cal. 3d 376, 395-396.) (Analysis equally applicable to an IS/MND.)

The present matter under review is similar to the situation reviewed in 2001 by an appellate court in *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm'rs*. In that case, an EIR was certified for a proposed airport development. Petitioners then alleged (among other issues) the EIR did not properly address future developments that may occur concerning possible runways and taxiways. The appellate court held the project description in the EIR could exclude the construction of a new runway, new high-speed taxiway, and the extension of a runway. That appellate court reasoned those:

projects existed only as concepts in long-range plans that were subject to constant revision. The record is silent with regard to any meaningful planning, decision-making, or any other activity by the [lead agency] moving forward with implementation of any such long-range plans. These are simply statements that at some undefined point in the future, the [lead agency] might try to undertake these projects.” (*Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm'rs*, (2001) 91 Cal. App. 4th 1344, 1361–62.) (Emphasis added.)¹

Similarly, any future development of the project site is speculative at present and is subject to revision; so, there has been no meaningful planning or decision making on the scope and breadth of any possible development. It remains unclear who will even hold title to the property if and when development is proposed.

2. No “Piecemealing” of CEQA Analysis

The Stakeholders’ correspondence asks how the City plans to address an alleged “piecemealing” violation of CEQA concerning CP0-500 and UP0-440. CEQA forbids “piecemeal” review of the

¹ See also *Nat'l Parks & Conservation Assn. v. Cty. of Riverside* (1996) 42 Cal. App. 4th 1505, 1518, (landfill EIR could omit detailed analysis of processing plants because “it is not known where they will be situated and who will be operating them.”); *Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.4th 712, 736, disapproved on another ground in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 576, fn. 6, 38 Cal.Rptr.2d 139, 888 P.2d 1268 (highway EIR could omit detailed analysis of “anticipated,” but “still contingent,” expansion).

significant environmental impacts of a project. (*Aptos Council v. Cty. of Santa Cruz* (2017) 10 Cal. App. 5th 266, 277.)

The issue is whether the project (as proposed by CP0-500 and UP0-440 for demolition of tanks and associated structures at 3300 Panorama Dr., Morro) is actually, for purposes of CEQA analysis, part of a larger project that is *also* subject to current CEQA review. The answer is no.

The seminal 1988 California Supreme Court decision in *Laurel Heights Improvement Assn. v. Regents of Univ. of California* established a two-prong test for determining whether CEQA mandates environmental analysis of a potential future action. The test is “if:

(1) it is a reasonably foreseeable consequence of the initial project; **and**

(2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.” (*Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal. 3d 376, 396.) (Emphasis added.)

As concerns the first prong, the potential for residential development of the project site is a consequence of the *existing* zoning. The potential for residential development, however, is not a consequence of simply removing the tanks. While removing the tanks may be required before there is residential development, such development is not a consequence of tank removal.

More importantly, addressing the second prong, any potential subsequent residential development of the project site has no impact on the scope or nature of the current project or its environmental effects. The existing environmental requirements for the project to proceed do not change whether there is future residential development. The same standards apply regardless of whether there is no subsequent development, the applicant sells the property, or someone develops the property (whether the applicant or a third party).

The *Laurel Heights Improvement Assn.* court went on to hold without both of the two factors referenced above being present, potential future action need not be considered at the present time in CEQA analysis.

Because there is no identifiable “piecemealing” of the subject project, there is nothing for the Morro Bay Community Development Department-Planning Division to reconcile in that regard.

The *Laurel Heights Improvement Assn.* holding also pointed out, if potential future action is not considered at the present time, then it will need to be addressed in subsequent CEQA analysis performed on any potential future project. (*Laurel Heights Improvement Assn., supra*, at p. 285.)

As such, it should go without saying of course, any potential future applications to develop the project site for single-family homes, or for any other use, will be subject to applicable CEQA analysis (just like any other project).

The concerns expressed by the Stakeholders may be addressed by the fact that any proposed future development of the project site for single-family residential units (or any other use) - being a separate project - will require its own submission to the applicable CEQA process.

In closing, we would again like to express our appreciation for the civic engagement and activity of the Morro Bay Stakeholders. We believe this response fully addresses the concerns raised by your correspondence. Thank you for your continued interest in your community.

- 9.2 The Stakeholders included supplemental information pertaining to the application of CEQA to the proposed project. Please refer to Response 9.1 above. No revisions have been made to the IS/MND in response to this comment.

