

City of Morro Bay

City Council Agenda

Mission Statement

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

SPECIAL MEETING

**THURSDAY, JANUARY 3, 2013; 6:00 P.M.
VETERAN'S HALL - 209 SURF STREET, MORRO BAY, CA**

- I. ESTABLISH QUORUM AND CALL TO ORDER**
- II. MOMENT OF SILENCE**
- III. PLEDGE OF ALLEGIANCE**
- IV. PUBLIC COMMENT**
- V. DISCUSSION AND DIRECTION RELATING TO CONTINUING OR TERMINATING THE AGREEMENT WITH DUDEK, MCCABE, AND/ OR DELZEIT FOR WASTEWATER TREATMENT PLANT PROJECT CONSULTANT SERVICES**
- VI. DISCUSSION AND DIRECTION RELATING TO THE CITY'S ROLE, POSITION AND PARTICPATION AT THE JANUARY 10, 2013 COASTAL COMMISSION HEARING ON THE WASTEWATER TREATMENT PLANT PROJECT**
- VII. APPROVAL OR DENIAL OF RESOLUTION NO. 07-13 OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA REQUESTING CALIFORNIA COASTAL COMMISSION DENIAL OF APPLICATION NUMBER A-3-MRB-11-001**
- VIII. APPROVAL OR DENIAL OF RESOLUTION NO. 08-13 OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA REQUESTING CALIFORNIA COASTAL COMMISSION APPROVAL OF APPLICATION NUMBER A-3-MRB-11-001**

VII. ADJOURNMENT

THIS AGENDA IS SUBJECT TO AMENDMENT UP TO 24 HOURS PRIOR TO THE DATE AND TIME SET FOR THE MEETING. PLEASE REFER TO THE AGENDA POSTED AT CITY HALL FOR ANY REVISIONS OR CALL THE CLERK'S OFFICE AT 772-6205 FOR FURTHER INFORMATION.

COPIES OF STAFF REPORTS OR OTHER PUBLIC DOCUMENTATION RELATING TO EACH ITEM OF BUSINESS REFERRED TO ON THIS AGENDA ARE ON FILE IN THE OFFICE OF THE CITY CLERK AND AVAILABLE FOR PUBLIC INSPECTION AND REPRODUCTION AT COST AT CITY HALL, LIBRARY, AND MILLS STATIONERY.

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

6. **SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

(a) The City/District may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City/District suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

The Agreement with Delzeit contains the following similar provision regarding termination of the Agreement:

8.00 **TERMINATION OF AGREEMENT**

8.01 **TERMINATION OF NOTICE.** Notwithstanding any other provisions of this Agreement, any party hereto may terminate this Agreement, at any time, without cause by giving at least ten (10) days prior written notice to the other parties to this Agreement.

The City of Morro Bay certainly has the ability under the Agreements to terminate the Agreements and have no further obligation to pay any sums to Dudek, McCabe and/or Delzeit for any work performed after notice of termination is given. However, termination of the Agreements may result in exposure to litigation and damages between the City and Cayucos based upon a variety of legal theories. I have spoken with each of the Council members individually about the risk and potential exposure to litigation and damages. I am also available if the Council decides to call a closed session to discuss it further.

CONCLUSION:

Council should review the attached Status Report and provide direction to Staff.

MEMORANDUM

**MORRO BAY-CAYUCOS J.P.A.
WASTEWATER TREATMENT PLANT**

To: Honorable Mayor and City Council, City of Morro Bay
Honorable President and Board of Directors, Cayucos Sanitary District

From: Dennis Delzeit, P.E., Project Manager

Date: December 1, 2012

Subject: Status Report on Upgrade Project as of December 1, 2012

Activities during November 2012

- The City Manager, the Public Services Director/City Engineer and Susan McCabe attended the California Coastal Commission (CCC) meeting on November 14 and 15, 2012 in Santa Monica. The Public Services Director/City Engineer spoke under public comment to the Coastal Commission and requested that the de novo hearing be scheduled for the December meeting in San Francisco. The CCC executive director replied that the CCC staff is targeting the hearing for the January meeting in Pismo Beach. This was the fifth request for scheduling the hearing, directly to the Commission: One by the City Manager, three by the project manager and one by the Public Services Director/City Engineer.
- MBCSD staff, Dudek and the project manager continue to respond to questions from the CCC staff by e mails and conference telephone calls. These information requests from CCC staff are questions concerning the Fine Screening Report submitted in November 2011. No new information has been prepared by the MBCSD team. The MBCSD staff and consultants have provided timely responses to the many requests for information and clarification from CCC staff during the past several months.
- McCabe & Company continues to communicate in meetings and phone discussions with Coastal Commissioners to provide project updates.
- The monthly status report was provided to the Regional Water Quality Control Board staff.
- The project web site was updated.

Looking Ahead-December 2012 and January 2013

It is anticipated that the de novo hearing for the Coastal Development Permit will be scheduled for the January 2013 meeting in Pismo Beach.

Fiscal Impact:

- There are no new expenditures to report.

Discussion/Project Overview:

Major Milestone Schedule

- Council certified the EIR and approval of the Conditional Use Permit and Coastal Development Permit January 11, 2011
- Deadline for Coastal Commission Appeals January 31, 2011
- Coastal Commission substantial issue hearing March 11, 2011
- Public Outreach/Workshops June 27 & 28, 2011
- Deadline for the rough screening criteria and alternative sites public comments July 15, 2011
- Coastal Commission staff level meeting in Santa Cruz August 25, 2011
- Public release of the Rough Screening analysis September 1, 2011
- **Rough Screening Analysis Presentation to the JPA** September 8, 2011
- Public workshop- Alternative Sites Update September 19, 2011
- Deadline for public comments on the Rough Screening Analysis and Fine Screening criteria and alternative sites September 30, 2011
- Public release of the draft Fine Screening analysis November 3, 2011
- **Fine Screening Analysis Presentation to the JPA** November 10, 2011
- Coastal Commission staff level meeting in Santa Cruz (review de novo materials) December 9, 2011
- 2012 Recycled Water Feasibility Study released March 9, 2012
- **2012 Recycled Water Feasibility Study Presentation to the JPA** April 12, 2012
- Coastal Commission staff level meeting in Santa Cruz (review de novo materials) June 22, 2012
- Coastal Commission staff level meeting in Santa Cruz (review of staff report for the August 9, 2012 CCC mtg.) August 3, 2012
- **Coastal Commission de novo hearing, Santa Cruz Postponed by CCC staff** August 9, 2012
- **Coastal Commission de novo hearing, Pismo Beach?** January 9-11, '13
- Submit SRF loan application to the State Board On hold
- Issuance of SRF Financing Agreement On hold
- Submit first SRF disbursement request to State Board On hold
- Completion of the Design On hold
- Advertise for Construction Bids On hold
- Receive Construction Bids On hold
- Award Construction Contract, after receiving State Revolving Fund Loan Approval On hold
- Start Construction On hold
- Completion of Construction On hold
- Achieve full compliance with federal secondary treatment Deadline on hold

Dudek - California Coastal Commission - Substantial Issue Study

Dudek contract Fee Status:

- Original Contract Amount: \$345,485.00
- Amendment: \$110,157.00
- Revised Contract Amount: \$455,642.00¹
- Amount invoiced to date: \$430,762.87
- Amount remaining in contract: \$ 24,879.13
- Most recent billing amount (11/16/12): \$ 1,020.00
- Amount remaining w/o archaeology services: \$ 3,252.13
- Percent of contract billed w/o add'l archaeology services: 99%

MWH Design

Final design of the project will resume after completion of the Coastal Commission Appeal Process.

MWH Contract Fee Status:

- Contract Amount: \$2,700,000.00
- Addendum #1, updated flows and loadings: \$ 9,000.00
- Addendum #2, advanced treatment options: \$ 9,600.00
- Addendum #3, updated cost estimate \$ 18,700.00
- Revised MWH Contract Amount: \$2,737,300.00
- Amount Billed to Date: \$ 474,490.33
- Amount Remaining: \$2,225,509.67
- Most Recent Billing Amount (10/7/11)² \$ 4,631.46
- Percent of contract billed: 18%

McCabe & Company) California Coastal Commission Communications/Liaison Services

- Invoice 4/11/11: \$12,500 + \$857.47³ = \$13,347.57
- Invoice 5/3/11: \$12,500 + \$98.28⁴ = \$12,598.28
- Invoice 6/3/11: \$12,500 + \$4,032⁵= \$16,532.00
- Total billings from start of contract to suspension: \$42,477.85⁶
- Invoice for January 2012, dated 2-29-12: \$12,500.00
- Invoice for February 2012, dated 3-23-12: \$12,500.00
- Invoice for March 2012, dated 4-23-12: \$12,500.00
- Invoice for April 2012, dated 5-15-12: \$12,500.00

¹ \$21,627 is reserved as an optional task for archaeology services, if required by Coastal.

² The 5/2/11 invoice is for services rendered 1/1/11 through 1/28/11. MWH work was suspended on 11/19/10 except for completion of surveying, geotechnical report, floor plan layout and support at the PC and CC meetings in support of the permits.

³ Travel expenses to Morro Bay and the Santa Cruz Coastal Commission hearing on 3/11/11. The contract fee is \$12,500 per month plus outside expenses.

⁴ Conference calls outside expenses.

⁵ This is the prorated fee from March 22 through 31 that was not previously billed.

⁶ This is the total fee for services from the beginning to the suspension of the contract: Feb 22 through May 31, 2011. No services were provided between May 31 through December 31, 2011.

- Invoice for May 2012, dated 6-25-12: \$12,991.97⁷
- Invoice for June 2012, dated 7-23-12: \$12,500.00
- Invoice for July 2012, dated 8-23-12: \$12,500.00
- Invoice for August 2012, dated 9-23-12: \$13,728.07
- Invoice October 2012, dated 11-24-12: \$ 220.00⁸
- Amount billed to date: \$144,417.89
- Not to exceed limit: \$155,000
- Percent billed to date: 93%

Project Manager, Dennis Delzeit

Services provided in November:

- Prepared the monthly status report to the MBCSD JPA;
- Attended the MBCSD JPA meeting on November 9, 2012;
- Prepared weekly update e mails to MBCSD;
- MBCSD staff, Dudek and the project manager responded to questions from the CCC staff by e mails and conference telephone calls;
- Coordinated with McCabe & Company in communication with Coastal Commissioners to provide project updates;
- Prepared the monthly status report to the Regional Water Quality Control Board staff;
- Prepared updates for the project web site.

Contract Fee Status:

- Original Contract amount: \$250,000.00
- Contract Amendment (PERC) \$ 3,000.00
- Revised Contract Amount: \$253,000.00
- Amount Billed to Date: \$197,145.85
- Amount Remaining: \$ 55,854.15
- Most Recent Billing Amount (12/4/12) \$ 1,385.15
- Percentage of contract billed: 75%

State Revolving Fund Loan:

The SRF process is on hold pending approval of the California Coastal Commission. Without a Coastal Development Permit from the CCC, the project work scope components, the schedule and the total project costs are unknown.

⁷ Expenses for meeting with CCC staff in Santa Cruz: \$407.60 airfare; \$45.54 car rental; \$8.83 gas; \$30 taxi.

⁸ October 2, 2012 visit with CCC staff in Santa Cruz: 460 miles @ \$.55 = \$220

CALIFORNIA COASTAL COMMISSION

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Th23b

Filed: 1/31/2011
Action Deadline: None
Staff: S. Rexing - SC
Staff Report: 12/21/2012
Hearing Date: 1/10/2013

STAFF REPORT: DE NOVO HEARING

Application Number: A-3-MRB-11-001

Applicants: City of Morro Bay and the Cayucos Sanitary District

Project Location: 160 Atascadero Road in the City of Morro Bay, San Luis Obispo County (APNs 066-331-32, 066-331-33 and 066-331-34).

Project Description: Demolish an existing wastewater treatment plant and construct a new wastewater treatment plant and related development.

Staff Recommendation: Denial

SUMMARY OF STAFF RECOMMENDATION

The City of Morro Bay and the Cayucos Community Services District are proposing to demolish their existing wastewater treatment plant (WWTP) and to construct a new WWTP on the same site in the City of Morro Bay just inland of the beach and upcoast of Morro Rock in the City of Morro Bay. The proposed WWTP project raises significant coastal resource concerns, including with respect to allowable uses and land use priorities, hazard avoidance and response, sustainable public infrastructure, and public viewshed protection. The City approved a coastal development permit (CDP) for the project in early 2011. That CDP was appealed to the Commission by eleven different parties, and in March 2011 the Commission found that the appeals raised substantial Local Coastal Program (LCP) and Coastal Act conformance issues and took jurisdiction over the CDP for the project. In the time since, the Applicant has prepared additional information about

A-3-MRB-11-001 (Morro Bay WWTP)

the proposed project, including an analysis of alternative siting and design options, and staff has worked closely with the Applicant to work through issues associated with the proposed project.

Staff has carefully reviewed the proposed project and based on the applicable policies and standards of the LCP and Coastal Act, is recommending that the Commission deny the CDP for the proposed project.

The first issue raised by the proposed project is that a new WWTP is not an allowed use under the LCP's zoning at its existing location. The existing WWTP is a non-conforming use under the LCP's certified light-industrial zoning of the site, and construction of a new WWTP on this site is not an allowable use and is therefore inconsistent with the LCP. At a minimum, approval of a new WWTP at the proposed location would first require that the LCP be amended to allow such a use. However, given that the site is located in a prime visitor-serving redevelopment opportunity area for the City, and given the other constraints to WWTP development at this location, it is not clear that such an LCP amendment would be appropriate.

Second, with respect to coastal hazards, the WWTP site is located in a tsunami run-up zone in an area that would also be inundated in a 100-year storm event through flooding (associated with Morro Creek), which could be exacerbated by dune migration and sea-level rise over time. The project proposes to address these issues by elevating the new WWTP on roughly four acres of fill up to seven and a half feet high, estimated by the Applicant to amount to approximately 35,000 cubic yards of fill (equivalent to approximately 3,500 large truckloads of fill soil). The LCP requires that risks from coastal hazards be minimized, and appears to contemplate flood elevation as a means to do that in certain circumstances. However, given the significant potential flooding at this location, and the uncertainty of future long-term risks over the potential life of the project, staff does not believe that siting a large public infrastructure project in a flood zone by using a such a large fill slope, instead of siting the WWTP out of a hazardous area, is consistent with the LCP (including with LCP policies requiring that projects with excessive grading be denied, and with policies designed to maximize protection of the existing landform by fitting development to existing topography and natural grade). In a 100-year flooding event, the WWTP would be an island, and in a tsunami, it would be under water; neither of which conservatively minimize hazard risk as required by the LCP.

The WWTP project would produce tertiary treated wastewater, but it only includes a small reclamation component, one that is designed to use only a portion of the reclaimed water that could potentially be produced. The vast majority of the treated wastewater would be discharged to the ocean via the existing WWTP ocean outfall that extends some 2,900 feet into the ocean. The City's LCP not only requires the project to include reclamation, but also requires protection and enhancement, where feasible, of Morro and Chorro groundwater basins, as well as coastal streams, wetlands, and related freshwater resources. Read as a whole, the LCP thus directs a WWTP project to maximize reclamation so that such recycled water can be made available to both offset potable water use as well as to enhance freshwater resources (e.g., through use for agricultural irrigation, urban landscaping, groundwater replenishment, etc.). These concerns are especially important given that the City receives much of its water from the State Water Project and reclamation would provide an important contingency in the event that such water transfers are suspended, reduced, or otherwise impacted (e.g., increase in costs, etc.).

Finally, the WWTP site is located in an LCP-designated sensitive view area between Highway 1 and Morro Rock. The LCP requires the scenic and visual qualities of the coast to be protected and where feasible enhanced, and requires development to be sited and designed to protect views to and along the ocean and other coastal areas. The new WWTP would be in a similar location as the plant to be demolished, but would be taller, including because it would be elevated on a fill slope above flood levels. Although the development pattern and area of the WWTP is not currently significantly visually sensitive, given that this is a non-conforming use and the area could potentially be redeveloped to connect upcoast Morro Bay with the Embarcadero as a visitor-serving and public recreational access unit, the development of such a facility is problematic from a visual perspective as well.

In short, the proposed project is inconsistent with the City's LCP, including policies related to allowable uses and land use priorities, hazard avoidance and response, sustainable public infrastructure, and public viewshed protection, where these inconsistencies are largely related to the Applicant's chosen site; a site that is identified by the LCP for lower intensity industrial development than a WWTP, such as coastal-dependent commercial fishing related uses.

At the same time, the WWTP project is an important community project, as the current plant results in discharge of inadequately treated wastewater, albeit very infrequently (approximately four times in the last seven years), and the Applicant is under a Central Coast Regional Water Quality Control Board (RWQCB) order to avoid such episodes. Thus, the current WWTP results in coastal resource impacts, and a new WWTP is important to avoid such impacts.

Fortunately, there appear to be alternative feasible sites for WWTP development in the area, including inland sites evaluated by the Applicant. Staff estimates that at least one of these sites, the Righetti site (located just out of town on the Highway 41 corridor), could be developed with a new WWTP in about five years (as compared to the Applicant's estimate of three years at the existing site), and for about \$39 million dollars (as compared to the Applicant's estimate of about \$27 million dollars for a new WWTP at the existing site). The degree of environmental degradation associated with the existing WWTP is relatively low, and thus the extra two years is not expected to lead to significant coastal resource impacts as compared to the existing situation.

In addition, the Applicant could use this additional time to explore potential funding sources that can be used to offset local costs, including funding associated with adaptation planning in light of global climate change and rising sea levels. Staff has coordinated with both the State Water Resources Control Board (SWRCB) and the RWQCB, and both agencies have indicated that taking time to explore these types of options, particularly if it can lead to a more sustainable facility located away from a hazardous area, is worth the time and investment in that process. Staff is prepared to work with the Applicant, the City, other agencies and interested parties to help foster a better overall project that can meet LCP requirements, enhance and protect water quality, and meet the community's needs over the longer term with a sustainable and beneficial public infrastructure project.

In conclusion, a WWTP project is needed to address ongoing coastal resource impacts, but a project at the existing WWTP site cannot be found consistent with the LCP. In fact, an LCP

amendment would first be necessary to make it an allowed use at the proposed location. Staff recommends that the Commission deny the CDP for the WWTP at the existing site, and further recommends that the Commission provide direction to the Applicant to pursue an alternative site that can meet LCP objectives and requirements. Staff believes that such recommendation is good coastal planning and public policy, that it is required for LCP consistency, and that it will provide for a WWTP project that can appropriately address coastal resource problems in a manner that provides long-term sustainable public infrastructure.

The motion to effect this recommendation is found on page 5 below.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Visual Simulations

Exhibit 3 – Proposed WWTP Plans

Exhibit 4 – Alternative Site Maps Analysis

Exhibit 5 – Commission Staff Correspondence on the WWTP Project

Exhibit 6 – Correspondence Received

Go To Exhibits

I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, deny a coastal development permit for the proposed project. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present

Motion: I move that the Commission approve Coastal Development Permit A-3-MRB-11-001, and I recommend a no vote.

Resolution to Deny: The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the Local Coastal Program and the access and recreation policies of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT LOCATION

The proposed project is located just inland of the dunes and along the immediate shoreline north of Morro Creek just upcoast of Morro Rock in the City of Morro Bay.

City of Morro Bay Setting

The City of Morro Bay is located on the shores of Morro Bay and the Pacific Ocean near the middle of the larger Estero Bay area in San Luis Obispo County (see Exhibit 1). Along the shoreline, the City includes the Embarcadero area to the south fronting along Morro Bay proper, as well as the area north of Morro Creek containing an industrial area, RV park, Morro Bay High School, Del Mar Park, Cloisters Community Park and residential subdivision to the north, with the Morro Bay Power Plant site roughly bisecting the two. Embarcadero Road, which runs through the Embarcadero area and also runs parallel along the beach, fronting the RV park shoreward of the wastewater treatment plant, is not continuous as there is not currently a bridge over Morro Creek that would connect the area of the wastewater treatment facility to the Embarcadero area.¹

Until the mid-1940's, most of the small community of Morro Bay was built on the bluff tops above the tidal flats. Between 1942 and 1945, the north and south breakwaters at the entrance to

¹ The City recently received grant funds to construct a pedestrian and bicycle bridge over Morro Creek at this location, but the project has not yet commenced.

the Morro Bay harbor, two “T”-piers, and the inner harbor bulkhead were constructed for a Navy amphibious base. A navigational channel was dredged and the spoils deposited behind the inner harbor bulkhead to create a fill area along the bay that became known as the Embarcadero. In the late 1940’s the Navy base, including all waterfront facilities, was sold to San Luis Obispo County. Buildings began to be constructed on the Embarcadero, and various docks and piers were occupied by a growing fleet of commercial fishing boats. In the early 1950s, the County sold a portion of the old Navy base property to PG&E, which was later used to construct the Morro Bay Power Plant, now a defining feature in Morro Bay. In 1964, the City of Morro Bay incorporated and assumed jurisdiction over the County’s waterfront land and facilities, including the Embarcadero. Trusteeship of state tidelands was also transferred to the City at that time. The area north of the Power Plant was developed originally starting in 1954. The Cloisters subdivision was constructed in phases starting in 1992, and is almost at full build-out today.

The power plant’s future status not certain.² Currently, it is apparently operating at low capacity, only in times of peak demand, as a part of a third party contract, which has not been renewed. Lease agreements with the City expire at the end of 2012 and have not been renewed, and without a contract with a new utility, it may not be viable to renew the leases. The owner of the plant, Dynegy, apparently has no intentions to modernize the plant to a new combined cycle plant but has said it will operate it as long as viable, which may not extend past 2015 considering it uses the outdated once-through cooling technology that must be phased out by that time. Further, Dynegy has begun the oil tank removal process, eliminating six, 32-foot tall tanks from the premises. If the power plant shuts down because it is no longer viable given its minimal operation, lack of revenue and outdated (and soon to be unlawful) technologies, the 450-foot tall cooling stacks could be removed, drastically changing the look of the area in which it sits, just south of Morro Creek from the WWTP and just inland from Morro Rock. Thus, while the future for this power plant area is somewhat uncertain, there is the possibility that at some time in the future, maybe even the near future, this area may no longer be dominated by power plant infrastructure such as large oil tanks and massive cooling stacks in association with industrial use.

The City and the Embarcadero are major tourist attractions and prime coastal visitor-serving destinations with an estimated 1.5 million visitors annually. The Embarcadero is now largely developed with a variety of visitor-serving (overnight units, restaurants, gift shops, etc.) and coastal-related land uses (i.e., kayak rental, commercial and recreational fishing services, etc.). Parcels on the bayside of Embarcadero are leased to individual lessees by the City through the City’s proxy relationship to the State Lands Commission.

The WWTP site is located just north of Morro Creek and the Embarcadero area, in the middle of a prime visitor destination, including public recreational access pursuits related to Morro Rock and the beaches and facilities located there and extending upcoast. The area around the WWTP is the second most popular surfing spot in the City. A surf spot called “The Pit” that has a large dirt

² The City has in the past contemplated downsizing and complete modification of the power plant that would include essentially dismantling and removing the existing power plant, except for its intake and outfall lines, and potentially constructing two new 600-megawatt power generation units at the site. There have also been a variety of alternative reuse concepts that have been identified for the plant and the plant site, and it is also possible that it ceases to be used for power generation and instead is turned over to other development and uses, including in light of its prime shoreline location and Coastal Act and LCP land use and development priorities for same.

parking lot is located to the west of the WWTP. The WWTP site is close to the Morro Rock/Coleman Park area, a prime area for pursuing active and passive recreational opportunities, including “surfing, fishing, boating, cycling, hiking and sightseeing”.³ Additionally the WWTP site is bordered to the west and the south by Morro Dunes RV park, a low-cost, visitor-serving use that provides overnight parking for RVs in 150 spaces, providing the most conveniently located lower-cost overnight facility in close proximity to the prime Morro Rock and Embarcadero area visitor destinations. The WWTP area also includes two hotels and several restaurants to the east, within about 1,500 feet of the WWTP. There are currently three developed coastal access points located due west of the current site: one to the north at Atascadero Road, one just south of Atascadero Road and one north of the Morro Creek outlet.⁴ As described in more detail, below, the City is currently pursuing its vision for the area which includes connecting, by pedestrian and bike path, the area surrounding the WWTP site to the Embarcadero, including to the Harbor Walk public recreational trail on the downcoast side of Morro Creek.⁵ This connection would not only connect the two sides of Morro Bay across the creek, but it would fill a gap in the local public shoreline access system and the California Coastal Trail (CCT) that is presently missing a crossing over Morro Creek, allowing visitors to more easily travel between the significant coastal and visitor-serving resources that are located on either side of the creek.

Morro Bay and the surrounding area include a variety of biological habitats, including coastal wetlands, dunes, intertidal mud/salt flats, rocky subtidal and intertidal zones, riparian corridors and woodlands. All of these habitats provide highly productive, diverse and dynamic ecosystems. Central to this habitat framework is the Morro Bay Estuary itself. This mostly shallow lagoon is approximately 2,500 acres and is sheltered from the open ocean by the sandspit and constructed breakwater. It is considered the most significant wetland system on California’s south central coast. The Bay serves as a critical link of the Pacific Flyway by providing important habitat for resident and migrating shorebirds and waterfowl. The Audubon Society has ranked Morro Bay as one of the top five areas out of nearly 1,000 sites nationwide for diversity of winter bird species.⁶

The Bay is home to a diverse collection of fish and wildlife species, many of which are rare, threatened, endangered, and/or endemic to the bay. For example, the estuary serves as resident and nursery habitat for the federally endangered tidewater goby and the steelhead trout, and other fish and shellfish. Other examples of federally threatened or endangered species that depend on the estuary and its watershed for their survival and recovery include: snowy plover, brown pelican, California black rail, California red-legged frog, Least Bell’s vireo, Morro shoulderband snail, Southern sea otter, California clapper rail, Southwestern Willow Flycatcher, and the Morro Bay kangaroo rat. In addition, the bay supports a diverse and wide range of marine organisms including fish, shellfish, invertebrates, and other taxa (e.g., phytoplankton, zooplankton and jellyfish). It also supports recreational and commercial fisheries, and also provides commercial

³ Fine-Screening Analysis, page 21.

⁴ Fine-Screening Analysis, page 22.

⁵ Approved by the Coastal Commission in 2006 (CDP 3-05-071).

⁶ For example, the Audubon Society estimates indicate that 200 different bird species have been identified using the Bay during a single day in December, including approximately 25,000 black brants.

shellfish harvests.

Morro, Chorro and Los Osos Creeks and several smaller tributaries drain into the bay. The creeks and their associated riparian areas provide habitat for fish and other aquatic organisms as well as food and shelter for migratory birds and other animals. In addition, they provide important habitat for the federally endangered steelhead trout. Steelhead trout are anadromous fish, which are spawned in streams, spend a portion of their life cycle in the ocean, and then return to the stream where they were spawned to reproduce.

Project Site

The proposed project is located at 160 Atascadero Road just inland of the beach and on former dunes, seaward of Highway 1 just upcoast of the Embarcadero, the Morro Bay Power Plant, Morro Creek, and Morro Rock. The entire site is 14.4 acres, comprising three parcels (APNs 066-331-032, 066-331-033 and 066-331-034) with approximately one-third of the site extending across Atascadero Road, over existing dunes and the beach area (see Exhibit 1). The existing WWTP was originally constructed in 1954, and according to the Applicant's Geological Report, it is likely that the site was originally prepared for construction by cutting into the sand dunes that previously occupied the site.⁷

The site is currently occupied by the existing City of Morro Bay and the Cayucos Community Services District⁸ WWTP, including clarifiers, trickling filters, sludge drying beds, an operations buildings, and related WWTP development (see Exhibit 1). It is immediately adjacent to the Morro Dunes RV Park and Trailer Storage, the City corporation yard and a cement business, and across the street from Morro Bay High School. The project site is zoned Light Industrial/Planned Development/Interim Use by the LCP. Light Industrial allows for manufacturing and other industries while minimizing offensive or objectionable noise, dust, odor or other nuisances, but it does not include waste water treatment plants, which are instead allowed in the Coastal-Dependent Heavy Industrial zone. Planned Development allows for analysis of those parcels which because of location, size or public ownership warrant special review and requires that any development must occur in accordance with a precise development plan, which has received discretionary City approval. The Interim Use overlay applies to properties that are identified for industrial use, but that may be approved for interim uses, limited to visitor-serving, recreational and fishing uses, to ensure such special coastal areas can be utilized for high-priority coastal uses.⁹

B. PROJECT DESCRIPTION

Project Background

The existing WWTP was originally constructed in 1954, and it was upgraded in 1964 and again in the early 1980s. The upgrades in the early 1980s included updating the WWTP design to provide secondary treatment for up to 0.97 million gallons per day (mgd) of wastewater;

⁷ DEIR Page 3.5-2

⁸ Co-applicants for the proposed project, and the operators of the WWTP under a joint powers agreement.

⁹ City of Morro Bay LCP Sections 17.24.140, 17.40.030, and 17.40.080.

increasing the capacity to accommodate the current peak season dry weather flow (PSDWF) of 2.36 mgd; and extending the ocean outfall pipeline to 2,900 feet offshore.¹⁰ The existing WWTP is rated for an average dry weather flow (ADWF) of 2.06 mgd, a PSDWF of 2.36 mgd, and a peak hourly flow (PHF) equating to 6.6 mgd. The existing plant is equipped to treat up to 0.97 mgd of wastewater to secondary treatment levels, and to treat wastewater in excess of 0.97 mgd to primary treatment levels.

The WWTP discharges treated effluent to the Pacific Ocean via ocean outfall and is regulated by a National Pollutant Discharge Elimination System (NPDES) Permit in accordance with Section 402 of the federal Clean Water Act. The WWTP is currently covered by a modified NPDES permit with a Clean Water Act Section 301(h) waiver, which waives the Clean Water Act minimum treatment requirement for full secondary treatment for all discharge. The Regional Water Quality Control Board (RWQCB) generally issues NPDES permits to waste dischargers every five years. The Morro Bay-Cayucos NPDES permit was first issued with a 301(h) waiver in 1985, and was re-issued with the same waiver in 1993, 1999 and 2008. Prior to the 1999 re-issuance, RWQCB staff requested that the Applicant consider upgrading the facility to full secondary treatment to comply with the Clean Water Act, as opposed to continuing to request a 301(h) waiver from discharge requirements, and to avoid discharging inadequately treated effluent into the ocean. The Applicant determined that such an upgrade was not feasible at that time, and again requested that RWQCB issue the 301(h) waiver-modified permit. In November 2005, RWQCB agreed to re-issue the 301(h) waiver-modified permit. In December 2005, the Applicant and RWQCB reached a settlement agreement to pursue a schedule for a full upgrade of the plant to eliminate the need for a 301(h) waiver-modified permit in the future. According to the terms of the current settlement agreement, the WWTP must be modified so that all effluent is treated to at least secondary levels, phasing out the need for a modified NPDES permit, by March 2014. The WWTP serves some 13,000¹¹ customers in both the City of Morro Bay as well as in the unincorporated community of Cayucos to the north of Morro Bay.

Project Description

The proposed project provides for demolition of the existing WWTP facilities and construction of new WWTP facilities and related development on the same site (see Exhibit 3 for proposed project plans). The new WWTP would be built mostly on the site of the existing sludge drying beds on the south side of the site, reducing the footprint of development on the site by about 50% as compared to the existing WWTP development. As soon as the new WWTP is completed, the old WWTP would be demolished. After demolition of the existing facilities, the northern portion of the site would be left vacant under the proposed project. The new WWTP facilities would include pumping stations, secondary clarifiers, oxidation ditches and a chlorine contact basin, as well as maintenance and operations buildings. The project also includes construction of new access roads, new fencing and landscaping.

The new facilities would provide tertiary filtration capacity of up to 1.5 mgd, and additional flows would be treated to full secondary levels. Any secondary treated water would be

¹⁰ A 1981 CDP has been identified that appears to apply to this work, but as of the date of this report the file has not yet been retrieved from State archives so it is not clear what exactly was covered by that 1981 CDP.

¹¹ <http://ca-morrobay.civicplus.com/index.aspx?NID=342>.

discharged as effluent via the existing WWTP ocean outfall, which would be connected to the new facility as part of the proposed project, but the wastewater that is treated to tertiary levels (up to 1.5 mgd) would meet Title 22 standards for disinfected recycled water. The Applicant proposes to use only 0.4 mgd of that disinfected tertiary recycled water for on-site uses such as soil compaction, concrete mixing and dust control, and potentially for off-site uses, including agricultural irrigation, groundwater replenishment and residential landscaping. Such future reclaimed water for off-site uses would be made available through the new truck filling station that is part of the approved project. Thus, the proposed project would meet the RWQCB order (and the settlement agreement) by treating all effluent to at least secondary treatment levels prior to discharge (i.e., 1.5 mgd to tertiary levels and anything above that to secondary levels).

Recent Regulatory Actions

In January of 2009 the Commission granted a federal consistency certification for the renewal of its EPA-issued secondary treatment waiver for the existing WWTP, to allow them to continue to discharge effluent receiving less than secondary treatment (in terms of suspended solids and biochemical oxygen demand) for the period covered by the waiver. At the time, though the Applicant had already agreed to upgrade to full secondary, an extension of the waiver was required during the interim to allow time to complete the upgrade. The Commission granted the consistency determination, finding that the continued use of the existing plant was consistent with California Coastal Management Program requirements, including because the Applicant's discharges are small compared to other California treatment works, because the discharges from the treatment plant were previously monitored and not found to be a threat to the marine environment, including local sea otter populations and because they agreed to continue to monitor future discharges for pollutants that could potentially harm the marine environment until they moved to an upgrade of full secondary treatment.

On December 20, 2010, the City of Morro Bay Planning Commission unanimously denied a CDP for the proposed project, and recommended against certification of its associated environmental impact report (EIR). In making this decision, the City Planning Commission found that the proposed project could not be approved consistent with the LCP, including because the project was analyzed as an upgrade to existing development, when it actually constitutes a new project; because the EIR analysis was not sufficient; because the visual impacts were not minimized; and because there was an insufficient scoping process for the project. Specifically, it found that there was not an adequate alternatives analysis, that the viability of the proposed location as well as alternatives should be more meaningfully explored and that the public scoping period may not have been of sufficient length. The Applicant appealed the Planning Commission's denial to the City Council, and on January 11, 2011, the City Council approved the CDP and certified the EIR.

The City's CDP approval was appealed to the Commission by eleven different parties, and on March 11, 2011 the Commission determined that the City's approval raised a substantial issue of conformance with the LCP and the public access and recreation policies of the Coastal Act, and took jurisdiction over the CDP application for the proposed project. In coming to this conclusion, the Commission adopted the following findings:

The City-approved project raises significant coastal resource issues, including with respect to hazard avoidance, public viewshed protection, maximizing and optimizing public access

and recreational opportunities, protection of archeological resources, and sustainable public infrastructure requirements. The project site is subject to multiple significant constraints, including risks from a variety of coastal hazards, a location within a scenic public shoreline viewshed, and the presence of significant archeological resources. In addition, it is located on prime oceanfront land where it is not clear that continuation of industrial use is appropriate in light of LCP and Coastal Act objectives, and it may well be that the site is better-suited for public access and recreation. The City also authorized a major public works project which does not appear to have properly countenanced the sustainable public works provisions of the LCP.

The City's approval is fundamentally flawed in that it lacks a thorough alternatives analysis that evaluates a broad range of alternatives, including fundamentally in terms of alternative appropriate sites, such as is required to be able to find a WWTP project consistent with the LCP and the Coastal Act. Such alternative sites, especially if located further inland, have the potential to completely avoid the constraints of the subject site, and the potential to allow consideration of a WWTP project that can resolve other coastal resource issues associated with the City-approved project. As it is, it appears that the City-approved project is inconsistent with the LCP and the Coastal Act on multiple grounds, perhaps most critically because it is not clear that WWTP development at this site can even be found LCP and Coastal Act consistent in terms of hazards avoidance, public recreational access, the public viewshed, sustainable use of public resources, and archaeological protection.

In finding substantial issue, the Commission identified additional information that the Applicant would need to develop and submit before the project could be further considered in a de novo review. Such information included the need for better identification of hazard issues at the existing WWTP site, an analysis of alternative siting and design options that could avoid LCP inconsistencies and better address Coastal Act and LCP objectives (e.g., hazard avoidance, visual and public access impact avoidance, etc.), and identification of a more meaningful wastewater reclamation program that could be made part of the project to help the City carry out LCP policies that prioritize water reclamation to meet water supply needs while enhancing water quality and biological resources. The Applicant has prepared and provided the identified materials, and these are described below.