Nancy Hubbard

From: don headland <donkrs88@yahoo.com>
Sent: Friday, March 23, 2018 3:18 PM
To: Aaron Labarre; Tricia Atkins; Carole Truesdale; Annie Pivarski; Ed Grigg; Bill Alpert; Scot Graham; Scott Collins; Nancy Hubbard
Subject: Jet Fuel Demolition Project CPO-500 & UPO-440, 3300 Panorama Drive, Morro Bay, CA
Attachments: CEQAnet - 3300 Panorama Drive, Demolition of Tanks and Associated Structures project.pdf; 2.16.2018.Mitigated Negative Declaration 3300 Panarama.pdf.pdf

Hello Mr. Labarre and Ms. Atkins,

The City of Morro Bay released a new "Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration" for the Jet Fuel Demolition project, CPO-500 & UPO-440 located at 3300 Panorama Drive, Morro Bay, CA. Please see attached copies. There are changes to the new Draft Mitigated Negative Declaration dated February 16, 2018. I would like to know if you have any concerns.

10.1

The demolition site sits in a residential neighborhood so the neighbors and I are concerned for our health and safety. Not to mention the children that use Panorama Drive as their walking route to Del Mar Elementary School and neighbors that use this route for daily walks. I live one-hundred feet from 3300 Panorama Drive and also speak for neighbors who live across the street from this property.

10.2

Your department has been very helpful in reassuring us that this project will be observed by the San Luis Obispo Environmental Health Services to ensure the health and safety of the public and surrounding neighborhoods. We are very grateful for your willingness to meet with us in the past to answer questions and ease our concerns.

10.3

Have you had a chance to review the new Draft Mitigated Negative Declaration dated February 16, 2018? I understand the Hazardous Materials Storage Tank Closure Permit expired on 03-14-2018. Has a new one been issued? If so, may I have a copy of the new permit? Do you have any concerns regarding the new MND?

10.4

Thank you for all your assistance in this all important matter.

Respectfully,

Kristen Headland

498 Yerba Buena Street

Morro Bay, CA., 93442

MND 18.PC 10. Response to: Kristen Headland, Email to County of San Luis Obispo Environmental Health Services, Aaron Labarre and Tricia Atkins (March 23, 2018)

- 10.1 Thank you for your comments. The commenter inquires if the City has any concerns about the new Draft MND dated February 16, 2018. The City has identified all potential impacts associated with the proposed project and has included feasible mitigation measures to address impacts where appropriate in the IS/MND.
- 10.2 The commenter states that the demolition site sits in a residential neighborhood and the commenter expresses concern for the health and safety of neighbors and children that use Panorama Drive as their walking route to Del Mar Elementary School.

As stated in the IS/MND, the project will be required to comply with federal and State laws pertaining to hazardous materials and with the Hazardous Waste Contingency Plan, the Lead Compliance Plan, and the Soil Management and Sampling Plan prepared for the proposed project (refer to Appendix C). Implementation of the project will require implementation of: Mitigation Measures AQ-1 through AQ-7, which would reduce potential air quality impacts to be less than significant; Mitigation Measures HM-1 and HM-2, which would reduce potential impacts related to hazards and hazardous materials to be less than significant; and TR-1, which would designate truck routes, staging areas, queuing areas, and restrict vehicle speeds. Additionally, the truck route proposed in the February 2018 IS/MND is a revised route compared to previously considered routes, specifically designed to avoid conflicts with pedestrians and vehicles travelling to and from the Del Mar Elementary School.

- 10.3 The commenter expresses gratitude for the City's willingness to answer questions and ease public concerns. These comments are noted and do not require revisions to the IS/MND. The City is pleased to have coordinated with the commenters.
- 10.4 The commenter asks if the City has reviewed the new IS/MND dated February 16, 2018 and asks if a new Storage Tank Closure Permit has been issued and requests a copy. The City prepared the new MND and does not have any concerns that are not addressed in the IS/MND. All potential impacts have been adequately addressed through the inclusion of appropriate mitigation measures. A new Storage Tank Closure Permit has not been issued; however, the existing permit may be able to be extended upon request by the project applicant.



Air Pollution Control District
San Luis Obispo County

RECEIVED
MAR 21 2018
City of Morro Bay
Community Development Dept.