Alternative Sites Analysis

The Applicant's alternative sites analysis consists of a rough screening designed to flag a range of potential alternative sites, and a fine screening of the sites considered feasible.¹² For rough screening, the Applicant analyzed 17 potential alternative project sites that were identified through public workshops as potential locations for a new WWTP. The rough screening was intended to eliminate sites with 'fatal flaws' that would preclude WWTP development from further consideration. Per the rough screening methodology, fatal flaws were those where the following applied: (1) development at the site would be "inconsistent with the City or County LCPs or California Coastal Act policies regarding protection of prime agricultural soils or actively farmed coastal farmland"; (2) the site contains "environmentally sensitive habitat areas (ESHA), as defined by the City or County LCPs or California Coastal Act, such that avoidance is

¹² The Applicant coordinated with Commission staff on the alternative sites analysis, including the methodology employed for both rough and fine screening components.

infeasible and/or related buffers would result in an inadequate developable site envelope”; and/or (3) the new development would be located and prohibited within “the 100-year flood hazard zone as delineated by the City or County LCPs or identified on FEMA flood insurance maps and/or within other inundation zones, such that avoidance is infeasible and strictly prohibited pursuant to City or County LCP policies, and/or related mitigation results in an inadequate developable site envelope”.¹³ Six of the 17 sites initially analyzed were deemed to be fatally flawed.

The eleven remaining sites were then evaluated with respect to the following criteria: (1) Environmental Considerations/LCP policies (ESHA/biological resources, water quality, coastal priority land use, coastal dependent development, floodplain hazards, shoreline development/coastal hazards, public access/recreation, visual resources, agriculture, cultural resources, sustainable use of public resources, land use compatibility and energy consumption/greenhouse gas emissions); (2) Logistics/Site Constraints (land use, zoning, regulatory restrictions, site accessibility, site availability, implementation and additional site requirements); and (3) Engineering and Economic Constraints (treatment/disposal options, recycled water opportunities/demands, proximity to existing wastewater conveyance facilities and comparative economic feasibility). The eleven remaining sites were ranked according to their consistency with (or amount that they were constrained by) these factors, with the highest ranked sites being for those that yielded the least environmental impact, the greatest LCP and Coastal Act consistency, the fewest land use, logistical and site constraints and the greatest degree of economic feasibility. The three sites that the Applicant’s rough screening rated best were the current WWTP site, the old Chevron marine terminal facility site (located between Cayucos and Morro Bay),¹⁴ and a site just inland of Morro Bay known as the Righetti site (see map of alternative sites in Exhibit 4).

The Chevron site is approximately 160 acres (consisting of both the marine terminal and row crop, hay lands and sheep grazing land inland)¹⁵ and is located southeast of Toro Creek, spanning both sides of Toro Creek Road on the inland side of Highway 1 along the generally undeveloped piece of shoreline between the residential neighborhoods making up the City’s northern boundaries and the unincorporated community of Cayucos further upcoast. The site is occupied by the remnants of Chevron’s old facility nearest the coast, and primarily agricultural uses extending inland. The Chevron facility itself is at the lowest elevation on the property, while the rest of the site consists of undeveloped rolling hills that range from gentle (near the road) to steep (on the hillsides). The property is interspersed with secondary drainages to Toro Creek. The site is surrounded primarily by open space and agricultural areas.

The Righetti site is approximately 260 acres¹⁶ located just outside of the City of Morro Bay city limits and north of Highway 41. The western boundary of the Righetti site is located just east of

¹³ Rough Screening Alternative Sites Evaluation, pages 9-10.

¹⁴ The Chevron facility was historically a crude oil storage and loading facility. Chevron has been in the process of remediation for a number of years, and currently Chevron’s Estero Marine Terminal property and agricultural uses are supported on the land.

¹⁵ Fine-Screening Analysis, pages 96-97.

¹⁶ Fine-Screening Analysis, page 152.

the boundary of the developed, residential areas of the City of Morro Bay. Currently, the site consists of a single-family residence and grazing areas. The land is surrounded by cropland to the south, undeveloped areas to the north and east and a mobile home park, RV park, and agricultural lands to the east.

These three sites rated best by the Applicant's rough screening analysis were then subjected to a fine-screening analysis where the three sites were assessed in the context of site constraints and a more detailed LCP and Coastal Act policy consistency analysis than the rough screening applied, all premised on continuing to ensure that all three sites could meet project goals and objectives, and could feasibly accommodate construction of a WWTP project. The fine-screening analysis used three broad categories of evaluation criteria that were weighted in terms of relative importance, as follows: (1) Avoid and Minimize Environmental Impacts/Local Coastal Program Consistency Analysis – 40% weighted; (2) Project Implementation – 30%; and (3) Economic Factors – 30%. Based on this ranking system, the Applicant concluded that the existing WWTP site was the best site amongst the three.¹⁷ The Applicant's conclusions were based on their assessment that the current WWTP site was the best and most feasible alternative site for development of the new WWTP based on its consistency with LCP and Coastal Act policies, its ability to reduce environmental impacts to a less than significant level, and because it presents the most streamlined project implementation schedule while being the most cost-effective option for the rate payer within the service area. See the Applicant's alternatives analysis in Exhibit 5.

Additional WWTP Site Hazards Analysis

In response to the Commission's request for a more robust description and analysis of the coastal hazards at play at the existing WWTP site, the Applicant provided updated materials describing shoreline erosion and flood hazards for the site, including with respect to sea level rise, as well as an assessment of the ability of the existing dunes seaward of the WWTP site to effectively protect the site from coastal hazards.¹⁸

Given that significant grading is proposed to be used at the current site to elevate the new plant out of the floodplain, the Applicant also submitted a grading plan superimposed over the proposed plant design at the current site, as well as an alternative, terraced grading plan for the Righetti site. These analyses illustrate what the Applicant indicates is the proposed grading that would be required at the current site to elevate the new plant out of the floodplain inundation levels¹⁹ and the grading required at the Righetti site to develop the WWTP while addressing the site constraints present (see Exhibit 4).²⁰

¹⁷ Per the Applicant's ranking, the existing WWTP site had a score of 4.54 compared to scores of 3.32 for the Righetti site and 2.82 for the Chevron site.

¹⁸ "Shoreline Erosion Study and 100-Year Sea Wave Run-Up Analysis" (by Dudek Environmental Consultants and dated October 28, 2011), "Maximum Tsunami Flood Elevations" (by Dudek Environmental Consultants and dated February 1, 2012), "Morro Creek Flood Analysis with Wave Run-Up and Sea Level Rise (Addendum to Flood Study dated 8/7/09)" (by Dudek Environmental Consultants and dated January 10, 2012), and two memos with additional information regarding the dune fields at the current WWTP site (by Dudek Environmental Consultants and dated July 2, 2012 and July 9, 2012).

¹⁹ New Site Plan with Proposed Grading, prepared by Rob Livick, October 23, 2012.

²⁰ Email communication with Tom Falk, Project Manager, Dudek on October 26, 2012.

Recycled Water Feasibility

In taking jurisdiction over the CDP application, the Commission adopted findings that state:

The Applicant must also provide a complementary, updated water reclamation feasibility study that explores all potential demand for reclaimed water, including for agricultural irrigation inside and outside of the City limits, and the way in which the project could be reconceived to dispose of treated effluent in this manner. The study must evaluate the feasibility of constructing infrastructure to accommodate such water reclamation program, and it must evaluate the benefits of a water reclamation program, including potential benefits to stream habitats and water supply, potential revenue generation from providing such water to users and offsetting the need for purchased State Water credits, and the potential for elimination of the existing ocean outfall.

In response, the Applicant submitted a “Recycled Water Feasibility Study” (by Dudek Environmental Consultants and dated March 9, 2012) that evaluates opportunities for more thoroughly incorporating water recycling and reclamation into the project in its current location to augment the City of Morro Bay and surrounding area’s water supply (for irrigation uses, agricultural uses, stream replenishment and beneficial reuse). The study also includes a market analysis for recycled water looking for potential users, costs to those users for the recycled water, and market enthusiasm for such recycled water use. Finally, the study gave recommendations to move forward to incorporate additional water reclamation/recycling into the final WWTP project.²¹ Specifically, the study recommends that the current site be upgraded to tertiary treatment, that the water treated to tertiary levels be used as “wash down and process water”, that upon completion of the upgrade, opportunities for local reuse continue to be explored, that in collaboration with other stake holders, a Salt and Nutrient Management plan be devised and opportunities for water reuse at golf courses be explored, that opportunities for recycled water implementation continue to be explored, that the current water conservation program continue, and that the water supply and demand data be updated every five years when the Urban Water Management Plan is updated.²² These recommendations came from the study team, and the Applicant requested that they be included as a part of the proposed project.

Clarifications of the Fine Screening Analysis

In order to better understand the alternatives analysis in the Fine Screening Analysis, the Applicant also provided additional information regarding the assumptions and methodology used to generate the cost estimates analysis presented in the Fine Screening Alternatives analysis.²³ The Applicant also prepared a memo regarding the logistical and temporal assumptions used in preparing the timing at the current site versus the alternatives.²⁴

²¹ That is, to incorporate additional measures beyond what was proposed in the CDP application that was originally approved by the City.

²² Draft 2012 Recycled Water Feasibility Study, Presentation to JPA, April 12, 2012.

²³ “Response to Coastal Commission Staff Requests for Information Regarding the MBCSD Wastewater Treatment Plant Upgrade – Cost Estimating” (prepared by Tom Falk, PE Dudek and dated September 17, 2012).

²⁴ Time and Logistics of Regulatory/Land Use Permitting; Coastal Commission Comments and Responses (prepared by Dudek, October 18, 2012).

The Commission's Jurisdiction

The Commission notes that the Coastal Act imposes specific review criteria on the Commission when a "treatment work", such as the proposed project, is considered by the Commission. Such criteria are part of Coastal Act Chapter 5, which identifies the manner in which the Coastal Act is to be understood in relation to other state agencies and their programs. Chapter 5 identifies the Legislature's intent that the Coastal Act not "increase, decrease, duplicate or supersede the authority of any [then] existing state agency", while requiring all state agencies to "carry out their duties and responsibilities in conformity with [the Coastal Act]".²⁵ Coastal Act Section 30412 includes guidance on implementation of the Coastal Act in relation to the programs of the State Water Resources Control Board (SWRCB) and the RWQCBs. It states in relevant part:

(b) The State Water Resources Control Board and the California regional water quality control boards are the state agencies with primary responsibility for the coordination and control of water quality. The State Water Resources Control Board has primary responsibility for the administration of water rights pursuant to applicable law. The commission shall assure that proposed development and local coastal programs shall not frustrate this section. The commission shall not, except as provided in subdivision (c), modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights.

Except as provided in this section, nothing herein shall be interpreted in any way either as prohibiting or limiting the commission, local government, or port governing body from exercising the regulatory controls over development pursuant to this division in a manner necessary to carry out this division.

(c) Any development within the coastal zone or outside the coastal zone which provides service to any area within the coastal zone that constitutes a treatment work shall be reviewed by the commission and any permit it issues, if any, shall be determinative only with respect to the following aspects of the development:

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

The commission shall make these determinations in accordance with the policies of this division and shall make its final determination on a permit application for a treatment work prior to the final approval by the State Water Resources Control Board for the funding of such treatment works. Except as specifically provided in this

²⁵ Coastal Act Sections 30401 and 30402.

subdivision, the decisions of the State Water Resources Control Board relative to the construction of treatment works shall be final and binding upon the commission.

As a result, the Commission's review of a treatment work is limited to questions of siting and visual impacts and appropriateness of service areas (including in terms development projections that may determine the size of the treatment work). Of note, siting questions involve all aspects of siting and not just the treatment plant itself, including mitigation required to offset impacts caused by siting decisions. In this context, the Commission's review appropriately extends to siting related to recycled water reuse and evaluation of such reuse components in terms of LCP and Coastal Act requirements.

C. LAND USE PRIORITIES

Applicable Policies

The subject site is designated general (light industrial) with planned development and interim overlays and is zoned for light industrial development (M-1). This land use designation (General Industrial/PD/I) extends beyond the subject site, but portions of the surrounding area are zoned for visitor-serving commercial uses (C-VS), as opposed to M-1, both west and east of the site. A bit further to the east, there is an area that is both designated and zoned for commercial-visitor serving uses, and south of Morro Creek, there is a large area designated Coastal Development Industrial with PD/I overlays and zoned for heavy industrial development (M-2). The interim land use overlay calls for temporary visitor-serving, fishing and recreation uses when industrial uses are not present, and requires a comprehensive review of the area to ensure new development is consistent with the site and the surroundings, prior to approval of development. Relevant land use designation and zoning district requirements include:

Visitor-Serving: The visitor-serving land-use category is especially important to the City since tourism is a significant contributor to the local economy. This category encourages concentration of tourist-intensive uses at major destination points in the City or at locations easily accessible to travelers along State Highway One. Visitor-serving uses that should be developed in those areas designated as such are hotels/motels, overnight RV facilities, restaurants, gift shops, goods and supply stores, commercial recreation and other uses typically found to accommodate tourist needs and activities.

General Industry: Light industry land uses which do not require materials or equipment which emit excessive air, audio, water or land pollutants, or would require considerable outdoor storage, are allowable in this designation. The City would like to encourage the location of light industries that would specifically cater to commercial fishing and regional needs, such as machine shops, auto mechanic shops, black smith, cold storage, ware housing and food processing, light manufacturing, component assembling and small parts processing.

Coastal-Dependent Industrial Land Use: This land use specifically relates to those industrial land uses which are given priority by the Coastal Act of 1976 for location adjacent to the coastline. Examples of uses in this designation are thermal power plants, seawater intake structures, discharge structures, tanker support facilities, and other similar uses which

must be located on or adjacent to the sea in order to function. The Morro Bay wastewater treatment facilities are protected in their present location since an important operational element, the outfall line, is coastal-dependent; see Policy 5.03.

Interim/Open Space Uses in Industrial Categories: *This designation allows interim or temporary land uses in both industrial categories until such time as the area is needed for its primary use. These uses must have relocatable (not permanent) structures which are subordinate to the character of the visual setting and are limited to visitor-related, recreational or commercial fishing temporary uses as listed in Policy 5.02.*

IP Policy 17.40.030.C. Planned Development, (PD) Overlay Zones: Permitted Uses. *Subject to the granting of a conditional use permit for a conceptual and/or a precise plan of development 1. Any principal or conditional use which is allowed by the primary zoning district is a permitted use; 2. Community housing projects as defined in Chapter 17.49, may be permitted in PD overlay residential zones. The provisions of that chapter shall, also apply to the review of such PD overlay zone projects. D. General Development Standards. The standards for development within a PD overlay zone shall be those of the base zoning district, provided however, that standards may be modified by the planning commission or city council as they relate to: building heights; yard requirements; and minimum lot area for dwelling units in the density range provided that any specific design criteria of the general plan and coastal land use plan, applicable to the property, is not exceeded. For those areas of the city which are covered by the waterfront master plan, all new development projects requiring discretionary permits (conditional use permits, etc.) shall be consistent with the design guidelines contained in Chapter 5 of the waterfront master plan. Modifications of standards shall only be approved upon a finding that greater than normal public benefits may be achieved by such deviations. Such benefits may include, but are not limited to improved or innovative site and architectural design, greater public or private usable open space and provisions of housing for the elderly or low/moderate income families, provision of extraordinary public access, provision for protecting environmentally sensitive habitat (ESH) areas, but in all cases these provisions shall meet the coastal land use policies.*

IP Policy 17.40.080.B. Interim Development, (I) Overlay Zones: Uses Allowed with Interim Permits. *The following uses may be permitted on all M-1 or M-2 industrial-zoned properties which are also designated in the coastal land use plan/coastal element as appropriate for interim uses, on a temporary basis until the properties are needed for their principally permitted uses, and subject to the issuance of an interim use permit in accordance with the provisions of this chapter. 1. Commercial Fishing and Boating Industries. Uses serving the needs of the commercial fishing and boating industries, including but not limited to temporary boat storage and repair, and ancillary uses for same; and 2. Temporary Visitor-Serving or Recreation. Temporary visitor-serving or recreation uses, including but not limited to paths, R-V parks, camping facilities and ancillary uses for same, playground, exercise courses, restrooms, drinking fountains, sewage dump stations, and parking. 3. Conditions Required. The planning commission may grant an interim use permit only if the following conditions are met: a. The proposed uses is limited to relocatable, nonpermanent structures, or existing structures; and b. The proposed use is subordinate to the character of the visual setting; and c. The non-owner applicant agrees to remove the interim use after notice from the property owners that the site is necessary for the primary use in the base*

zoning district.

In addition, per the Coastal Act, the standard of review for the approved project includes the public access and recreation policies of both the City's certified LCP as well as the Coastal Act. These policies require new development to maximize public access and protect oceanfront land for public access and recreation, and also include land use prioritization. Relevant policies include:

Section 30211. Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30213. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...

Section 30221. Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222. The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30222.5. Ocean front land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority, except over other coastal dependent developments or uses.

Section 30223. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30253(e). New development shall do all of the following:...(e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

LUP Policy 2.01. Lower-cost visitor and recreation facilities for persons and families of low or moderate income shall be protected, encouraged, and where feasible, provided. Developments providing public recreation opportunities are preferred.

Consistency Analysis

Background and Context

The project site is located in close proximity to the shoreline and the surrounding area is characterized by public access and visitor-serving resources, as well as coastal-dependent

industry. The California Constitution²⁶ and the federal Coastal Zone Management Act²⁷ mandate the protection and enhancement of public access to and along California's coastline. The Coastal Act and the City's certified LCP refine these requirements, including prioritizing public recreational use and development in areas along the shoreline such as this one. Coastal Act Section 30210 requires that public recreational opportunities be maximized,²⁸ and Section 30211 further requires that development not interfere with existing public access. Section 30221 protects oceanfront land such as that including the WWTP area for recreational use, Sections 30222 and 30222.5 identify certain land use priorities, and Section 30223 reserves upland areas necessary to support public recreational uses. Coastal Act Section 30213 and LCP Policy 2.01 require lower-cost visitor and recreation facilities to be protected, encouraged, and where feasible, provided. Section 30253 requires the protection of special communities that provide popular visitor destination points for recreational uses, such as the Morro Bay shoreline.

In addition, the City has expressed an interest in improving and enhancing the public access, recreation, and visitor-serving attributes of this area of the City. In other words, in addition to the public access and recreation policies that clearly require public access to be maximized, protected, and enhanced, the LCP also articulates a vision for the project site area where it transitions to a visitor serving corridor as an entrance to the City²⁹, providing a visitor's first view of the City. Highway 41, a major artery that visitors to the City of Morro Bay use to gain access to the city, enters the City before turning into Atascadero Road. Atascadero Road then serves as a major entrance to the City for those traveling west on Highway 41 from inland areas. When Embarcadero Road eventually links up to Highway 41/Atascadero in the future, it will create one continuous thoroughfare, allowing visitors to the City to link up to visitor-serving areas such as Morro Rock and the Embarcadero Area. Such visitors will drive right past the site of the proposed WWTP. Thus, the use of the current site is affected by these Coastal Act and LCP land use priorities, including in terms of the potential for preserving or utilizing the current site for visitor-serving and/or recreational uses along this important entrance to the City.

²⁶ Section 4 of Article X of the California Constitution provides: "No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof."

²⁷ The federal Coastal Zone Management Act requires its State partners to "exercise effectively [its] responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone" (16 U.S.C. Section 1452(2)) so as to provide for "public access to the coasts for recreational purposes." (Section 1452(2)(e))

²⁸ Coastal Act Section 30210 direction to maximize access represents a different threshold than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect. In other words, it is not enough to simply provide access to and along the coast, and not enough to simply protect access, rather such access must also be maximized. This terminology distinguishes the Coastal Act in certain respects, and provides fundamental direction with respect to projects along the California coast that raise public access issues, like this one.

²⁹ The vision for this area is mentioned in the LCP in Chapter I, Area 5 Morro Rock, page 14: This section acknowledges that the wastewater treatment plant is a current use of this area but mentions increasing or changing the recreational use of the area; In Section E, Specific Resources, Issues and Constraints by Planning Area, Area 5 Morro Rock, page 45: Potential improvements include...a pedestrian and bicycle bridge over Morro Creek that would enhance lateral shoreline access; Finally, LCP policy 1.19, page 52: "at such time that funding is available, the City shall undertake construction of a pedestrian and bicycle bridge over Morro Creek as a means of enhancing lateral shoreline access and recreation opportunities."

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The WWTP site is located just north of Morro Creek in the middle of a prime visitor destination, including public recreational access pursuits related to Morro Rock and the beaches and facilities located there and extending upcoast, as well as access to and along the Morro Bay Embarcadero with its bayside access walkways and the shops, restaurants, and overnight facilities that cater to coastal visitors. Morro Bay also offers recreational and commercial boating access, including at Morro Bay Harbor.

The WWTP site is close to the Morro Rock/Coleman Park area, which is located just south of the WWTP site and just across Morro Creek. This is a prime area for pursuing active and passive recreational opportunities, including “surfing, fishing, boating, cycling, hiking and sightseeing”.³⁰ The surf spot offshore is known as “the Pit”, and is one of the most popular surfing locations in the Morro Bay area. Additionally the WWTP site is bordered to the west and the south by Morro Dunes RV park, a low-cost, visitor-serving use that provides overnight parking for RVs in 150 spaces, providing the most conveniently located lower-cost overnight facility in close proximity to the prime Morro Rock and Embarcadero area visitor destinations.

The WWTP area also includes two hotels and several restaurants, as well as the City’s Lila Keiser park with playground and ball fields, within about 1,500 feet of the WWTP. These amenities are located east of the WWTP, so that their visitors have to move through the WWTP area to access this significant beach area. There are currently three developed coastal access points located due west of the current site: one to the north at Atascadero Road, one just south of Atascadero Road and one north of the Morro Creek outlet.³¹ In addition, the confluence of Highway 1, running north and south, and the terminus of Highway 41, which runs from Yosemite National Park to Morro Bay, is approximately 1,000 feet from the WWTP site.

Currently, coastal visitors are directed along a circuitous route from these highways to the main Embarcadero area, and there has long been a vision that the WWTP area could be both better connected to the Embarcadero and become an important visitor access corridor in the City. This vision has manifested itself in various forms, including the recently adopted Morro Bay Bicycle and Pedestrian Plan,³² one objective of which is to connect, by pedestrian and bike paths, the area surrounding the WWTP site to the Embarcadero, including to the Harbor Walk public recreational trail on the downcoast side of Morro Creek.³³ Another is the recently adopted City goals for 2012/13, one of which is to “increase recreational opportunities of bike pathways and beach pathways”...including “to improve the connectivity between the bike paths at Atascadero Road” for which the City has applied for a grant.³⁴ The city was awarded a Federal Highway Association grant of \$220,000 to pay for construction of a bicycle and pedestrian bridge that will connect the Harborwalk and Embarcadero to Atascadero Road north of Morro Creek and will

³⁰ Fine-Screening Analysis, page 21.

³¹ Fine-Screening Analysis, page 22.

³² Approved by the Morro Bay City Council in February 2012 (and found at http://www.morro-bay.ca.us/documents/Public%20Services/Engineering/Bicycle%20and%20Pedestrian%20Plan%20Adopt%2028_12.PDF).

³³ Approved by the Coastal Commission in 2006 (CDP 3-05-071).

³⁴ Approved by the Morro Bay City Council in May 2012.

add a new segment to the North Coast National Scenic Byway in Morro Bay.³⁵ The funding for construction of this bridge will be available in 2014, but the City has executed agreements with Caltrans and is preparing to begin the preliminary design and permitting process.³⁶ This connection would not only connect the two sides of Morro Bay across the creek, but it would fill a gap in the local public shoreline access system and the California Coastal Trail (CCT) that is presently missing a crossing over Morro Creek.

The land use designations in the area include park and open space/recreation and visitor-serving commercial, as well as industrial designations that have an overlay allowing temporary visitor-serving uses. The project site is designated for light industrial uses with planned development and interim overlays. The light industrial land use designation calls for uses which do not require materials or equipment which emit excessive air, audio, water or land pollutants, or would require considerable outdoor storage. Pursuant to the LCP (page 23), the City encourages the location of industries in this designation that would cater to commercial fishing as well as to regional needs, such as machine shops, warehousing, light manufacturing, etc. The planned development overlay is intended “to provide for detailed and substantial analysis of development on parcels which, because of location, size or public ownership, warrant special review” such as this one.³⁷ The interim use overlay explicitly allows for uses other than those allowed by the underlying zoning designation in recognition of the higher priority of certain uses, including temporary visitor-serving or recreation uses “including but not limited to paths, RV parks, camping facilities and ancillary uses for same, playground, exercise courses, restrooms, drinking fountains, sewage dump stations, and parking”, as well as commercial fishing uses.³⁸ Pursuant to the zoning regulations, the district is meant to provide for manufacturing and other light industry, such as lumber yards, boat building, equipment storage, auto shop, etc.

The RV park west of the site and the area of motels and restaurants east of the site are zoned for visitor-serving uses. The purpose of the C-VS district is to provide for commercial uses intended to serve the needs of tourists and other visitors, and uses must provide for landscaping and related aesthetic improvements that create and enhance the visual attractiveness of the city. The City park (Lila Keiser Park) located southeast of the project site is designated and zoned for light industrial uses (the same as the project site), but provides recreational amenities to the public as allowed through the interim overlay designation. South of the project site (and south of Morro Creek) is the site of the power plant. This large area is designated for coastal-dependent industrial uses with the same PD/I overlay as the subject site, and is zoned for coastal-dependent industrial uses (M-2). The M-2 district is meant to provide for industrial development that requires a site on or close to the ocean or harbor. Allowed uses are thermal power plant and support facilities, pipelines, storage tanks, wastewater treatment facilities, and other industrial uses, and the M-2 district specifically identifies a prerequisite for development here to require a site located on or adjacent to the sea in order to be able to function. The M-2 zoning district also

³⁵ Grant Money Awarded for Pedestrian and Bike Bridge in Morro Bay, by David Sneed, San Luis Obispo Tribune, August 7, 2012.

³⁶ Email communication, Rob Livick, December 12, 2012.

³⁷ LCP Section 17.40.030.

³⁸ LCP Section 17.40.080.

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allows uses that are allowed in the M-1 district, but only if they are coastal-related, such as boat construction, marine supply and repair, etc.

In short, although the WWTP site itself does not currently provide any recreational opportunities, it is in a zoning district that allows for temporary recreational opportunities to be established and is located in an area with significant public recreational and visitor-serving uses and attractions, coastal access points, and a good number of current and potential public visitor-serving recreational opportunities. This area has the potential to become a vital part of the coastal recreational use opportunities located up and down the almost 11 miles³⁹ of ocean and bayfront shoreline in the City of Morro Bay,⁴⁰ including in terms of the articulated City vision for the area that would find it connected with the core visitor destinations of the Embarcadero.

In addition, the area of land between the WWTP site and the Embarcadero area consists largely of the power plant, and the power plant's future status is not certain. Currently, it is apparently operating at low capacity and only in times of peak demand, as a part of a third party contract, which has not been renewed. Lease agreements with the City expire at the end of 2012 and have not been renewed, and without a contract with a new utility, it may not be viable to renew the leases.

The Commission is not aware of any plans the owner of the plant, Dynegy, may have to modernize the plant to a new combined cycle plant, but Dynegy has indicated that it will operate the plant as long as it is viable. It may not be viable past 2015, considering that it uses the outdated once-through cooling technology that must be phased out by that time. Further, Dynegy has begun the oil tank removal process, eliminating six, 32-foot tall tanks from the premises. If the power plant shuts down because it is no longer viable, given its minimal operation, lack of revenue and outdated technologies that must be phased out, the 450-foot tall cooling stacks could be removed, drastically changing the look of the area in which it sits, just south of Morro Creek from the WWTP and just inland from Morro Rock. This area would no longer be dominated by power plant infrastructure such as large oil tanks and massive cooling stacks in association with industrial use, and would have strong potential to be converted to visitor-serving uses, to enhance coastal recreation and tourism, which has become the City's largest industry.

Thus, it is important to consider the importance of the WWTP site in relation to the overall area within which it sits, and to understand how decisions here jibe with LCP and Coastal Act priorities for shoreline development, including with respect to existing and potential public recreational access and visitor-serving uses and development in the area, when evaluating whether it is an appropriate site for a new WWTP facility.

WWTP not an Allowed Use

As described above, the existing WWTP is located in the LCP's M-1 zoning district. The LCP's M-1 zoning district does identify wastewater treatment facilities as an allowed use. Rather, wastewater treatment facilities are explicitly identified as allowed and appropriate in the M-2 designation. As a result, the existing WWTP is currently a non-conforming use on the site. As a

³⁹ Fine-Screening Analysis, page 21.

⁴⁰ About half of that shoreline area located along the more urban area of shoreline from the north end of the Cloisters residential area to the Golf Course, and the other half extending along the Bay to Audubon Sweet Springs Nature Preserve.

new WWTP, the proposed project thus proposes a use that is not allowed in the M-1 district. Absent an LCP amendment (e.g., to rezone the site to M-2), the proposed project cannot be found consistent with the allowed use requirements of the LCP.

WWTP Impacts

The LCP and Coastal Act require preservation and protection of the already-existing lower-cost visitor serving and recreational opportunities surrounding the project site. The proposed development will demolish an already-existing wastewater treatment plant and replace it with a new wastewater treatment facility. The proposed development of the new WWTP facility would place facility development on the southern and eastern portions of the site and create an open space area on the western and northern portions of the site. The new wastewater facility is proposed to include a new and different solids handling process than that used at the current WWTP. The new process would produce biosolids with “potentially stronger odors than those currently produced and stored” at the site.⁴¹ The biosolids would no longer be treated at the site, and would instead have to be removed from the proposed facility, requiring new truck trips to and from the site, estimated at 6 truck trips per day.⁴² In addition, truck trips associated with recycled water use would also increase future truck trips in the area, depending on the ways in which the recycled water is used. Further, construction is estimated to take 24 months,⁴³ during which time the area would be impacted by construction traffic, noise, and associated activities.

In addition to not being an allowed use at this location, the proposed project would significantly impact the potential for public access and recreation opportunities at the current site and in the area, in conflict with Coastal Act and LCP requirements. First, perpetuating industrial uses that would include additional truck trips and create stronger offensive odors in an area that is in close association, and has the potential to become a part of, a network of prime visitor-serving beachfront and tourist areas, would degrade the already-existing public access points in the area, as well as impede future, potential public access opportunities, by occupying land that could be used for public access and recreation, and by impacting areas adjacent to it. Further, the negative impacts of construction activities in an area frequented by tourists, beachgoers and recreational users of the area would potentially impede public access uses in the area for up to 24 months.

These project attributes will negatively impact existing public recreational access activities in the area, including intruding on the aesthetics, ambiance, and recreational utility of the beaches fronting the site. The existing RV park is likely to be most impacted due to it being directly adjacent to the WWTP site, thus disproportionately impacting lower-cost visitor serving overnight opportunities, but it is expected that all forms of access in the area will be negatively affected to one degree or another by the project. Although the new configuration of the WWTP would allow for a 2.75-acre open space area along Atascadero Road, this area is proposed to be immediately adjacent to an industrial WWTP, which is closed off by chain-link security fencing, and the area is not proposed to have any public access amenities such as paths, picnic tables or benches. Therefore, it would not provide a particularly inviting or useful public access or recreation benefit, nor soften the visual impact of the development. Further, although temporary

⁴¹ Fine-Screening Analysis, page 22.

⁴² Fine-Screening Analysis, page 22.

⁴³ Fine-Screening Analysis, page 51.

construction and ongoing traffic impacts can be reduced through proper construction BMPs and traffic management, they cannot be eliminated at this site. Thus, due to the proposed location of this project, it raises questions of consistency with Coastal Act Sections 30210, 30211, 30213, and 30253, and LUP Policy 2.01 in terms of protecting and not interfering with public access, including explicitly lower cost visitor recreational facilities such as the adjacent RV park.

Opportunity Costs

Perhaps even more critical, particularly in light of the fact that it is not an allowed use, and in light of the coastal hazard policies that constrain development at this site (see Hazard findings below), is the opportunity cost associated with recommitting the site to significant industrial use when the Coastal Act and LCP encourage higher priority use and development (including public access, and recreation, and visitor-serving uses and development) in this prime shoreline location and as a part of a vision for the area, including per LCP Policy 1.19 to enhance lateral shoreline access and recreation opportunities. As discussed above, the Coastal Act and LCP direct upland and ocean-fronting properties like this to be protected for visitor-serving commercial and public recreational use and development, although this site is currently zoned for light industrial uses. In addition, this site, is located within an area envisioned for meaningful connection to the Embarcadero (and thus creating a continuous public access shoreline and CCT trail system through Morro Bay), including as articulated by the City's vision for same, its promise, prominence, and relevance in terms of the application of these core LCP and Coastal Act policies are only heightened.

The location of this site adjacent to existing recreational, visitor-serving uses, clearly presents opportunities to coordinate use of this site with other surrounding and nearby uses that combine to make the Morro Bay shoreline such a prime visitor destination. As previously described, the existing WWTP is a non-conforming use and a new WWTP is not allowed in this zoning district. Further, it is important to evaluate whether use of such site for a WWTP is appropriate given LCP and Coastal Act protections of recreational access along the shore. The priority for use and development at this site, including in terms of local and regional long-term visions for redevelopment over time, is geared towards developing recreational and visitor-serving uses at this special location, and connecting such amenities across Morro Creek. Constructing a new WWTP at this location is not entirely in conflict with these LCP and Coastal Act directives, given that there is currently no access on this site and that it is zoned primarily for industrial uses, but given that the site is being redeveloped and the use proposed is not allowed, the City should evaluate its vision for the area and whether the project site should serve to transition the public into a visitor-serving corridor, providing a key connection and recreational/visitor-serving enhancement to the way in which residents and visitors use and view the City and its shoreline.

Moreover, constructing a new WWTP at the current site will have other indirect impacts, including committing this site to industrial use for the foreseeable future, which will limit consideration of other potential public recreational access and visitor-serving improvements in the area. In other words, such a commitment to siting a WWTP here would reduce both the potential for such nearby improvements, as well as their value and utility overall (because they would be sited in an area committed to ongoing industrial use, as exemplified by a new WWTP, as opposed to an area that is redeveloping as a connecting visitor and recreational corridor along the Morro Bay shoreline).

Land Use Priorities Conclusion

The LCP and Coastal Act require preservation and protection of existing lower-cost, visitor serving and public recreational opportunities surrounding the project site, and protect sites along the shoreline, such as the current site, for visitor-serving and public recreational access use and development. The project would negatively impact surrounding public recreational access and visitor-serving facilities, amenities, and future potential opportunities inconsistent with these requirements.

Critically for the proposed project, a WWTP is not an allowed use under the LCP's zoning at this location. In other words, it is currently a non-conforming use, thus construction of a new WWTP on this site, as proposed, is not an allowable use under the current zoning and is therefore inconsistent with the LCP. At a minimum, approval of a new WWTP at the proposed location would first require that the LCP be amended to allow such a use. However, given the site is located in a prime visitor-serving redevelopment opportunity area for the City, and given the other constraints to WWTP development at this location, it is not clear that such an LCP amendment would be appropriate.

Further, siting the proposed project here would limit the City's opportunity to provide a meaningful link and connection within the visitor-serving Embarcadero. While the LCP hazard policies discussed below may make development at this site challenging, an LCP amendment could be crafted to provide for public, visitor-serving and recreational use and development that could readily be removed if threatened, as opposed to significant brick and mortar public infrastructure (like the \$30 million WWTP) that would be significantly more difficult to address without shoreline alteration and armoring in the face of the same threats. In short, the proposed project cannot be found consistent with the Coastal Act and LCP land use priority and public creational access policies as cited and described in this finding.

D. HAZARDS

Applicable Policies

The LCP requires development to located in hazardous areas to minimize risks to life and property, and landform alterations. In addition, development that creates or contributes to erosion or geologic instability is prohibited. Excessive cutting and filling may be a basis for denial or project modification, and grading is to be kept to the "absolute minimum" by, among things, building structures on existing natural grade wherever possible. Relevant LCP hazards policies include:

LUP Policy 9.01. All new development located within areas subject to natural hazards from geologic, flood and fire conditions, shall be located so as to minimize risks to life and property.