March 19, 2018

Ms. Nancy Hubbard
City of Morro Bay
955 Shasta Avenue
Morro Bay, CA 93442

SUBJECT: 3956-2: APCD Comments Regarding the Rhine LP Fuel Tank Demo (UPO-440 and CPO-500)

Dear Ms. Hubbard:

Thank you for including the San Luis Obispo County Air Pollution Control District (APCD) in the environmental review process. We have completed our review of the proposed project located at 3300 Panorama Drive in Morro Bay. The project as proposed involves demolition of two empty fuel tanks and one water tank along with associated pipes, pumps, concrete work and equipment that were used by the Navy to store and transport jet fuel. *The following are APCD comments that are pertinent to this project.*

GENERAL COMMENTS

As a commenting agency in the California Environmental Quality Act (CEQA) review process for a project, the APCD assesses air pollution impacts from both the construction and operational phases of a project, with separate significant thresholds for each. **Please address the action items contained in this letter that are highlighted by bold and underlined text.**

11.1

APCD submitted a CEQA comment letter on this project on April 12, 2016, and it appears that all recommendations from that letter have been incorporated into the revised draft mitigated negative declaration. The proposed changes to the project do not materially affect our recommendations; however, we would emphasize that **all of the comments contained in our previous letter continue to apply to this project**, especially regarding any permissible activities, to wit:

Hydrocarbon Contaminated Soil

This project will require an APCD permit to address proper management of the hydrocarbon contaminated soil prior to the start of any earthwork. This permit will include conditions to minimize emissions from any excavation, disposal or related process. To the extent feasible, the applicant should contact the APCD Engineering & Compliance Division at (805) 781-5912 120 days before the start of excavation to begin the permitting process.

11.2

Project Referral for Rhine LP Fuel Tank Demo
March 19, 2018
Page 2 of 2

Petroleum Storage Tank Removal and Degassing

If degassing and cleaning of the fuel storage tanks is required, it must be done under an APCD permit for tank degassing and cleaning equipment. For more information concerning permit requirements, please contact the Engineering & Compliance Division at (805) 781-5912.

11.3

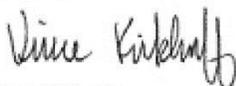
Naturally Occurring Asbestos

The project site is in a candidate area for Naturally Occurring Asbestos (NOA.) The applicant had a geologic report and dust mitigation plan prepared for this site by GeoSolutions, Inc. on May 18, 2016, which was submitted to the APCD. Based on that geologic report, the site is not exempt and must comply with all requirements of the ARB Asbestos Air Toxics Control Measure (ATCM) for Construction, Grading, Quarrying, and Surface Mining Operations. **Pursuant to the ATCM and mitigation measure number 3 of the project dust mitigation plan, the owner or operator shall notify the APCD immediately but not later than the next business day if naturally-occurring asbestos, serpentine, or ultramafic rock is encountered on the project site.** Notification shall be directed to the APCD Engineering & Compliance Division at (805) 781-5912.

11.4

Again, thank you for the opportunity to comment on this proposal. If you have any questions or comments, feel free to contact me at (805) 781-5912.

Sincerely,



Vince Kirkhuff
Air Quality Specialist

VJK/agj

cc: Mr. Chris Mathys
Dora Drexler, Enforcement Division, APCD
Tim Fuhs, Enforcement Division, APCD
Brian Auger, Engineering Division, APCD

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MND 18.PC 11. Response to: Vince Kirkhuff, San Luis Obispo County Air Pollution Control District (March 19, 2018)

- 11.1 Thank you for your comment. The participation of the San Luis Obispo County Air Pollution Control District (APCD) in the public review of this document is appreciated. The commenter provides a brief summary of the project, describes the APCD's role as a commenting agency in the CEQA process, and references the APCD's comment letter previously prepared for the project on April 12, 2016. The commenter acknowledges that all of the APCD's recommendations from the April 12, 2016 letter have been incorporated into the February 16, 2018 Draft IS/MND and states that the proposed changes to the project do not materially affect the APCD's original recommendations. The commenter emphasizes that all of the comments contained in the April 12, 2016 letter continue to apply to this project. The APCD's comments are noted. No revisions to the IS/MND are necessary in response to this comment.
- 11.2 The commenter states that the project will require an APCD permit to address proper management of the hydrocarbon contaminated soil prior to the start of any earthwork. This comment is noted. The applicant will contact the APCD Engineering & Compliance Division before the start of excavation to begin the permitting process.
- 11.3 The commenter states that, if degassing and cleaning of the fuel storage tanks is required, it must be done under an APCD permit for tank degassing and cleaning equipment. This comment is noted. The applicant will contact the APCD Engineering & Compliance Division before the start of excavation to begin the permitting process for tank degassing and cleaning equipment if degassing and cleaning of the fuel storage tanks is required.
- 11.4 The commenter states that, pursuant to the Air Toxics Control Measure (ATCM) and mitigation measure number 3 of the project dust mitigation plan, the owner or operator shall notify the APCD immediately but not later than the next business day if naturally-occurring asbestos, serpentine, or ultramafic rock is encountered on the project site. This comment is noted. The applicant will contact the APCD Engineering & Compliance Division APCD immediately but not later than the next business day if naturally-occurring asbestos, serpentine, or ultramafic rock is encountered on the project site.

Nancy Hubbard

From: Kristen Headland <donkris@charter.net>
Sent: Wednesday, March 14, 2018 9:29 AM
To: Nancy Hubbard
Subject: 3300 Panorama Drive Project

Hello,

Can you provide me copies of "the project description has undergone additional revisions and supporting technical studies have been revised" ? I live near this project and would like to know what more about revisions or reports regarding this project.

Thank You,
Kristen Headland

12.1

Nancy Hubbard

From: Nancy Hubbard
Sent: Thursday, March 15, 2018 9:49 AM
To: 'Kristen Headland'
Subject: RE: 3300 Panorama Drive Project

Kristen,

All of the documents related to the additional studies and information are posted on the website under current planning projects.

<http://www.morro-bay.ca.us/842/Current-Planning-Projects>

There are over 500 pages of data related to this project and the research and studies that have occurred over the past several years, however, I think the Draft Mitigated Negative Declaration (first document in the list under 3300 Panorama) is the best summary of what is being requested and how that will occur. The tables and narrative from page 13 to 18, I think cover most of the detail. Let me know if you need further help.

The full set of documents are also available in the Community Development offices at 955 Shasta Ave if you prefer to stop by and take a look at a hard copy.

Nancy Hubbard
Contract Planner
805-772-6211
nhubbard@morrobayca.gov

From: Kristen Headland [mailto:donkris@charter.net]
Sent: Wednesday, March 14, 2018 9:29 AM
To: Nancy Hubbard <nhubbard@morrobayca.gov>
Subject: 3300 Panorama Drive Project

Hello,

Can you provide me copies of "the project description has undergone additional revisions and supporting technical studies have been revised" ? I live near this project and would like to know what more about revisions or reports regarding this project.

Thank You,
Kristen Headland

MND 18.PC 12. Response to: Kristen Headland (March 14, 2018)

- 12.1 Thank you for your comment. The commenter requested copies of the project description and supporting technical studies for the revised project. The City provided additional information and the link to access the Draft IS/MND and supporting technical studies on March 15, 2018. No revisions to the IS/MND are required in response to this comment.



EDMUND G. BROWN JR.
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT



KEN ALEX
DIRECTOR

March 30, 2018

Nancy Hubbard
City of Morro Bay
955 Shasta Avenue
Morro Bay, CA 93442

Subject: 3300 Panorama Drive, Demolition of Tanks and Associated Structures project
SCH#: 2016081001

Dear Nancy Hubbard:

The State Clearinghouse submitted the above named Mitigated Negative Declaration to selected state agencies for review. The review period closed on March 29, 2018, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Scott Morgan
Director, State Clearinghouse

13.1

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
1-916-445-0613 FAX 1-916-558-3164 www.opr.ca.gov

**Document Details Report
State Clearinghouse Data Base**

SCH# 2016081001
Project Title 3300 Panorama Drive, Demolition of Tanks and Associated Structures project
Lead Agency Morro Bay, City of

Type MND Mitigated Negative Declaration
Description Rhine LP and Morro 94, LLC proposes to demolish and remove two aboveground JP-5 jet fuel storage tanks (131,600 barrels, approx 5,527,000 gallons each, (aboveground 100,000 gallon fire-water tank, and associated pumps and piping from the decommissioned fuel storage site formally known as the Defense Fuel Support Point, located at 3300 Panorama Dr in Morro Bay, CA. All piping attached to the tanks and pumps, both above and below ground, will also be removed, as well as approx 1,050 cy of concrete, including shotcrete on the rim and on the inside of the berms forming containment basins for each of the large tanks, a concrete slab at the northern corner of the site, and the concrete ring foundation beneath the tanks.