LUP Policy 9.02. All new development shall ensure structural stability while not creating nor contributing to erosion or geologic instability or destruction of the site or surrounding area.

LUP Policy 9.03. All development, including construction, excavation and grading, except

for flood control projects and agricultural uses shall be prohibited in the 100-year floodplain areas unless off-setting improvements in accordance with the HUD regulations are required. Development within flood plain areas shall not cause further stream channelization, alignment modifications or loss of riparian habitat values consistent with Section 30236 of the Coastal Act. Permitted development shall be consistent with all applicable resource protection policies contained in the Coastal Act and in the City Land Use Plan. ... Development in the flood prone areas within the City shall include finished floor elevations two feet above the 100 year flood elevation. The heights of permitted development shall be compatible with the character of the surrounding area and not conflict with scenic and visual qualities.

LUP Policy 9.04. *Soils reports prepared by a licensed civil engineer with expertise in soils, geology and reports prepared by a certified engineering geologist shall be required prior to acceptance for filing of development applications in the following areas: a) Zone F, subzones 2 and 3; b) all areas having fill material on the property; c) where there are known or suspected geologic, soils, or hydrologic problems in the immediate vicinity; d) In addition, soils and/or geology reports may be required whenever in the judgment of the Chief Building Official, or City Engineer such studies are needed. The geology and soils reports shall identify and evaluate any hazards present including faults under or near the site, and shall provide for mitigating measures to assure a stable foundation. These reports shall contain statements that the proposed project will not destabilize adjacent or nearby land or improvements or create a public hazards or nuisance...*

LUP Policy 9.05. *Plans for development shall minimize cut and fill operations. Plans showing excessive cutting and filling shall be modified or denied if it is determined that the development could be carried out with less alteration of the natural terrain.*

LUP Policy 9.06. *All development shall be designed to fit the site topography, soils, geology hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. To accomplish this, structures shall be built to existing natural grade whenever possible. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited to development because of known soil geologic, flood, erosion or other hazards shall remain in project open space.*

LUP Policy 9.14. *All development along bluffs shall be adequately set back to ensure protection of development for its economic life and development shall not require alteration of the existing bluff land form or beach. New development shall assure stability and structural integrity, and neither create nor contribute significantly to erosion or geologic instability by accomplishing the following:*

- (1) Bluff-top setback shall be determined from a site-specific geology report prepared by a registered geologic engineer. The report shall set forth recommendations for building setbacks which shall ensure structural stability and integrity without altering bluff land form or necessitating the construction of protective devices such as seawalls for the life of the development (75-100 years).*

(2) The face of the bluff and vegetation or fill material stabilizing slopes shall not be altered.

IP Section C.2.c.1.0 Provide for the identification and evaluation of existing structural hazards, and abate those hazards to acceptable levels of risk.

IP Section C.2.c.2.0 Ensure that new development within the City's jurisdiction is designed to withstand natural and man-made hazards to acceptable levels of risk.

In addition, the LCP protects coastal-dependent use and development along the shoreline and indicates that the Morro Bay wastewater treatment facilities are to be protected in their existing location because the outfall line element is coastal-dependent.⁴⁴ Policy 5.03 states:

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

Analysis

The LCP requires development in hazardous locations to minimize risks to life and property. The introduction of Chapter 10 of the LCP identifies the City's significant hazards, including flooding, erosion and landslides, and establishes a vision for the City to go beyond its previous Safety and Seismic Safety elements, its Flood Insurance Program and other previous policies to address hazards. Chapter 10 also references Coastal Act Section 30253 as guiding the policy for addressing hazards in the City, where Section 30253 specifically states that "new development shall minimize risks to life and property in areas of high geologic, flood and fire hazard" and "assure stability and structural integrity and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area..." The hazards policies then go on in Policy 9.01 to require all new development to be located so as to minimize risks from hazards. In addition, Policy 9.02 requires new development to ensure structural stability and prohibits the destruction of the site or surrounding areas, and Policy 9.03 prohibits most new development in the floodplain and requires all new development that is within the floodplain to comply with all applicable resource protection policies of not only the City's LCP, but also the Coastal Act. Further, Policy 9.04 requires a geology report to be prepared that describes whether proposed projects on hazardous sites would destabilize adjacent or nearby land or improvements, or create a public hazard or nuisance. Also, IP Section C.2.c.1.0 requires existing structural hazards to be identified and abated, and IP Section C.2.c.2.0 requires new development to be designed to withstand natural and man-made hazards to acceptable levels of risk.

Although the LCP does contemplate the use of mitigation measures in the flood plain, such as elevating finished floor elevation about the 100-year flood, the LCP also requires landform alterations to be minimized, including LUP Policy 9.05's requirement that development minimize cut and fill, and that projects that have excessive cut and fill be modified or denied if the development could be carried out with less alteration of the natural terrain. LUP Policy 9.06 requires development to be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions so that grading and other site preparation is kept to a minimum, and requires development to be built at the natural grade whenever possible. In addition, Policy 9.06

⁴⁴ The LUP defines coastal-dependent as "any development or use which requires a site on, or adjacent to, the sea to be able to function."

requires natural features to be preserved to the maximum extent feasible, and it also requires hazardous areas of project sites to remain in open space.

The LCP provides some details about the risks of flooding within the City, specifically mentioning flooding in the Morro and Chorro Creek watershed. Page 156 of the LCP states that the floods of 1969 and 1973 showed that flooding could have been worse if the flood plain had been more highly developed, and on page 157, the LCP specifically identifies the fact that the existing WWTP is located in the flood plain as one of the City's flood-related problems. As described above, the LCP goes on, in Policy 9.03, to prohibit all new development in 100-year floodplain areas, except for flood control projects, agricultural uses, and development that is required to use off-setting improvements required by the Department of Housing and Urban Development (HUD) regulations (such as elevating above the flood level). The LCP also describes risks from potential tsunami run up areas, and describes the area that is at risk, which includes the Embarcadero, and areas up to Highway 1 in the Atascadero Beach area.

Finally, consistent with these hazards policies, including policies requiring risks from existing structural hazards to be abated, and policies allowing for protection of existing structures, LCP Policy 5.03 allows for protection of the WWTP at its current location. This policy is also based, in part, on a determination that the ocean outfall line of the WWTP is coastal-dependent.⁴⁵

The proposed project site is located approximately 1,000 feet from the ocean, within a historic dune field, just north of the mouth of Morro Creek. The area is subject to multiple coastal hazards. First, the project is within the 100-year floodplain and may be subject to ocean flooding in the future. Second, the project is in the tsunami runup zone. And third, the project is subject to seismic hazards, including liquefaction and lateral spreading. The City has proposed to address flooding hazards on the site through significant filling and elevation of the grade on the existing WWTP site. In terms of consistency of this approach with the LCP, it should first be observed that Policy 5.03 does not apply to the proposed project because the project is for construction of a *new* WWTP. Policy 5.03 indicates that the existing plant could be protected in situ (e.g., a floodwall to address flooding) if that were deemed appropriate for other reasons, but it is not a basis to justify a replacement plant incorporating different technologies at the same location. The LCP contemplates future improvements to the existing facilities, in terms of expanded capacity to meet build-out demands,⁴⁶ a future expansion to the existing wastewater treatment facilities to 2.4 mgd,⁴⁷ and to make a recycled water plan a required part of any wastewater treatment plant

⁴⁵ The policy refers to "The Morro Bay Wastewater Treatment facilities", not future facilities, redeveloped facilities, generic wastewater facilities, or new facilities, but rather The Morro Bay Wastewater Treatment facilities. The LCP does not identify any future development in this context, nor does it explicitly protect any such future development at the site. It only references the facilities as they existed when the LCP was drafted. Thus, absent additional explanation, the policy must be read in the time and context in which it was written, namely referring to the existing WWTP facilities.

⁴⁶ LCP Public Works and Locating and Planning New Development, page 64 states: "Future needs of Morro Bay have also been anticipated by a planned wastewater treatment plant expansion (completion date in 1983)". This expansion took place in 1979 through CDP 406-01.

⁴⁷ LCP Policy 3.06.

upgrade.⁴⁸ None of these policies or references within the City's LCP contemplates demolishing the current facilities and building a new, replacement plant at the same location.

In addition, Policy 5.03 is itself based on a premise that the ocean outfall line is coastal-dependent. In other words, the policy is not based on the WWTP being identified as coastal-dependent, rather just the ocean outfall. Current technology may allow for the elimination of the ocean outfall altogether,⁴⁹ as shown by the recently approved wastewater plant in nearby Los Osos,⁵⁰ in which case the LCP could be amended to remove this section. More importantly, the existing coastal-dependent ocean outfall could still be used by a plant that is located further inland. In short, despite the Applicant's reliance on LUP Policy 5.03,⁵¹ LCP Policy 5.03 was designed to protect the coastal-dependent outfall line and the existing facility that relied on it. It should not be interpreted, as the Applicant urges, as an override of the LCP's hazards minimization and other policies, to protect the current facilities and/or any entirely new wastewater treatment facilities in that location for perpetuity.⁵²

100-Year Floodplain

The WWTP site is situated in a "topographic depression, situated between higher ground to the east and a narrow swath of dunes to the west".⁵³ The Applicant's current proposed project design uses a 50% reduced footprint from the site's currently developed pad mitigating the size of the development in the floodplain. Even given that, the majority of the project site lies in the FEMA-identified 100-year flood zone,⁵⁴ and the proposed project plans show that the new facility itself is situated partly (around 50%) within this zone. In addition, the site experiences both localized drainage problems and larger flooding problems,⁵⁵ and according to the LCP, the WWTP site and other areas "near the lower reach of Morro Creek as it empties into the sea" are subject to the

⁴⁸ LCP Policy 3.08-Water Management Plan (adopted in 1995).

⁴⁹ Though the applicant urges that even given no use of the outfall to dispose of treated effluent were a full recycled water reuse program be implemented, the outfall must remain as the only "fail-safe" disposal system as well as a potential mechanism for brine disposal (brine being a byproduct of treating water in a recycled water program to safe reusable levels).

⁵⁰ The Los Osos WWTP, approved by the Commission last year, was premised on returning all treated wastewater effluent to beneficial uses, and did not include any ocean outfall.

⁵¹ Including its alternatives analysis and rankings that rely on LUP 5.03 in relation to the existing WWTP site. When LUP Policy 5.03 is appropriately discounted, and when LUP Policy 9.03 is appropriately applied, application of these LCP policies to the existing WWTP site would lead to a different outcome in the Applicant's alternatives analysis, perhaps even resulting in the proposed site being found to have a 'fatal flaw,' in terms of the Applicant's alternatives analysis methodology.

⁵² At all locations considered for siting the WWTP, the Applicant determines that the ocean outfall is the only means for "fail-safe disposal," to "ensure protection of the environment and human health when beneficial reuse is temporarily postponed or terminated." At all sites, it was determined specifically that: the existing ocean outfall is the preferred disposal option as it provides for cost effective "fail safe disposal" and is likely necessary to support future water reclamation (for a means of disposal of the treatment byproduct brine), maximizes use of existing infrastructure, and minimizes wastewater treatment costs. Fine Screen Analysis, pages 32, 33, 73 and 132.

⁵³ Flood Hazard Analysis, page 4.

⁵⁴ The FEMA flood zone refers to FEMA maps (FEMA Flood Insurance Rate Maps (FEMA/FIRM)) that depict the boundaries and depths of flooding in a 1% chance (100-year) flood. The FEMA/FIRM maps do not take into account sea level rise due to global warming nor the simultaneous occurrence of 100-year flooding coming from both inland and seaward sides, as would affect this site.

⁵⁵ Flood Hazard Analysis, page 4.

100-year flood.⁵⁶ The 100-year floodplain is defined in the LUP as “the area subject to flooding in a major storm which has the potential for occurring once during a 100-year period”⁵⁷ and was defined in the Applicant’s flood hazard analyses as the “flood that has a 1% chance of being equaled or exceeded in any given year”.⁵⁸ The FEMA floodplain, on the other hand, is the zone where FEMA has mapped the 1% chance (100-year) flood, without taking into account sea level rise caused by global warming, nor the simultaneous occurrence of both 100-year storm flooding and maximum wave run-up.⁵⁹ The project site is located almost entirely within both the LCP-defined 100-year floodplain, and the depth of flooding at the existing site expected in a 100-year event has been estimated to range from 3.4 to 5.5 feet.

Flooding at the WWTP site is associated with flooding from Morro Creek and has the potential to be affected by ocean wave run-up under changed conditions such as eroded dunes or the occurrence of natural disasters, such as tsunamis. The Applicant’s submittal evaluated the 100-year floodplain pursuant to LCP requirements, assuming wave run-up of 11.1 feet, sea level rise of 4.6 feet and a simultaneous occurrence of sea level rise, maximum wave run-up, and a 100-year flood.⁶⁰ This analysis was subsequently peer-reviewed and the numbers were revised to deal with “mathematical surging” in the model in a second analysis.⁶¹ Removing the mathematical surging from the model changed the inundation levels that the first flooding model predicted to a certain extent, but the model still predicts that the current site will be inundated during the confluence of maximum wave run-up, predicted sea-level rise and a 100-year flood. Per the Applicant’s estimates, the WWTP site (including the footprint of the proposed new WWTP) would be under 3.4 to 5.5 feet of water during a 100-year flood event given the current site elevations.⁶² Thus, in a 100-year storm (i.e., a major storm which has the potential for occurring once during a 100-year period), the entire existing WWTP site is located in an area subject to significant flooding and some parts of the development would be subject to more than 5 feet of inundation.

To address such flooding, the proposed project includes raising the new plant’s development vertically to an elevation that is 2 feet above expected flood levels. To do this, the Applicant would raise the elevation of approximately four acres of fill up to seven and a half feet high, estimated by the Applicant to amount to approximately 35,000 cubic yards of fill (equivalent to approximately 3,500 large truckloads of fill soil). However, raising the site on fill does not change the fact that the footprint of the new development is in a 100-year flood hazard zone as designated by the City’s LCP. The fill the Applicant is proposing does not “remove” the project from the LCP floodplain, it simply elevates the project vertically out of the flood inundation zone. Therefore, the proposed development is still situated in the LCP-designated floodplain in

⁵⁶ LCP Chapter X, Hazards, page 157.

⁵⁷ LUP Page A-5.

⁵⁸ Flood Hazard Analysis, page 2.

⁵⁹ Flood Hazard Analysis, page 2; Morro Creek Flood Analysis with Wave Run-up and Sea Level Rise (Addendum to the Flood Study dated August 7, 2009).

⁶⁰ Morro Creek Flood Analysis with Wave Run-up and Sea Level Rise (Addendum to the Flood Study dated August 7, 2009), page 1.

⁶¹ Review of the Morro Creek LOMR FLO-2D, prepared by Riada Engineering, Inc. March 3, 2012.

⁶² Review of the Morro Creek LOMR FLO-2D, prepared by Riada Engineering, Inc. March 3, 2012, Exhibit 6B-C.

conflict with the general direction of LCP policy 9.03 to avoid new development in the floodplain.

Policy 9.03 does have an exception to prohibiting development in the floodplain in that it allows development in the floodplain when “offsetting improvements in accordance with the HUD regulations are required.” The HUD regulations cited in these policies apparently refer to HUD’s former role as the agency administering floodplain regulations as a part of the National Flood Insurance Act. The National Flood Insurance Act of 1968 enacted a National Flood Insurance Program (“NFIP”) which principally required jurisdictions to “enact land use and control measures...to guide the rational use of the floodplain as a condition of Federal subsidized flood insurance” in order to assist victims of floods which the law considered to be “one of the most destructive national hazards facing the people of the United States.”⁶³ The NFIP, which was initially administered by HUD, uses the 100-year flood as a base flood standard in the administration of the program.⁶⁴ The program directives stated that “in carrying out the flood insurance program the Secretary shall afford a priority to making flood insurance available to the cover residential properties which are designed for the occupancy of from one to four families, church properties and business properties...owned or leased and operated by small business.”⁶⁵ At the outset of the program, before any amendments to the law, insurance could be extended to other types of development, including properties owned by State and local governments and agencies, but only upon a determination by the administrator of the program that extending flood insurance to such development would be feasible. In 1973 the Flood Disaster Protection Act of 1973 was amended to expand the National Flood Insurance Program to “provide coverage for all types of buildings, whether owned publicly or privately, and regardless of whether...religious, residential, industrial, commercial, or agricultural use.”⁶⁶

In April of 1979 Executive Order 12127 merged many of the federal government’s separate disaster-related responsibilities into the Federal Emergency Management Agency (FEMA), including the Federal Insurance Administration and all Federal Disaster Assistance Administration activities from HUD,⁶⁷ and FEMA is now responsible for administering the NFIP. The Department of Water Resources (DWR) is the state-side administrator of the NFIP for FEMA in California and provides communities technical assistance with floodplain management. Once a community is a participating member of the NFIP, the DWR will allow non-residential development in the floodplain, so long as said development complies with the locally certified ordinances that speak to development in the floodplain and the development is designed so as not to adversely impact surrounding development. Morro Bay’s participation in the NFIP resulted in them passing Ordinance No. 172 “Flood Damage Prevention” in November 1979. This ordinance allows nonresidential development or substantial improvement so long as

⁶³ National Flood Insurance Program, U.S. Department of Housing and Urban Development, Washington, D.C. January 1974, page 43.

⁶⁴ Further Advice on Executive Order 11988; Floodplain Management Interagency Task Force on Floodplain Management, page 3.

⁶⁵ National Flood Insurance Program, U.S. Department of Housing and Urban Development, Washington, D.C. January 1974, page 22.

⁶⁶ National Flood Insurance Program, U.S. Department of Housing and Urban Development, Washington, D.C. January 1974, page 1

⁶⁷ <http://www.fema.gov/about>.

the “structure shall...have the lowest floor, including basement, elevated to the level of the base flood elevation.” Morro Bay’s current ordinance, passed August of 2012, demands that nonresidential development in the zone in which the current WWTP sits be elevated at least to two feet above base flood elevation.”

Because Morro Bay’s first Flood Management Ordinance was developed in 1979, after FEMA took over administration of the NFIP, and LCP Policy 9.03 was certified in 1982, it is unclear why the LCP cites HUD regulations when restricting development in the floodplain, when at that time, such development was regulated by FEMA. However, these references are either erroneous or simply outdated, because HUD regulations no longer address floodplain management, and it appears appropriate to substitute FEMA’s regulations related to the NFIP in place of HUD regulations. FEMA allows for development in the floodplain, when a participating jurisdiction has developed a local flood ordinance that speaks to managing development in these areas, so long as the development does not exacerbate flooding to surrounding areas (see above). Morro Bay’s “Flood Damage Prevention” ordinance demands that nonresidential development in the floodplain zone, in which the current WWTP sits, be elevated to two feet above base flood elevation. Since the Applicant’s proposed development is elevated two feet above flood elevation, the project as proposed is allowed in the FEMA-designated floodplain, so long as the development does not exacerbate flooding to surrounding areas. The final peer-reviewed flood model submitted by the Applicant shows that the proposed development would exacerbate flooding to surrounding areas, although the impacts would be minimal. For example, the High School would be expected to experience less than three inches more of flooding, flooding at the intersection of Atascadero Road and J Street right near the Morro Strand RV park would see about 1 additional inch of flooding and the Motel 6 at the intersection of Highway 41/Atascadero Road and Highway 1 would experience an additional tenth of an inch of flooding.⁶⁸

Despite the fact that the proposed WWTP site is in an area that currently experiences flooding, and given the exacerbating effects of sea level rise may experience even more flooding in the future, the Applicant indicates that these issues are mitigated by the protective ability of the existing dune field seaward of the site and can be mitigated further by elevating the facilities using some 2-7.5 feet of fill (varies because the site topography varies). In terms of the former, dunes can only provide so much protection. For example, despite the presence of the dunes there is anecdotal evidence that wave run-up reaches the base of the fronting dunes at least once a year.⁶⁹ In addition, historically, an outlet for floodwaters passed through the dunes at the west end of Atascadero Road,⁷⁰ and there has been at least one observation of waves overtopping the dunes at the outlet (at elevation 17 feet).⁷¹ Although this gap has reduced in width and gained height to the point that the outlet has somewhat closed and apparently no longer serves as an outlet for flood waters, there is a potential for it to be re-opened in the future due to storms.⁷² Further, although the Applicant urges these dunes are relatively stable,⁷³ they are subject to the

⁶⁸ Review of the Morro Creek LOMR FLO-2D, prepared by Riada Engineering, Inc. March 3, 2012, Exhibit 6B-C.

⁶⁹ Flood Hazard Analysis, page 16.

⁷⁰ Flood Hazard Analysis, page 4.

⁷¹ Flood Hazard Analysis, page 16.

⁷² Flood Hazard Analysis, page 4.

⁷³ Applicant’s Response to Request for Additional Information (File No. SL-16578-SB).

aforementioned changes caused by flowing water or other natural forces, withstand significant foot traffic, and are currently migrating at an estimated rate of about 1 foot per year.⁷⁴ Dunes are typically a shifting and changing landform. With rising sea levels and associated movement of the sea-land interface, even the Applicant's proposals to better protect the dunes (by increasing vegetative cover and/or through the construction of boardwalks and dune condition monitoring), are unlikely to ensure their continued function as fail-safe protection from flooding. Although the site would not be subject to wave run-up under the current dune configuration, the Applicant's engineer evaluated what the wave run-up impacts would be at the site if the dunes were not present. That analysis found that the wave run-up would be approximately 24 feet, or approximately three to nine feet above the existing site elevation (depending on the exact location). If the proposed fill were developed, this wave run-up would inundate the site to a depth of up to three feet above the proposed fill slope. Therefore, given the changing nature of the dunes, including the dune outlet at Atascadero Road, it is quite possible that the site could be subject to some ocean flooding in the future.

With respect to the Applicant's proposal to mitigate flood risk through bringing in significant amounts of fill to raise the proposed facilities above flood elevation (up to 7.5 feet of fill in some areas) this portion of the project is inconsistent with LUP Policy 9.05 (requiring minimization of cut and fill, and requiring denial if other alternatives are available that result in less alteration) because the project likely could be carried out in a way that does not require the placement of a large amount of fill (estimated by the Applicant at 35,000 cubic yards of fill) in the LCP designated flood zone (see alternatives discussion below). For similar reasons, the proposed fill is inconsistent with LUP Policy 9.06 requiring development to fit the site topography and to keep grading "to an absolute minimum." Further, adding this amount of fill at the project site will result in the WWTP being confined to an 'island' with floodwaters all around during a flood event. During the 100-year flood event, these surrounding floodwaters would range from approximately two to five feet deep along Atascadero Road, the only vehicle access to the site. Therefore, in a 100-year flood, when equipment is at most at risk for failure, it would be difficult for plant operators to reach the site, potentially increasing the risk of a malfunction or sewer spill.

Because the proposed project would site development in a 100-year floodplain when the LCP prohibits same to minimize such flood risk, because a large amount of fill is required to make the project allowable under the LCP, the proposed project has not abated such hazards to an acceptable level of risk, and is inconsistent as well with IP Sections C.2.c.1.0 and C.2.c.2.0.

In short, the LCP requires that risks from coastal hazards be minimized, and appears to contemplate flood elevation as a means to do that in certain circumstances. However, given the significant potential flooding at this location, and the uncertainty of future long-term risks over the potential life of the project, siting a large public infrastructure project in a flood zone by using a such a large fill slope is not consistent with the LCP (including with LCP policies requiring that projects with excessive grading be denied, and with policies designed to maximize protection of the existing landform by fitting development to existing topography and natural grade). In a 100-year flooding event, the WWTP would be an island, which doesn't conservatively minimize hazard risk as required by the LCP.

⁷⁴ USGS National Assessment of Shoreline Change Part 4: Historical Coastal Cliff Retreat along the California Coast, page 19.

Tsunami

According to the San Luis Obispo County Tsunami inundation zone map, the entire WWTP site (including the footprint of the proposed new WWTP facilities) lies within the tsunami inundation zone.⁷⁵ The elevation of the current WWTP site is 15 feet at the lowest elevations and up to 21 feet at the dune edge or highest point.⁷⁶ The maximum tsunami flood elevations given a “distant worst case earthquake source” scenario would be 23.9 feet,⁷⁷ or approximately three to nine feet above the existing elevation, or to a height of up to three feet above the proposed fill slope. Further, under future sea level rise conditions, this tsunami threat would be even greater. Recently, the Commission found that the most appropriate way to approximate the threat of a tsunami under future sea level rise is to add three feet to the maximum tsunami elevation as determined by CalEMA.⁷⁸ Therefore, in this circumstance, the potential tsunami inundation threat would flood the site to a depth of up to 12 feet as compared to the existing site, or six feet above the proposed fill slope elevation. Thus, the site would be under water in a tsunami flood situation, even given the plans to elevate it on significant fill. Although the Applicant indicates they would agree to a tsunami mitigation, evacuation and training plan to prepare for the hazards associated with tsunamis, and there are likely measures that could be put in place to further address tsunami risk (such as tying down tanks, building tank walls high enough to prevent over-topping and using flexible pipe couplings to prevent pipe breakage), measures such as the fill currently proposed, cannot themselves be found consistent with the LCP, as described above, and it is unclear if there are feasible measures to reduce risks to an acceptable level, nor how expensive such measures would be to undertake. Tsunami risks cannot be avoided at the project site, and therefore, the proposed project is inconsistent with LUP Policy 9.01 on this point given that alternative sites that appear feasible would further minimize this risk.

Site Stability

The soils at the proposed project site are largely made up of sand, interspersed with layers of alluvium deposits, and have been identified by the Applicant as having a high erosion potential.⁷⁹ Though the site is relatively flat, the proposed project would grade and add a significant new area of fill to the site. Although the proposed fill would only have minimal impacts on off-site flooding, it would, to some degree, be expected to direct eroding forces (such as floodwaters) off onto other areas, aggravating the potential for erosion of the areas that are not raised through fill. Such potential to increase erosion will only be exacerbated by sea-level rise and associated impacts. Siting new development in an area with soils that are at high risk for erosion, in addition to adding fill which may contribute to additional/aggravated erosion, is not consistent with LUP Policies 9.01 and 9.02.

In addition, the site is mapped by the LCP in the “area of potential groundshaking” (LUP Figure 23), and likewise mapped by the LCP in the area of “moderate to high liquefaction potential” (LUP Figure 24), where the Applicant concurs that the potential for liquefaction at the current

⁷⁵ Shoreline Erosion Study and 100-year Sea Wave Run-up Analysis, page 6.

⁷⁶ Maximum Tsunami Flood Elevations, prepared by Dudek, February 1, 2012.

⁷⁷ Per the California Emergency Management Agency.

⁷⁸ See Commission approval of Del Norte County LCP.

⁷⁹ Fine-Screening Analysis, page 15.

WWTP site is moderate to high.⁸⁰ Seismic settling and lateral spreading are also potential concerns at the site.

According to the Applicant's geological report, in the 1980s, the WWTP was improved with stone column supports to minimize liquefaction hazards. Due to low blow counts and a high groundwater table, the Commission's Senior Geologist has determined that additional liquefaction mitigation would be necessary for the proposed improvements, including potentially additional stone columns, pile or mat foundations, or removal and recompaction of native soils. Although these mitigation measures could be applied (and the Applicant has agreed to provide necessary seismic hazards mitigation), such measures themselves would be located in the floodplain the same way that the fill area would be, and further, any additional removal and recompaction of native soils would lead to additional landform alteration and elimination or degradation of the dune soils underlying the site. As a result, geologic risks cannot be minimized consistent with the LCP because the measures required to minimize these risks, including placement of excessive quantities of fill, and major landform alteration, are not consistent with the LCP.

Hazards Conclusion

The proposed project site is located in the 100-year floodplain and is subject to significant hazards from flooding and tsunamis, as well as seismic hazards. The LCP prohibits development in the 100-year floodplain unless it is designed to mitigate flooding hazards consistent with FEMA requirements and it can meet LCP requirements otherwise. The proposed WWTP site is located within the 100-year floodplain, and would require significant amounts of fill, some 35,000 cubic yards, to elevate proposed WWTP facilities above floodwaters in the floodplain. This fill would increase offsite flooding to some degree. In addition, the proposed project, including the proposed hazard mitigations that are needed due to the project's location within a 100-year floodplain, cannot be found consistent with LUP Policies 9.01, 9.02, 9.05, and 9.06. It is also inconsistent with LUP Policy 9.06 requirements that require that "Areas of the site which are not suited to development because of known soil, geologic, flood, erosion or other hazards shall remain in project open space" because the proposed project would put new WWTP facilities in just such an area, and would not preserve these areas as open space. In short, the proposed project cannot be found consistent with the LCP's hazards policies.

E. OTHER ISSUES

1. Visual Resources

Applicable Policies

The LCP requires development to minimize visual impacts and protects public views to and along the shoreline. The LCP states:

LUP Policy 12.01. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic and coastal areas, to

⁸⁰ Fine-Screening Analysis, page 13.

minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas...

LUP Policy 12.02. Permitted development shall be sited and designed to protect views to and along the coast and designated scenic areas and shall be visually compatible with the surrounding areas...

Visual Resources Consistency Analysis

The LCP requires the scenic and visual qualities of the coast to be protected and requires development to be sited and designed to protect views to and along the ocean and other coastal areas. It specifically identifies scenic and visual quality as a "resource of public importance". The project involves constructing a new WWTP immediately adjacent to multiple areas that are used by the public for access and recreation at and along the coast, as described in the preceding finding. The site is located in a visually significant area in close proximity to the shoreline and significant public views. It is on Atascadero Road, which is designated in the LCP as a street providing scenic views (LCP Figure 30). In addition, views from the dunes looking inland across the site include a backdrop of mountain ridgelines, and views from the road looking towards the coast across the site include Morro Rock (a significant visual, geologic and cultural landform). The site is also visible from Highway 1. Highly scenic dunes and Morro Strand Beach are located to the west, and the Morro Bay High School is across Atascadero Road. Therefore, proposed development at this location has the potential to cause significant adverse visual impacts.

The existing WWTP already impacts such public views, but the proposed WWTP would lead to additional and/or new view impacts due to the fact that it would be elevated above flood levels on top of up to approximately 7.5 feet of fill. The project is a large industrial development that will cover approximately 3.7 acres of the current site with an operations building, residuals facilities, a maintenance building, two large secondary clarifiers, and two large oxidation ditches, as well as other developments such as an influent pump station, and a chemical station. In addition, the new WWTP would include a two-story operations building, whereas the existing WWTP structures are only one-story or smaller. These larger buildings would be even taller, given that they are required to be elevated on fill. Despite this, the new WWTP would be clustered on the southern part of the site, reducing the facilities' footprint by about 50%.⁸¹ The northern portion of the site is also proposed to be left undeveloped as open space, which could potentially benefit visual resources. However, as currently proposed, this area would be surrounded by security fencing, and would not protect or enhance views in the area.

Since the project requires new buildings and infrastructure on significant fill (more than 7 feet in some areas), it will have an adverse impact on the views that exist in this area and may alter existing views, or further impede views that are already partially blocked. Views to the shoreline from Highway 1 (east of the project), toward the ocean are intermittent due to existing development and vegetation, and the new facilities will further interrupt these views because the residuals facility and Operations buildings will be seen over the top of the surrounding development while looking west from Highway 1. However, these impacts would be brief and

⁸¹ Fine-Screen Analysis, page 28-29.

would only momentarily affect blue water views or views of Morro Rock from the east across the site.

Views from Atascadero Road, including views to Morro Rock, would also be adversely affected because the new plant would have a raised profile, above that of the current plant, due to the extensive fill required to elevate the plant out of the floodplain and the proposed two-story building. As described above, although the facilities would be further set back from Atascadero Road, security fencing along Atascadero Road would be installed and therefore views would not be protected or enhanced by that aspect of the project. Scenic view impacts associated with the development of the new plant from the ocean and dunes, would also be impacted to the extent that a new building profile of the new plant on the fill would create “new contrasting elements into the local scenic vistas in the form of the new WWTP facilities.”⁸² The impacts to these scenic vistas from the beach and from the dunes, however, would not be substantially degraded from the impacts of the current plant. The new plant would be designed in accordance with the building and zoning code of the surrounding areas (Light Industrial Zoned) and with architectural themes that are consistent with the surrounding areas.⁸³

LCP Policies 12.01 and 12.02 require that permitted facilities should be sited and designed to protect views to and along the ocean and scenic and coastal areas, minimize the alteration of natural landforms and be visually compatible with the character of surrounding areas. Further, LCP policies 12.01 and 12.02 demand that where possible, permitted facilities should restore and enhance the visual quality in visually degraded areas.

The proposed development would be clustered on the southern half of the site to help mitigate the potential view impacts of placing this industrial facility in a coastal, scenic view corridor, adjacent to the beach and dunes. However, the development would also be taller than the existing WWTP and would be elevated even further on up to 7.5 feet of fill. Further, the open space that would result from clustering the development on the southern half of the parcel would be enclosed by security fencing, which would not blend with the natural surroundings or otherwise protect or enhance views. In short, the proposed project will not enhance the shoreline viewshed. See Exhibit 2 for visual simulations of proposed project.

Visual Resources Conclusion

The WWTP site is located in an LCP-designated sensitive view area between Highway 1 and Morro Rock. The LCP requires the scenic and visual qualities of the coast to be protected and where feasible enhanced, and requires development to be sited and designed to protect views to and along the ocean and other coastal areas, to be visually compatible, and where feasible to restore and enhance visual quality. The new WWTP would be in a similar location as the plant to be demolished, and would be elevated above flood levels, so it would be highly visible in this scenic area, similar to the existing plant. While mitigation measures could be required to minimize the plant’s visual impacts, the proposed project would still not achieve the LCP’s intent to protect and enhance views in visually significant areas, such as the project site. Development of the WWTP on the Righetti site would pose fewer visual resource concerns.

⁸² Draft EIR, page 3.1-6.

⁸³ Draft EIR, page 3.1-6.

2. Water Reclamation and Biological Issues

Applicable Policies

The LCP requires water reclamation to be a part of any upgraded WWTP, requires water supply to be protected for priority uses, and requires the quantity of water in the Morro and Chorro groundwater basins to be enhanced, where feasible. Taken together, these policies require this project to include a meaningful wastewater reclamation program. Relevant LCP policies include:

LUP Policy 3.08(5). Even with delivery of State Water, use of reclaimed water is the City's second highest priority and remains a productive source of potential conservation for both large and small scale projects, respectively, and as a result, should be pursued when funded by a potential user, required as part of a wastewater plant upgrade or permit condition or when it is shown as cost effective for City use. Staff is further directed to pursue small scale projects as both internal and external funding sources are made available.

LUP Policy 3.04....A Water Management Plan shall ensure at a minimum, the following: (1) An adequate water supply for coastal-dependent activities such as commercial fishing, oyster farming, fish and shellfish processing, recreation boating and fishing and industrial energy development...

LUP Policy 11.17. The biological productivity of the City's environmentally sensitive habitat areas shall be maintained and, where feasible, restored through maintenance and enhancement of the quantity and quality of Morro and Chorro groundwater basins and through prevention of interference with surface water flow. Stream flows adequate to maintain riparian and fisheries habitat shall be protected.

LUP Policy 6.06. The City shall participate in the efforts of the coastal Conservancy or other public or private agencies to implement agricultural enhancement programs. These programs may include but are not limited to... (4) Assistance programs (water subsidies, recycling methods...)

Consistency Analysis

Pursuant to LUP Policy 3.08(5), the LCP requires the Applicant to pursue water reclamation as part of this WWTP project. Furthermore, maximum reuse of reclaimed water would help the City meet its water supply needs and ensure water supply is available for priority uses, as required by the LCP, especially if/when State Water is restricted or unavailable. Properly treated reclaimed water could be used for many beneficial purposes, including agricultural irrigation inside (or possibly outside⁸⁴) of the district's service area, injection wells to maintain and enhance the water quality and biological resources associated with the Chorro and Morro groundwater basins (including as required by LUP Policy 11.17), and for residential and municipal landscaping, among other uses. LUP Policy 6.06 encourages the City to support agricultural assistance programs, including through water subsidies and recycling methods. In addition, LUP Policy 11.17 requires ESHA to be maintained and where feasible, restored and enhanced, including through assuring adequate quantity and quality of water in the Morro and Chorro groundwater

⁸⁴ In Monterey County they irrigate 12,000 acres with treated wastewater outside the City limits and have passed an ordinance to allow them to do so.

basins. In short, the LCP requires that the new WWTP provide for a meaningful reclaimed water component because the LCP requires: (1) water reclamation to be a part of the WWTP upgrade; (2) water supply to be protected for priority uses; (3) the quantity of water in the Morro and Chorro groundwater basins to be enhanced where feasible; and (4) the City to participate in agricultural enhancement programs (including recycling water). As explained below, the proposed site of the WWTP makes accomplishing these goals more difficult than it would be if the WWTP were in a different location.