Lead Agency Contact

Name Nancy Hubbard
Agency City of Morro Bay
Phone (805) 772-6211 **Fax**
email
Address 955 Shasta Avenue
City Morro Bay **State** CA **Zip** 93442

Project Location

County San Luis Obispo
City Morro Bay
Region
Lat / Long 35° 24' 21.4" N / 120° 51' 47.9" W
Cross Streets Panorama Dr, Tahiti St
Parcel No. 065-038-001
Township 29S **Range** 10E **Section** 14 **Base** MDBM

Proximity to:

Highways 1
Airports
Railways
Waterways Unnamed drainage, Pacific Ocean
Schools Del Mar ES
Land Use single fam res/planned dev/environmentally sensitive habitat; medium density res

Project Issues Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Coastal Zone; Drainage/Absorption; Flood Plain/Flooding; Forest Land/Fire Hazard; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Growth Inducing; Landuse; Cumulative Effects; Aesthetic/Visual

Reviewing Agencies Resources Agency; California Coastal Commission; Department of Fish and Wildlife, Region 4; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 5; Office of Emergency Services, California; Resources, Recycling and Recovery; State Water Resources Control Board, Division of Drinking Water, District 6; Regional Water Quality Control Board, Region 3; Department of Toxic Substances Control; Native American Heritage Commission

Date Received 02/28/2018 **Start of Review** 02/28/2018 **End of Review** 03/29/2018

Note: Blanks in data fields result from insufficient information provided by lead agency.

**MND 18.PC 13. Response to: Governor’s Office of Planning and Research,
State Clearinghouse and Planning Unit (March 30, 2018)**

- 13.1 Thank you for your comment. The participation of the Governor’s Office of Planning and Research State Clearinghouse and Planning Unit in the public review of this document is appreciated. The commenter states that the review period closed on March 29, 2018 and no state agencies submitted comments by that date. The commenter also acknowledges that the City has complied with the State Clearinghouse review requirements for draft environmental documents pursuant to CEQA. No revisions to the IS/MND are required in response to this comment.

Salinan Tribe

Of San Luis Obispo and Monterey Counties

Contemporary Lead
Gary Pierce
805-610-0037



Traditional Lead
John Burch
805-858-8199

March 29, 2018

City of Morro Bay
Attn: Nancy Hubbard
955 Shasta Ave.
Morro Bay, Ca 93422

Subject: Native Salinan consultation for the 3300 Panorama Drive, Demolition of Tanks and associated Structures.

Greetings Nancy,

I have reviewed the proposed project and the Draft Mitigated Negative Declaration.

14.1

I have a couple of changes I would like made. First to Section 5. CULTURAL RESOURCES, under Mitigation and Monitoring on page 53 in Mitigation Measure CR-2: in the fifth sentence I would like the wording "Native American monitor" changed to Playano Salinan and Obispeno Chumash. Also, in Mitigation Measure CR-3: in the eighth sentence I would like the wording "Native American representative", changed to Playano Salinan and Obispeno Chumash as these are the Native people culturally affiliated to the project area as stated on page 50 of the Environmental Setting, and as the Native American Heritage Commission states that cultural monitors should be culturally affiliated to the project site.

14.2

Thanks so much,
Patti Dunton
Patti Dunton, Tribal Administrator

7070 Morro Road, suite A, Atascadero CA 93422; info@salinatribe.com

*Mailed
3/30/18
Rec'd
4-2-18*

MND 18.PC 14. Response to: Salinan Tribe of San Luis Obispo and Monterey Counties, Patti Dunton (March 29, 2018)

- 14.1 Thank you for your comment. The participation of the Salinan Tribe of San Luis Obispo and Monterey Counties in the public review of this document is appreciated.
- 14.2 The commenter requests that text in Mitigation Measures CR-2 and CR-3 be revised to be “Playano Salinan and Obispeno Chumash” instead of “Native American monitor” and “Native American representative”. The text in Mitigation Measures CR-2 and CR-3 has been revised to state “locally affiliated Native American monitor” and “locally affiliated Native American representative”, respectively.