Water Supply Background

The City of Morro Bay has a storied water supply history that goes from primarily relying on Morro and Chorro Creek groundwater aquifer extractions to the point of overdraft during long-term drought periods or when alternative water sources experience shortages,⁸⁵ to building a desalinization plant in the early 1990s,⁸⁶ to finally relying heavily on State Water Project water for its municipal supply.⁸⁷ Currently the City contracts for 1,300 acre-feet per year (afy) of State Water, extracts some 1,700 afy from the Chorro and Morro groundwater basins, and produces an additional 645 afy in its desalinization plant. The City estimates that its current municipal demand is 1,250 afy, down from 1,625 – 1,800 afy historically due to successful conservation strategies.⁸⁸ The City argues that Morro Bay's water supply is adequate to meet "current and planned development to projected build out" and that the current potable water supply is sustainable and the availability of local groundwater makes recycled water "economically unattractive."⁸⁹

Groundwater Supplies

In light of resource issues associated with City draw-downs in the Chorro groundwater basin, the California State Water Resources Control Board (SWRCB) issued Decision 1633 in 1995. Decision 1633 includes a Water Management Plan for the City that established priorities for the City's long-term water supply. The Water Management Plan's number one priority is conservation, and the number two priority is reclamation and use of recycled water. Decision 1633 also established that to maintain public trust resources, such as habitat for important species like steelhead trout, tidewater goby and red-legged tree frog, minimum stream flows of 1.4 cubic feet per second (cfs) are necessary in Chorro Creek.⁹⁰ To assure that over-pumping of wells in the Chorro well field does not deplete this minimum stream flow requirement, SWRCB Decision

⁸⁵ For example, during the 1995 drought and the 2009 State Water Project shutdown (2010 Morro Bay Urban Water Management Plan, page 10).

⁸⁶ The City's desalinization plant was originally approved in 1993 during a drought emergency through an expedited permit process. The City uses the plant to augment State Water deliveries during peak demand times and other types of shortages. The plant had to be shut down after a few months of operation because of excessive costs. In addition, the permit was a temporary CDP that expired 5 years after it was approved. As a result, the desalinization plant, and any use of it, is currently unpermitted. The City is aware of this issue, and intends to submit a new CDP application in the near term. However, for the purposes of water supply analysis, water from the desalinization plant cannot be factored into this analysis, as it is speculative unless and until appropriately permitted.

⁸⁷ 2005 Morro Bay Urban Water Management Plan, page 33; City of Morro Bay Water Allocation History, page 1-3.

⁸⁸ Recycled Water Feasibility Study, page 11.

⁸⁹ Draft Recycled Water Feasibility Study, page ES-2 and ES-4.

⁹⁰ State Water Resources Control Board Decision 1633, pages 22-24.

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1633 required monitoring of stream flows with stream gauges.⁹¹ To date, no permanent flow monitoring equipment has been installed in Chorro Creek, and although the City relies on biweekly monitoring of stream flows to justify pumping, continuous data is not available at the current time to ensure that such requirements are maintained at all times for purposes of water budgeting.⁹²

The Morro Valley Groundwater Basin has been estimated to have a safe yield of 1,500 acre feet per year (afy).⁹³ Seawater intrusion during long-term droughts and nitrate contamination are the predominant concerns for this groundwater basin⁹⁴ and, since this basin is a shallow alluvial basin, it is more susceptible to drought impacts. In addition, the SWRCB has issued appropriative rights permits that limit the yield in this basin.⁹⁵ The City currently draws from four of the seven available Morro wells, the other three are physically disconnected from the system and inactive. The Morro Wells were taken out of service in 2000 after a methyl tertiary butyl ether (MBTE) contamination from fuel storage tank leakage was discovered and this issue was not completely resolved until 2008.⁹⁶

The Chorro Valley Groundwater Basin has been estimated to have a safe yield of 2,210 afy.⁹⁷ Seawater intrusion occurs in this basin in especially dry years or in wells that are influenced by wastewater treatment plant discharges to Chorro Creek from the Men's Colony WWTP, farther inland.⁹⁸ The water quality of the Chorro basin is also affected by nitrate contamination, including from agricultural sources.⁹⁹ The City is only able to draw from one of the eight Chorro wells currently and most of the Chorro wells are currently inactive due to nitrate problems and water quality concerns.¹⁰⁰

Lacking permanent flow monitoring gauges, there is no conclusive way to tell if the pumping of Morro and Chorro groundwater is fully in compliance with SWRCB Decision 1633 and that stream flows necessary to protect public resources, such as sensitive species habitat, are being maintained. Although the City's ad-hoc biweekly monitoring provides some data, it is not continuous data, and thus cannot be relied on ultimately for such conclusions. Further, the history and data appear to show that the reliability of the wells in these groundwater basins is unpredictable at best, including given the many instances of contamination and/or intrusion from various sources over time.

⁹¹ State Water Resources Control Board Decision 1633, page 22

⁹² 2010 Morro Bay Urban Water Management Plan, page 8.

⁹³ San Luis Obispo County Water Master Water Plan, page 4-18.

⁹⁴ 2010 Morro Bay Urban Water Management Plan, pages 4-7 and 4-8.

⁹⁵ 2010 Morro Bay Urban Water Management Plan, page 7; San Luis Obispo County Water Master Water Plan, page 18.

⁹⁶ 2010 Morro Bay Urban Water Management Plan, pages 7-8.

⁹⁷ San Luis Obispo County Water Master Water Plan, page 4-16.

⁹⁸ San Luis Obispo County Water Master Water Plan, page 4-16.

⁹⁹ 2010 Morro Bay Urban Water Management Plan, page 4-8; San Luis Obispo County Water Master Water Plan, page 19.

¹⁰⁰ Rob Schultz' City of Morro Bay Water History Memo, page 3; 2010 Morro Bay Urban Water Management Plan, page 8.

Desalinization Supplies

The City of Morro Bay also relies on a desalinization plant for some of its water supplies. This plant was originally constructed for the sole purpose of emergency drought preparation, and, it appears that the City does not have a valid CDP for the current use of this plant because its original CDP authorization was conditioned to allow operation of the plant for a limited time. The condition of approval limiting the term of the permit was largely based on concerns about impacts to marine resources from brine disposal. These issues remain unaddressed. Further, issues identified when the plant is in operation are related to its reliability and expense. In fact, the plant was shut down after its first several months of operation due to high operating costs, and again in 1995 because of water quality problems.¹⁰¹ The plant, even now, offers only limited reliability due to pretreatment clogging from iron.¹⁰² In short, desalinization is a relatively expensive and at times unreliable source of water for the City. In addition, the plant is currently unpermitted, and thus for the purposes of water supply analysis, water from the desalinization plant cannot be factored in, as it is speculative unless and until appropriately permitted.

State Water Supplies

Finally, the City relies heavily on State Water supplies. The California State Water Project has long been controversial, including because resource impacts are concentrated at the points of extraction, while the benefits of the water are realized by water users far away. This is the opposite of a locally sustainable water supply, and it is not clear that such a program can ultimately meet the State's water supply needs in a way that appropriately protects resources, including as the State's population continues to grow.

In addition, State Water is not controlled by local communities, but rather its provision is controlled by the State, which can shut off supply unilaterally.¹⁰³ State Water Project water can also be unilaterally suspended, reduced, or otherwise impacted (e.g., increase in costs, etc.). In the past and going forward, given a drought or other uncontrollable environmental condition, "at the SWP points of diversion, projected deliveries have been as low as 5 percent of allocated water."¹⁰⁴ In such an instance, the City would need to purchase an additional drought buffer to take the full allotment, which at this time "would not be economically feasible for the community... and also may not be cost effective in terms of the enhancement to reliability that it provides."¹⁰⁵ Reclamation would provide an important contingency in the event that such water transfers are suspended, reduced, or otherwise impacted (e.g., increase in costs, etc.)

Recycled Water Feasibility Study

The Applicant developed a Recycled Water Feasibility Study, as directed by the Commission in March 2011. In that study, the Applicant concluded that the City of Morro Bay has an adequate and reliable water supply, even in drought years, through the use of State Water, while

¹⁰¹ 2010 Morro Bay Urban Water Management Plan, page 4.

¹⁰² 2010 Morro Bay Urban Water Management Plan, page 10.

¹⁰³ As nearly occurred in Morro Bay over the Labor Day weekend of 2011, when the City nearly had to turn to inactive and nitrate impacted Chorro wells due to a State Water delivery issue that was only rectified at the very last minute (Personal Communication, Rob Livick, Public Services Director, City of Morro Bay, June 22, 2012).

¹⁰⁴ 2010 Morro Bay Urban Water Management Plan, page 15.

¹⁰⁵ 2010 Morro Bay Urban Water Management Plan, page 15.

groundwater wells and seawater desalination and brackish water desalination offer diverse water supply alternatives,. It therefore concluded that it need not currently pursue use of recycled water in conjunction with the WWTP project, but that once the approvals for the final design and construction of the WWTP is completed, studies and interest surveys can go out to further explore more reuse and recycling opportunities in the area.¹⁰⁶ The Applicant's conclusion is based on both State Water and City desalination plant water being both reliable and available. On the former, it is fair to say that the City has a contract for State Water, but it seems equally fair to say the long-term sustainable future of that supply is uncertain. On the latter, the City desalination plant water cannot be applied towards such water supply analysis, as it is currently unpermitted, and it is unclear to what extent such use could be permitted in the future. In addition, both State Water and desalinated water are expensive, and desalination takes a lot of energy to produce, further reducing its effectiveness as a source and causing its own adverse coastal resource impacts due to its relatively high greenhouse gas emissions. The City's groundwater wells are at times inundated with seawater and have been subject to contamination by both methyl tertiary butyl ether and nitrates.¹⁰⁷

In short, there appears to be uncertainty in terms of the City's conclusion that it does not need to pursue recycled water because "the City has no water supply concerns,"¹⁰⁸ particularly when contingency planning for worst case scenarios are applied (e.g., suspension of State Water, no desalination, etc.) and intensified use of local groundwater basins are the last resort. As indicated above, the City turned to State Water and desalination after its Morro and Chorro Creek aquifer extractions led to near overdraft of these resources throughout times of drought in the area.¹⁰⁹ Current monitoring is not complete and thus cannot conclusively demonstrate that minimum stream flows are always being maintained, and these resources suffer from nitrate issues currently.¹¹⁰

A return to drought conditions would further exacerbate such issues and degrade such resources, as well as other freshwater systems that rely on them (like Morro and Chorro Creek, etc.). In addition, others who use water from the groundwater basins, like agricultural operators, would also be relying on the same sources, again further exacerbating any such problems.

In any case, regardless of whether the Applicant has accurately assessed the City's need for recycled water in the future, the LCP nevertheless identifies reclaimed water as the City's second-highest priority and requires that recycled water be an element of a WWTP project (see LUP Policy 3.08(5)).

The City's evaluation of the potential use of recycled wastewater from the WWTP is somewhat skewed, given its reliance on a finding that there is no water supply issue in the City, and thus that there is no need for recycled water to offset such supplies (i.e., through use for agriculture and landscaping). With this context, the City concluded that the use of 0.4 million gallons per

¹⁰⁶ Draft Recycled Water Feasibility Study, page 90-92.

¹⁰⁷ 2005 Urban Water Management Plan, page 33.

¹⁰⁸ Draft Recycled Water Feasibility Study, page ES-5.

¹⁰⁹ 2005 Urban Water Management Plan, page 33.

¹¹⁰ 2005 Urban Water Management Plan, page 33.

day (mgd) (of the potential 1.5 mgd that could be produced) of recycled water to be produced and made available (via truck filling station at the WWTP) as a part of the proposed project was sufficient to meet LCP requirements that the project include reclamation.

However, should the water supply conclusion change, so would the recycled water conclusion. For example, the Applicant concludes that most of the potential uses for this recycled water are not feasible because of varying reasons (ranging from no enthusiasm for the water from potential users, to logistical concerns, to the concern that the water will be too expensive to move off site to the potential users¹¹¹). As discussed below, it appears that these concerns are not insurmountable here and should not be relied on as fatal flaws. Moreover, given that the LCP identifies recycled water as the City's second-highest priority, it does not appear that siting the WWTP in such a location that recycled water would all need to be trucked from the site, such that only one-third of its recycled water capacity could be used, is consistent with the LCP.

In addition, the Applicant's determination of what volume of recycled water should be produced was based, in part, on a conclusion that most of the potential uses for this recycled water are not feasible, including because it will be too expensive to move such recycled water off-site to the potential users. If the WWTP is located closer to potential users, then more recycled water could potentially be used. And, if the Applicant's optimistic predictions regarding the adequacy of existing water supplies do not hold up over time, then siting the WWTP in such a location that recycled water can more readily be made available to potential users can help address such water supply issues in the future, including by enhancing local sustainability and control.

If the water supply baseline is not as certain as predicted, then the degree to which users would be interested in making the most out of the treated wastewater would be expected to change as well. One need look no further than the recently approved wastewater treatment system in nearby Los Osos (about 7.5 miles away) where the Commission required that all of the wastewater effluent be reclaimed, recycled, and reused to offset potable water use and enhance groundwater resources in that nearby community.¹¹² The reclaimed water used by that plant is expected to be fully beneficially used by the community.

The Applicant does conclude that reuse of the recycled water in the agricultural corridor offers the largest potential use of recycled water, about 500 afy.¹¹³ However, the Applicant rules out this potential reuse of the recycled water because the water will be costly to produce and there will be nutrient constraints of the treated water.¹¹⁴ The Applicant goes on to state that farmers in the agricultural corridor of Morro Bay are, in fact, interested in using recycled water, but that cost is a major constraint.¹¹⁵ However, cost recovery is not always the main or only concern with making such recycled water available, particularly in scenarios where there are competing users for a finite water supply for which extractions are leading to resource impacts and concerns. Thus, the Applicant may have underestimated the demand for such water.

¹¹¹ Draft Recycled Water Feasibility Study, pages ES-16 – ES-17.

¹¹² CDP A-3-SLO-09-055/069, approved June 11, 2010.

¹¹³ Draft Recycled Water Feasibility Study, pages ES-16 – ES-17.

¹¹⁴ Draft Recycled Water Feasibility Study, pages ES-16 – ES-17.

¹¹⁵ Draft Recycled Water Feasibility Study, pages ES-16 – ES-17.

Finally, outside of the City's water supply issues, the Applicant indicates that recycled water provisions do not need to be maximized with the proposed WWTP because it already has a viable means of disposing of its treated water because it can continue to use the ocean discharge pipe. Although it is clear that all wastewater treatment systems need a "fail safe" disposal option for treated effluent, it is not clear that an ocean outfall is necessary today, in light of current technology. This was demonstrated in the Commission's approval of a wastewater treatment plant in Los Osos, where 100% of the treated water will be reused, and no ocean outfall was required. Given the environmental impacts of such ocean outfalls, and LCP and Coastal Act requirements to protect marine resources, the Applicant should site the new WWTP in a location where more of the treated water can be recycled so that less of it needs to be disposed of in the ocean.

In exploring recycled water and reuse options, the Applicant considered the possibility of 100% beneficial reuse, wherein a combination of direct reuse customers would use every bit of the potential 1.5 mgd of recycled water, thereby effectively eliminating the use of the ocean outfall. The recycled water feasibility study found that there is not enough demand in the area to utilize the full volume of recycled water produced, especially during the winter months. Therefore, they looked at a variety of storage and other beneficial reuse options to utilize 100% of the wastewater flows. However, they determined that these options were not feasible.

In summary, the development of new wastewater facilities offers an opportunity to the City of Morro Bay, much like the permitted development of a new wastewater facility in Los Osos. This project provides it the opportunity to improve the City's long-term water availability, allowing it to reduce its dependence on expensive, outdated and unreliable water sources. A newly devised plan for a WWTP that incorporated meaningful water reclamation and recycling would help conserve water in situ for habitat protection of sensitive species and bring the project into further compliance with LCP policies that state that water reclamation is the second highest priority for the City.

Water Reclamation and Biological Resources Conclusion

The proposed WWTP is a major public works project and investment in community infrastructure that relies heavily on a poorly supported conclusion that the City's water supplies are stable. In fact, the City's water supply has many constraints, including availability and reliability of State Water; the use of an unpermitted, expensive desalinization plant; the overuse and contamination of the Morro and Chorro groundwater aquifers; and the threats to stream levels in the groundwater basin associated with the Morro and Chorro Creeks. Regardless of the questions regarding the Applicant's conclusions regarding water availability, the LCP identifies use of recycled water as the City's second highest priority, it requires recycled use as part of a new WWTP, and use of such recycled water could benefit ESHA and biological resources and reduce the adverse impacts of the project on marine resources, by reducing, or possibly eliminating, the project's reliance on an ocean outfall. Given that the project as sited and designed fails to meet these goals, it is inconsistent with LUP policies 3.08(5), 6.06 and 11.17.

3. Archeology

Applicable Policies

The LCP also includes strong protections for archaeological resources. The key LCP policies

state:

LUP Policy 4.01. Where necessary significant archeological and historic resources shall be preserved to the greatest extent possible both on public and privately held lands.

LUP Policy 4.07. All available measures, including purchases, tax relief, purchase of development rights, etc. shall be explored to avoid development on significant archaeological sites...

Consistency Analysis

The LCP demands that if significant archeological or historical resources are present they shall be preserved to the greatest extent possible and that available measures be explored (such as tax relief, purchase of development rights, etc.) to avoid development on such sites.

The project site is located in close proximity to numerous documented archaeological sites and members of the Salinan Tribe expressed concern that the “shadow cast by Morro Rock at sunset between the winter and summer solstices was a burial ground” and that human remains had been found during the construction of the original wastewater treatment plant¹¹⁶. The new WWTP requires significant ground disturbance and excavation at this sensitive location, and would cover a large area with significant WWTP facilities, increasing the potential threat to such sensitive archeological resources.

The proposed WWTP site was surveyed for potential archaeological or historical resources within the site or vicinity. No resources were found at the site but there is potential “for intact portions of buried sites below existing infrastructure.”¹¹⁷

F. CDP DETERMINATION CONCLUSION

Proposed Project Not Approvable

As discussed in the above findings, the proposed project is inconsistent with LCP policies related to allowable uses and land use priorities, hazard avoidance and response, sustainable public infrastructure, and public viewshed protection, where these inconsistencies are largely related to the Applicant’s chosen site; a site that is identified by the LCP for lesser intensity development than a WWTP, and lesser intensity development that is keyed to coastally oriented uses and other Coastal Act priorities. In fact, absent an LCP amendment, the proposed project isn’t even an allowed use at this location. The project cannot be approved as proposed.

When the Commission reviews a proposed project that is inconsistent with the Coastal Act and the LCP, like this one, there are several options available to it. In many cases, the Commission will approve the project but impose reasonable terms and conditions to bring the project into conformance with the LCP and Coastal Act. In other cases, the range of possible changes is so significant as to make conditioned approval infeasible. In these situations, the Commission will frequently deny the project and provide guidance to applicants on the type of development

¹¹⁶ Draft EIR, pages 3.4-15.

¹¹⁷ Fine-Screen Analysis, page 39

changes that must be made for Coastal Act and LCP conformance. These denials are without prejudice inasmuch as applicants are given direction on what they need to do to propose an alternative project that can meet the applicable policies. In rare cases, there are no feasible conditions that could bring the project into conformance with the Coastal Act, and there are no obvious feasible alternatives consistent with the Coastal Act that the Commission might suggest to an applicant. When this happens, the Commission might deny the project without further guidance to the applicant at that stage, or it might consider approval of a different project that is the minimum necessary to avoid a taking of private property without just compensation.

In this case, the proposed project is fatally flawed inasmuch as a wastewater treatment plant is not allowed under the LCP's zoning at this location. Even were the Commission to want to suggest changes through conditions to try to bring the project into compliance with other aspects of the LCP, there is no way to condition the project to be consistent with the underlying zoning. This is one of those cases where the Commission finds itself on this point unable to fix project LCP inconsistencies.

In addition, even if the allowed use problem were solvable, which it isn't in a CDP context (i.e., because an LCP amendment would be required), the proposed site is subject to significant coastal hazard constraints, including significant flooding, tsunami and liquefaction risks. The LCP directs these risks to be avoided and otherwise minimized, but not at the expense of other LCP policies. In this case, the Applicant proposes to address these risks by elevating the new WWTP on roughly 4 acres of fill up to approximately 7.5 feet high (approximately 35,000 cubic yards of fill). This would ensure that the fill area extends two-feet above the estimated 100-year flood, but it also means that the project would be inconsistent with other LCP hazard policies, including those that require that grading "be kept to an absolute minimum", require maintaining natural grades and topography as much as possible, and that require excessive grading projects to be denied in cases like this. In short, the proposed project in essence proposes to create an elevated mound that would, by project design, become an island during a 100-year event, and which would be overtopped in a significant tsunami. Such a project cannot be readily rectified to the LCP's hazards requirements at this site.

The proposed project raises other LCP and Coastal Act challenges related to other coastal resource issues, including primarily with respect to water reclamation and public views, but these challenges are addressable at this site through conditions. While it appears that there may be opportunities for better LCP outcomes on these other issues at other locations, it also appears that a project could likely be conditioned to be made LCP consistent on these other issues at the existing site. Because the more significant flaws aren't readily fixable at the existing site, however, such potential conditions are moot.

Further, the project represents an important juncture for the City's coastal zone planning for the foreseeable future. As indicated, an LCP amendment would be required to make a new WWTP an allowed use at this shoreline location. Given the site is located in a prime visitor-serving redevelopment opportunity area for the City, and given the other constraints to WWTP development at this location, it is not clear that such an LCP amendment would be desirable, or that committing the site to a lower priority use can be squared with the priorities and requirements of the LCP, the Coastal Act, and the City's objectives for this land moving forward. As such, it appears that the LCP amendment process is unlikely to resolve the fatal flaws with

the proposed project.

At the same time, a WWTP project is an important project as the current plant results in discharge of inadequately treated wastewater, albeit very infrequently (approximately four times in the last seven years), and the Applicant is under RWQCB order to avoid such episodes. In short, the current WWTP results in coastal resource impacts, and a new WWTP is important to avoiding such impacts. Thus, the Applicant (i.e., the City and the Cayucos Sanitary District), find themselves in the difficult position of having pursued a project that is not approvable here, despite attempts, as this project was pending locally, to highlight such LCP and Coastal Act inconsistencies and to suggest course corrections.¹¹⁸

Alternatives

Fortunately, there are alternative feasible sites for WWTP development in the area, including more inland sites evaluated by the Applicant, two of which, the Chevron and Righetti sites, were evaluated in some detail by the Applicant (see Exhibit 4).¹¹⁹ Of the two alternatives they evaluated, both are viable, but the Chevron site appears somewhat more constrained on certain evaluation criteria than does the Righetti site. Namely, the Chevron site presents some challenges to WWTP development, including potential landslide issues, public view issues (it is located adjacent to Highway 1), habitat issues (including related to Toro Creek, which runs along the northern edge of the property), and difficulties associated with reclamation (due to its location away from identified potential users).

The Righetti alternative site appears to provide the best potential site of those evaluated by the Applicant for a new WWTP. The Applicant's analysis identified minimal potential for hazards and ESHA impacts at this site. It is also located inland in an area where it would not be expected to impact public recreational access and there are siting and design options available to minimize impacts on visual resources. The site is agricultural land, which presents some concerns in terms of agricultural conversion, but it is also located in the County where such conversion is contemplated for public facilities like this where it is the least environmentally damaging feasible site (in the same way that the Los Osos WWTP was ultimately sited on agricultural lands). The potential for water reclamation/reuse is very high at this site, given its location in the agricultural service area, where the most potential for such reuse appears to exist. It presents some public viewshed challenges, being located in an area of hilly terrain and visual open space adjacent to Highway 41, but these do not appear insurmountable.

The primary issues identified by the Applicant in terms of pursuing an alternative site are issues associated with the additional time it would take to pursue a project at such sites, and the additional costs that might be involved.¹²⁰ The Applicant has developed information on both of these topics during the course of the appeal to the Commission that provide information with

¹¹⁸ See, for example, Commission staff letters dated December 8, 2008 and November 12, 2010 in Exhibit 5.

¹¹⁹ As indicated earlier, the Chevron site is approximately 160 acres that is located on the inland side of Highway 1 along the generally undeveloped piece of shoreline between the residential neighborhoods making up the City's northern boundaries and the unincorporated community of Cayucos further upcoast. The Righetti site is approximately 260 acres located just outside of the City of Morro Bay city limits and north of Highway 41.

¹²⁰ Unfortunately, an alternatives analysis that could have saved time and provided better information on these questions, including evaluation of potential funding options, was not a robust part of the local process.

which to better understand these ramifications. According to the Applicant, a new WWTP at the Righetti site would cost approximately \$28 million dollars more than the approximately \$62 million dollars they indicate the WWTP would cost at the existing site, and would take 7 years longer to complete than the 3 years they indicate it would take to complete a WWTP at the existing site.

However, the Applicant's assumptions and analyses underlying these time and cost estimates appear to raise some questions, including with respect to costs that appear inaccurate (e.g., they estimate acquisition costs of \$7.5 million for the Righetti property, but the property is currently on the market for \$2.4 million) and timelines that appear somewhat inflated, including due to estimating sequential as opposed to concurrent events (CEQA separate from permit processing) and including allotting time for events that are not necessary (like an LCP amendment or an annexation through LAFCO, neither of which is required for a WWTP on this site). Although the site would include its own challenges, a more realistic assessment of time and cost factors is that a new WWTP could be up and running on Righetti site within about five years and for about \$74 million, as compared to the three years and about \$62 million the Applicant estimates for the proposed project.

There is no question that the additional costs and time that would be required to construct a WWTP at the Righetti site (or another alternative site) are impediments to a new WWTP. At the same time, given the WWTP is not approvable at the existing location, it is not an either/or question. Rather, this represents the practical reality of where this Applicant finds itself at this juncture, including because they pursued a project at the existing location notwithstanding the issues associated with it that have been highlighted for many years, including prominently that alternative siting was necessary.¹²¹ Moving forward, this practical reality will inform many things, including with respect to RWQCB requirements.

The Applicant is under a 2014 deadline per the RWQCB to upgrade their treatment facilities, and would be subject to a RWQCB permit extension at that time, contemplated as an interim permit to be for five years (through 2019). After 2019, a new permit would need to be issued, and according to RWQCB, such interim permit is unlikely to include a secondary treatment requirement 301(h) waiver, and thus fines could accrue if the City exceeded regulatory thresholds beyond 2019. Given that the Applicant has released effluent in violation of the terms of the RWQCB permit only four times in seven years,¹²² the potential for significant fines moving forward is slim. In addition, including in recognition of the significant constraints to development of WWTP at the current location, the information and analysis now available from the Commission's appeal and CDP process here, and the somewhat limited potential for environmental degradation in the interim, the RWQCB has indicated that other penalties or enforcement are unlikely to accrue as the Applicant pursues a new WWTP project.¹²³ In addition, the RWQCB and the SWRCB have both expressed interest in working with the Applicant to further flesh out alternative siting options, potential funding sources (including funding sources keyed to global climate change and adaptation planning), and arrangements and understandings

¹²¹ Again, see for example, the letters from Commission staff dated December 8, 2008 and November 12, 2010 in Exhibit 5).

¹²² Personal Communications the Bruce Keogh, City of Morro Bay Wastewater Division Manager, October 2, 2012.

¹²³ RWQCB staff comments December 10, 2012.

associated with water quality compliance moving forward.¹²⁴ In short, both agencies have offered a commitment to work together to help make an LCP-consistent project that can appropriately address water quality concerns moving forward.

Conclusion

In conclusion, a WWTP project is needed to address ongoing coastal resource impacts, but a project at the existing WWTP site cannot be found consistent with the LCP and the Coastal Act. In fact, an LCP amendment would be first be necessary to even make it an allowed use at the proposed location. The Commission's denial of the proposed project is not a denial of better treating wastewater in Morro Bay and Cayucos, rather it is a recognition of the constraints to WWTP development at the proposed site. The Commission believes that a more sustainable facility located out of harm's way is feasible, and that the time and investment in that process is appropriate and necessary at this juncture, and Commission staff is prepared to work with the Applicant, the City, the RWQCB, the SWRCB, other agencies and interested parties to help foster a better overall project that can meet LCP requirements, enhance and protect water quality, and meet the community's needs over the longer term with a sustainable and beneficial public infrastructure project. LCP and Coastal Act consistency, and good coastal planning and public policy, require nothing less.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects. [Relevant Portion.] A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.

Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication. ... (b) This division does not apply to any of the following activities: ... (5) Projects which a public agency rejects or disapproves.

CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved. (a) CEQA does not apply to projects which a public agency rejects or disapproves.

Section 13096 (14 CCR) requires that a specific finding be made in conjunction with coastal development permit applications about the consistency of the application with any applicable requirements of CEQA. This report has discussed the relevant coastal resource issues with the proposed project. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 "a public agency may disapprove a

¹²⁴ SWRCB and RWQCB staff comments December 10, 2012.

project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.” Section 21080(b)(5) of the CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the project was approved as proposed. Accordingly, the Commission’s denial of the project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

SI Findings

Rough Screening

Fine Screening

Recycled Water Feasibility Analysis

Flood Hazard Analysis

EIR

AGENDA NO: VII

MEETING DATE: January 3, 2013

RESOLUTION NO. 07-13

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
REQUESTING CALIFORNIA COASTAL COMMISSION DENIAL
OF APPLICATION NUMBER A-3-MRB-11-001**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the City of Morro Bay owns and operates 60% of a Wastewater Treatment Plant (WWTP) originally constructed in 1954; and,

WHEREAS, in 2003, the City of Morro Bay and Cayucos Sanitary District (MBCSD) began work efforts on upgrading the existing WWTP in order to phase out the need for the existing 301(h) modified discharge permit; and,

WHEREAS, in 2009, a flood analysis of the existing WWTP site concluded that “the flood elevation on neighboring properties would increase if new facilities are built within the existing WWTP footprint”; and,

WHEREAS, as a result of the flood analysis, the MBCSD designated the property to the south as the site for a new WWTP and changed the scope of the project from an on-site upgrade to demolition, relocation and construction of a new WWTP; and,

WHEREAS, on December 20, 2010 the Morro Bay Planning Commission unanimously denied the Coastal Development Permit and certification of the Environmental Impact Report, finding that the proposed project was not an upgrade but a new project and therefore required a more thorough alternative site analysis; and,

WHEREAS, on January 11, 2011 the Morro Bay City Council voted 4-1 to overturn the decision of the Planning Commission, approving the Coastal Development Permit and certifying the Environmental Impact Report; and,

WHEREAS, the Coastal Development Permit was appealed by numerous parties, including Commissioners Shallenberger and Stone, The Morro Bay Farmers & Ranchers Ag Coalition, Sierra Club and Surfrider Foundation; and,

WHEREAS, on March 11, 2011 the California Coastal Commission unanimously found Substantial Issue with the WWTP proposal and directed the applicant to conduct a thorough review of alternative WWTP site locations which may, among other benefits, provide greater protection from coastal hazards, have higher potential for beneficial reuse of the treated wastewater and allow for the restoration of the existing beachfront WWTP location for visitor serving purpose; and,

WHEREAS, the MBCSD conducted an alternative analysis and were presented the findings on November 10, 2011; and,

WHEREAS, although viable alternative sites exist, along with community support of said sites, the MBCSD concluded the proposed site remained the best site; and,

WHEREAS, after the decision by the MBCSD on November 10 , 2011 the MBCSD has held only four public meetings effectively limiting community dialogue on the proposed project; and,

WHEREAS, the community of Morro Bay, in the June 2012 General Election, elected three candidates who supported the consideration of the viable alternative WWTP sites; and,

WHEREAS, the new Morro Bay City Council was installed on December 10, 2012; and,

WHEREAS, the City Council requested a special MBCSD meeting for early January in order to review the relevant facts of the proposed WWTP project and provide direction to staff; and,

WHEREAS, the Cayucos Sanitary District declined to attend said meeting, citing holiday conflicts; and,

WHEREAS, the City of Morro Bay held the special meeting on January 3, 2013; and,

WHEREAS, the de Novo hearing for the new WWTP is scheduled for January 10, 2013; and,

WHEREAS, Coastal Commission Staff recommends denial of the new WWTP, listed as application number A-3-MRB-11-001; and,

WHEREAS, in their report Coastal Commission staff states “the proposed project is inconsistent with the City’s LCP, including policies related to allowable uses and land use priorities, hazard avoidance and response, sustainable public infrastructure, and public view-shed protection...”; and,

WHEREAS, in their report Coastal Commission staff states “Fortunately, there appear to be feasible sites for WWTP development in the area, including inland sites evaluated by the Applicant”; and,

WHEREAS, in their report Coastal Commission staff concludes “a WWTP project is needed to address ongoing coastal resource impacts, but a project at the existing WWTP site cannot be found consistent with the LCP. In fact, an LCP amendment would first be necessary to make it an allowed use at the proposed location. Staff recommends that the Commission deny the CDP for the WWTP at the existing site, and further recommends that the Commission provide direction to the Applicant to pursue an alternative site that can meet LCP objectives and requirements. Staff believes that such a recommendation is good coastal planning and public policy, that it is required for LCP consistency, and that it will provide for a WWTP project that can appropriately address coastal resource problems in a manner that provides long-term sustainable public infrastructure.”; and,

WHEREAS, the Morro Bay City Council concurs with these statements, and seeks additional time to develop the most appropriate project for the MBCSD.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of Morro Bay concurs with the Coastal Commission staff report on application number A-3-MRB-11-001 and formally requests the Commissioners deny the application.

PASSED AND ADOPTED by the City Council of the City of Morro Bay, at a special meeting thereof held on the 3rd day of January 2013, by the following vote:

AYES:

NOES:

ABSENT:

JAMIE L. IRONS, Mayor

JAMIE BOUCHER, City Clerk

AGENDA NO: VIII

MEETING DATE: January 3, 2013

RESOLUTION NO. 08-13

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
REQUESTING CALIFORNIA COASTAL COMMISSION APPROVAL
OF APPLICATION NUMBER A-3-MRB-11-001**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the City of Morro Bay owns and operates 60% of a Wastewater Treatment Plant (WWTP) originally constructed in 1954; and,

WHEREAS, in 2003, the City of Morro Bay and Cayucos Sanitary District (MBCSD) began work efforts on upgrading the existing WWTP in order to phase out the need for the existing 301(h) modified discharge permit; and,

WHEREAS, in 2009, a flood analysis of the existing WWTP site concluded that “the flood elevation on neighboring properties would increase if new facilities are built within the existing WWTP footprint”; and,

WHEREAS, as a result of the flood analysis, the MBCSD designated the property to the south as the site for a new WWTP and changed the scope of the project from an on-site upgrade to demolition, relocation and construction of a new WWTP; and,

WHEREAS, on March 11, 2011 the California Coastal Commission unanimously found Substantial Issue with the WWTP proposal and directed the applicant to conduct a thorough review of alternative WWTP site locations which may, among other benefits, provide greater protection from coastal hazards, have higher potential for beneficial reuse of the treated wastewater and allow for the restoration of the existing beachfront WWTP location for visitor serving purpose; and,

WHEREAS, the MBCSD conducted an alternative analysis and were presented the findings on November 10, 2011; and,

WHEREAS, the MBCSD concluded the proposed site remained the best site; and,

WHEREAS, the de Novo hearing for the new WWTP is scheduled for January 10, 2013; and,

WHEREAS, Coastal Commission Staff recommends denial of the new WWTP, listed as application number A-3-MRB-11-001; and,

WHEREAS, the Morro Bay City Council maintains the proposed site is the best site for the community.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of Morro Bay disagrees with the Coastal Commission staff report on application number A-3-MRB-11-001 and formally requests the Commissioners approve the application.

PASSED AND ADOPTED by the City Council of the City of Morro Bay, at a special meeting thereof held on the 3rd day of January 2013, by the following vote:

AYES:

NOES:

ABSENT:

JAMIE L. IRONS, Mayor

JAMIE BOUCHER, City Clerk